

Cease and Desist Orders and Surcharge Payment Orders against
Participants in Bidding for Engineering Works ordered by the City of Aomori
(Tentative Translation)

April 22, 2010
The Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC), under the provisions of the Antimonopoly Act (AMA), has investigated participants in the bidding for engineering works ordered by the City of Aomori and found that they were in violation of Article 3 (prohibition of unreasonable restraint of trade) of the AMA. Accordingly, the JFTC today issued cease and desist orders pursuant to Paragraph 2, Article 7 of the AMA and surcharge payment orders pursuant to Paragraph 1, Article 7-2 of the AMA as detailed below.

In addition, in relation to the above violations, the JFTC has found the involvement in the bidding by employee of the City of Aomori. Hence, the JFTC today demanded that the Mayor of Aomori implement improvement measures in accordance with the Act on Elimination and Prevention of Involvement in Bid Rigging, etc.

I The cease and desist orders and the surcharge payment orders

1 Companies subject to the cease and desist orders and to the surcharge payment orders, and the amount of the surcharge

Number of companies involved in the violation	Number of companies subject to the cease and desist orders	Number of companies subject to the surcharge payment orders	Total amount of surcharge
34 companies	27 companies	28 companies	297,890,000 yen

2 Outline of the violation

The 34 companies substantially restrained competition, on or after April 1, 2005 (Note 1) at the latest, in the field of trade of certain

engineering works ordered by the City of Aomori (Note2) contrary to the public interest by jointly appointing the designated successful bidder (the company or the specific joint venture to receive the order, the same shall apply hereinafter.) and managing to have the designated successful bidder receive the order.

(Note1) One company joined the collusion on or after January 10, 2006 at the latest, two companies joined on or after May 9, 2006 at the latest and another two companies joined on or after May 7, 2008 at the latest.

(Note2) Engineering works ordered by the City of Aomori as a series of engineering works through the means of designated competitive bidding. Only companies, which locate in the former City of Aomori (the city before consolidation with Namioka Town, South Tsugaru County, Aomori Prefecture on April 1, 2005.) and are rated as classification "A" by the City of Aomori with regard to engineering works, and specific joint venture whose representative is the company are allowed to participate in the bid.

3 Outline of the cease and desist orders

- (1) The 27 companies shall respectively adopt a resolution at their Board of Directors confirming that
 - they have terminated the action in item 2 above,
 - they will not appoint the designated successful bidder for the works ordered by the City of Aomori as a series of engineering works through the means of competitive bidding, through mutual consultation nor in collaboration with any other companies, and each of them will independently carry out its business to receive orders in the future.
- (2) The 27 companies shall respectively notify the measures taken in accordance with item (1) above to the other 26 companies, and shall have such measures thoroughly disseminated to their employees.
- (3) The 27 companies respectively shall not appoint the designated successful bidder for the works ordered by the City of Aomori as a series of engineering works through the means of competitive bidding, through mutual consultation nor in collaboration with any other companies in the future.

4 Outline of the surcharge payment orders

The 28 companies shall respectively pay the amount by July 23, 2010, (297,890,000 yen in total).

II Demand to the Mayor of Aomori for Improvement Measures

1 Outline of the Involvement in Bid Rigging

Concerning the violation described in I-2, the then special director (Local Government Management Officer) of the City of Aomori (Note3), was shown by an executive of a company the draft arrangement of designated companies which divided them into three groups in order to facilitate appointment of the designated successful bidder, and was requested to designate participants in the bid in accordance with the draft arrangement. Therefore, even as the special director acknowledged that coordination in receiving orders was being made among the participants, the special director directed the Contract Division, General Affairs Department, Local Government Management Bureau of the City of Aomori to make three groups arrangement of designated companies in line with the request in order to enable the participants to cooperate, and during the time period between April, 2006 and April 23, 2009 when the special director retired, had generally had the division maintain the three groups arrangement.

(Note3) The then special director was the Deputy Mayor of Aomori after October 1, 2008. The special director was appointed as the Acting Director of Local Government Management Bureau from April 1, 2006 to April 23, 2009, and supervised duties of the Local Government Management Bureau, including the Contract Division of the General Affairs Department, which took charge of affairs on bidding and agreement of engineering works ordered by the City of Aomori through the means of designated competitive bidding.

2 Applicable Articles of the Act and Demand for Improvement Measure

The actions described in section 1 above by the employee of the City of Aomori falls under the provision of Item 4, Paragraph 5, Article 2 of the

Act on Elimination and Prevention of Involvement in Bid Rigging, etc. (Aiding bid rigging).

Therefore, the JFTC demanded, pursuant to the provision of Paragraph 2, Article 3 of the Act on Elimination and Prevention of Involvement in Bid Rigging, etc., that the Mayor of Aomori immediately take necessary improvement measures in order to assure exclusion of the above mentioned bid rigging involvement in relation to the certain engineering works ordered by the City of Aomori, so that any actions similar to those in section 1 above will not be taken in the future. Further, the JFTC demanded that the Mayor of Aomori, pursuant to the provision of Paragraph 6 of the Article, make public and notify the JFTC of the result of the investigation and the contents of the improvement measures taken by the Mayor pursuant to the provision of Paragraph 4 of the Article corresponding to the demand.

In addition, the JFTC, from the viewpoint of making doubly sure to exclude and prevent any future involvement in bid rigging, notified the Board of Audit of Japan that the JFTC had demanded that the Mayor of Aomori implement improvement measures.