

Cease and Desist Orders and Surcharge Payment Orders against
Participants in Bidding for Offshore Works ordered by Kagoshima Prefecture
(Tentative Translation)

November 9, 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 offshore works (Note 1) ordered by Kagoshima prefecture 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.

(Note1) “Offshore works” means that the works ordered by Kagoshima prefecture as a series of engineering works or dredging operation, and all or part of these works are carried out using workboat because of the design specification ordered by Kagoshima prefecture.

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 (million yen)
31 (Note 2)	31 (Note 2)	27	1440.54

(Note 2) One of the violating companies is not a recipient of the cease and desist order, because the company transferred all of its construction business to the company which was established on November 2, 2009 through the incorporation-type company split, and since then, it has

not engaged in construction business.

On the other hand, the company which was established through the incorporation-type company split and succeeded to all of its construction business (hereinafter referred to as “succeeding company”) is not a violating company but a recipient of the cease and desist order as the company succeeded to the business pertaining to the violation.

2 Outline of the violation

The 31 companies agreed to take the following actions, on or after April 1, 2006 at the latest, to prevent decline of order prices for offshore works ordered by Kagoshima prefecture through the means of general competitive bidding, designated competitive bidding (both include a comprehensive evaluation bidding method with technical proposal) or quotation collection (hereinafter referred to as “Kagoshima prefecture offshore works”).

- (1) a. They decide which company or specific joint venture receives the order (hereinafter referred to as the “designated successful bidder”).
- b. The bid price is decided by the designated successful bidder, and companies other than the designated successful bidder shall cooperate so that the designated successful bidder can receive the order at the price decided.

Under the agreement above,

- (2) a. in cases where there is a Continuator (Note3) which participates in the bidding or quotation collection for the offshore works carried out at the places such as the port, fishing port, coast (hereinafter referred to as “port and the like”), and if there is only one company, in principle, the Continuator or the specific joint venture whose representative is the Continuator will be appointed as the designated successful bidder. If there are two or more Continuators, the designated successful bidder will be appointed through consultation among them.
- b. in cases where there is no Continuator or any Continuator is not able to

participate in the bidding or quotation collection, and if there is only one company who wants to receive the order (hereinafter referred to as “Applicant”), the Applicant or the specific joint venture whose representative is the company will be appointed as the designated successful bidder. If there are several Applicants, the designated successful bidder will be appointed through consultation among the Applicants in light of the past construction record at the port and the like, and the distance from the construction site to the office of the Applicant and so on.

Through the agreement, the 31 companies substantially restrained competition in the field of trade of Kagoshima prefecture offshore works contrary to the public interest by appointing the designated successful bidder and managing to have the designated successful bidder receive the order.

(Note 3) The “Continuator” means that the company which has been continually winning offshore works. In Kagoshima prefecture, there is one or more Continuator in each port and the like in which offshore works are carried out, and most of the violating companies were Continuators for either port.

3 Outline of the cease and desist orders

- (1) The 31 companies subject to the cease and desist orders (hereinafter referred to as “Addressees”) shall respectively adopt a resolution (succeeding company shall do only “b” below.) at their Board of Directors confirming that
 - a. they have terminated the actions in item 2 above,
 - b. they will not appoint the designated successful bidder for the works ordered by Kagoshima prefecture as a certain offshore works, 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) Addressees shall respectively notify the measures taken in accordance

with item (1) above to the other 30 companies and Kagoshima prefecture, and shall have such measures thoroughly disseminated to their employees.

(3) Addressees respectively shall not appoint the designated successful bidder for the works ordered by Kagoshima prefecture as offshore works, through mutual consultation nor in collaboration with any other companies in the future.

4 Outline of the surcharge payment orders

The 27 companies shall respectively pay the amount by February 10, 2011, (1,440,540,000 yen in total).