

Actions on the Issues of Low-Price Bids for Public Construction Projects  
( Tentative Translation )

July 8, 2008  
Japan Fair Trade Commission

[I] Background to the Investigation

1. As competition among construction companies becomes increasingly intense as public investment decreases, the incidence of so-called dumping bids has risen recently. Since there is a concern about the quality of public construction works under such circumstances, the entire government is taking measures to assure the quality of the public construction projects.

The Japan Fair Trade Commission (JFTC) has, from the viewpoint of restriction of unjust low price sales under the Antimonopoly Act, cooperated with the each ordering party to collect information about construction projects identified as subjects of examinations under the system of reviews into low-price bids. Then the JFTC has conducted necessary investigations and taken strict measures against any unlawful actions. In and after January 2008, the JFTC requested the Ministry of Land, Infrastructure, Transport and Tourism and the Ministry of Agriculture, Forestry and Fisheries as well as the ordering agencies in prefectures and ordinance-designated cities to provide information about the public construction projects that were subject to examinations under the system of reviews into low-price bids among those ordered in the period from October 1, 2006 to December 31, 2007.

In response to these requests, the ordering parties provided information about 2,000 cases (for about 1,100 companies). On the basis of such information, the JFTC sent survey questionnaires in February 2008 to influential entrepreneurs in their business regions and entrepreneurs that won several projects by low price bidding (83 entrepreneurs in total) and requested them to report the profitability etc. of the projects they won bids for during the above period.

2. On the basis of the reports from 83 entrepreneurs as described in 1. above and pursuant to the “Viewpoint concerning Unjust Low Price Sales in Public Construction Projects” (Refer to the Appendix), the JFTC decided to focus its investigation on three of the 83 entrepreneurs considering whether the successful bid price was lower than the construction costs in the detailed budget and the extent of difference between them, the ratios of successful bid price to the target price predetermined by ordering parties as well as frequency and scale etc. of successful bids at low prices. Accordingly, the JFTC has interrogated them from April 2008.

[II] Investigation Results

As a result of investigations described in [I]-2 above, the JFTC issued warnings today to these three entrepreneurs as follows since it was concerned that they could be in violation of the provision under Article 19 of the Antimonopoly Act (Paragraph 6 [Unjust Low Price Sales] of the Designation of Unfair Trade Practices).

1. Parties concerned

No.	Entrepreneur	Location of Principal Office	Representative
1	Okumura Corporation	2-2-2, Matsuzakicho, Abeno-ku, Osaka	Takanori Okumura, representative director
2	Oriental Shiraishi Corporation	2-1-1, Hirakawacho, Chiyoda-ku, Tokyo	Masayuki Kagaya, representative director
3	Toda Corporation	1-7-1 Kyobashi, Chuo-ku, Tokyo	Shunzo Inoue, representative director

2. Outline of the warnings

(1) The JFTC investigated the public construction projects that these three entrepreneurs won bids in the period from October 1, 2006 to December 31, 2007 and found the following facts:

A Okumura Corporation won:

- (a) two public construction projects procured by the Ministry of Agriculture, Forestry and Fisheries through Hokuriku Regional Agricultural Administration Office by means of general competitive bidding at unjustly low prices and it is suspected that the corporation would possibly cause difficulties to the business activities of other construction companies; and
- (b) a public construction projects procured by Toyama Prefecture by means of general competitive bidding with restriction at an unjustly low price via a joint venture represented by the corporation and it is suspected that the corporation would possibly cause difficulties to the business activities of other construction companies.

B Oriental Shiraishi Corporation won

- (a) two public construction projects procured by the Ministry of Land, Infrastructure, Transport and Tourism through Chugoku Regional Development Bureau by means of general competitive bidding;
  - (b) two public construction projects procured by the Ministry of Land, Infrastructure, Transport and Tourism through Kyushu Regional Development Bureau by means of general competitive bidding;
  - (c) two public construction projects procured by Aichi Prefecture by means of general competitive bidding or designated competitive bidding; and
  - (d) two public construction projects procured by Mie Prefecture by means of general competitive bidding,
- respectively at prices which are excessively below cost incurred in the supply and it is suspected that the corporations would possibly cause difficulties to the business activities of other construction companies.

C Toda Corporation won two public construction projects procured by Osaka Prefecture by means of general competitive bidding via a joint venture represented by the corporation at prices which are excessively below cost incurred in the supply and it is suspected that the corporation would possibly cause difficulties to the business activities of other construction companies.

(2) There are concerns that the actions described in (1) above by these three entrepreneurs are in violation of Article 19 of the Antimonopoly Act (Paragraph 6 [Unjust Low Price Sales] of

the Designation of Unfair Trade Practices). Accordingly, the JFTC issued warnings to these three entrepreneurs not to take similar actions in future.

[III] Action in future

The JFTC will continuously take necessary measures in case it finds any unlawful actions considered to be unjust low price sales prohibited under the Antimonopoly Act.

Viewpoint concerning Unjust Low Price Sales in Public Construction Projects  
(September 15, 2004, Japan Fair Trade Commission)

1. Unjust Low Price Sales Prohibited under the Antimonopoly Act

If an entrepreneur “supplies ,without justifiable grounds, goods or services continuously for a consideration which is excessively below the cost incurred in the supply, or otherwise unjustly supplies goods or services for a low consideration,” (Price requirement) and thereby “tends to cause difficulties to the business activities of other entrepreneurs.” (influence requirement), it shall be considered to be unjust low price sales prohibited under the Antimonopoly Act (Paragraph 6 of the Desination of Unfair Trade Practices).

2. Viewpoint concerning Unjust Low Price Sales in Public Construction Projects

Considering the characteristics of public construction projects, viewpoint of “unjust low price sales” is as follows:

(1) Cost structure in public construction projects

Construction cost = Direct construction cost  
+ Common temporary works cost + Site management cost  
Construction price = Construction cost + General management cost etc.

(2) Viewpoint based on characteristics of public construction projects

- A. For the price requirement described in 1. above, “the cost incurred in the supply” is usually considered as the total cost of sales. In the case of public construction projects, “Construction cost + General management cost” may be equivalent to this cost. In addition, to determine if the price is “a consideration which is excessively below the cost incurred in the supply”, one of the criterions will be whether the successful bid price is lower than the total of “Construction cost (Direct construction cost + Common temporary works cost + Site management cost)” in the detailed budget (See Note).
- B. The influence requirement described in 1. above will be judged case by case considering the position of the entrepreneur bidding at low prices in the market, frequency of low price bidding, magnitude of low prices, effect and scale of entrepreneurs affected by low price bidding and so on.

(Note) Detailed budget

The successful bidder prepares, after executing an agreement with the ordering party, detailed estimation for the costs based on the contract price (successful bid price). This is usually called the detailed budget and the actual construction will be carried out according to this budget.