

JFTC Published the Report concerning Measures Taken by Procuring Agencies to Prevent Procurement Officials from Being Involved in Bid-rigging

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A bid-rigging is one of the most serious anticompetitive conducts and constitutes the violation of the Antimonopoly Act (hereinafter “AMA”). In some of bid-rigging cases, it was found that officials of procuring agencies were involved in or even led them. The AMA is applicable to enterprises which commit bid-riggings, but not to the procurer side. Against the backdrop, the “Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that Harm Fairness of Bidding, etc.” (Act No. 101 of 2002) (hereinafter “Involvement Prevention Act”) was enacted in Japan. According to the Involvement Prevention Act, the JFTC may, when it recognizes involvement of an official of procurement agency in a bid-rigging, demand that the head of the agency should implement improvement measures necessary for eliminating the said involvement. Once the agency receives the demand from the JFTC, it shall perform necessary inspection and implement measures to eliminate such involvement by its employee.

Unfortunately, cases have been continuously observed to which the Involvement Prevention Act applies. Having recognized such circumstance, the JFTC conducted a survey, by questionnaires to and interviews with procuring agencies (central and local governments, and government-owned institutions) subject to the Involvement Prevention Act, to identify the state and challenges in deterring such involvements. The objective of the survey is to help procuring agencies improve the effectiveness of preventive measures taken by them.

The report on the survey published today, shows extensive scope of the preventive measures. For example, it mentions that only about 25% of procurement agencies provide their employees with training courses on the Involvement Prevention Act in the last three years. Among other things, the report stresses, based on the analysis of previous cases, that it is essential for senior officials to explicitly show every employee the intent

as an organization that involvement in bid-rigging would never be justified.

“Bid-riggings are absolutely harmful because they impair efficient public procurements attained through competition. Meanwhile, it would never be tolerated that employees of procuring agencies get involved in them,” said the Secretary-General of the JFTC Takashi Yamamoto. “The JFTC will continue its strict enforcement of the AMA against bid-riggings. Where involvement of procuring agency’s employee is revealed through bid-rigging investigation, the JFTC will take appropriate measures under the Involvement Prevention Act. At the same time, we will continue to support procuring agencies by providing training programs and necessary information,” he also stated.

*Every announcement is tentative translation.