

Report on the Fact-Finding Survey on Measures Taken by Procuring Agencies to Prevent Procurement Officials from Being Involved in Bid Rigging (Overview)

I Purpose of Survey etc.

1 Purpose of survey

From the viewpoint that the measures on the part of procuring agencies are extremely important to ensure the prevention of bid rigging and involvement in bid rigging etc. by officials of procuring agencies, the Japan Fair Trade Commission (“JFTC”) has conducted surveys with regard to measures to prevent bid rigging etc. in procuring agencies (the latest report was published in September 2011).

However, in light of the current situation where cases of bid rigging etc. involving officials of procuring agencies have been often observed (see Note), the JFTC conducted a fact-finding survey with the aim of contributing to the improvement of compliance in procuring agencies.

2 Targets of survey, etc.

○ Targets: Governmental agencies, local governments, and government-owned institutions

○ Methods: Questionnaire survey and hearing survey

(1) Questionnaire survey

The JFTC sent questionnaires in December 2017 and confirmed the status of their measures as of the end of March of that year.

Of 2,018 procuring agencies in Japan, the JFTC received responses from 1,768 agencies (Response rate: 87.6%).

(2) Hearing survey

The JFTC conducted a hearing survey of 130 procuring agencies, which provided examples of their measures in description-type questionnaire responses, which will be useful for other procuring agencies as a reference.

(Note) Of procuring agencies that responded to the questionnaire survey (1,768 agencies), 81 agencies responded that collusive bidding cases (*) occurred in said agencies in the last 10 years (FY2007 to FY2016).

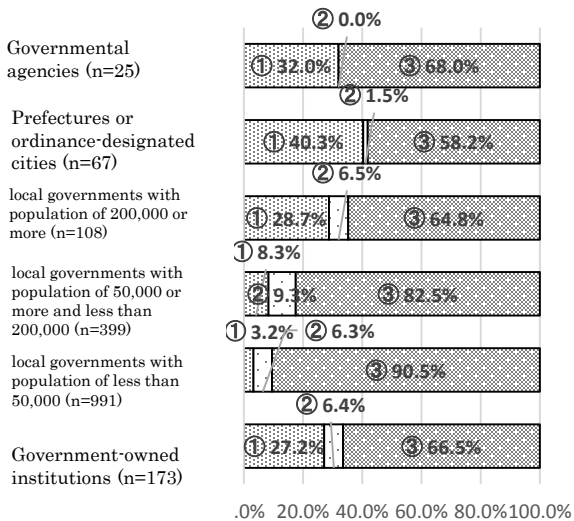
(*) In this report, the collusive rigging cases refer to the cases where the JFTC recognized the involvement in bid rigging etc. by an official of a procuring agency (each item of Article 2, paragraph 5 of the Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that Harm Fairness of Bidding (the “Involvement Prevention Act”), as well as the cases where an official committed a crime of the disturbance of bid rigging etc. under the said Act (Article 8), the cases where an official committed a crime of the disturbance of a public auction or bid under the Penal Code (paragraph 1, Article 96-6), and the cases where an official committed a crime of bid rigging in which the official is an accomplice under the Penal Code (paragraph 2, Article 96-6).

II Results of Survey (1)

1 Improvement of rules to be observed to prevent officials from being involved in bid rigging etc.

Clarification of the contents of confidential information and dissemination thereof

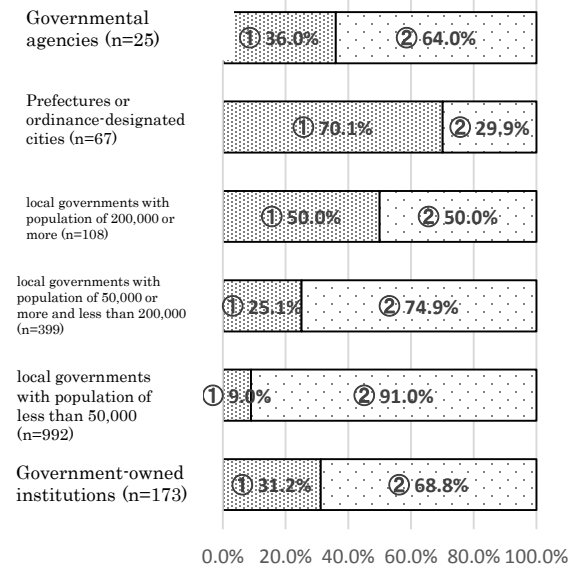
As for the question “Whether an agency provides the contents of confidential information relating to bidding etc. and disseminates such definitions to its officials,” either of the procuring agency categories shows a higher percentage for “(3) Not provided,” and even the lowest category “Prefectures or ordinance-designated cities” that answered “(3) not provided” shows 58.2%.



(1) Provided and disseminated
 (2) Provided, but not disseminated
 (3) Not provided

Actions to approaches from outsiders

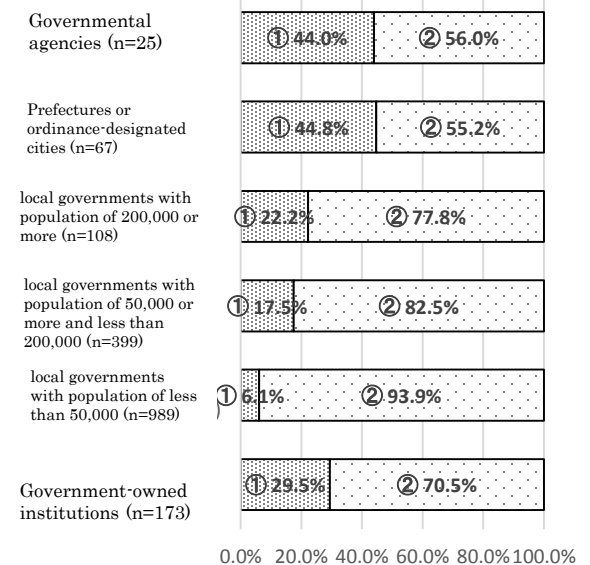
As for the question “Whether an agency takes measures to require the official to document the contents thereof and report it to his/her supervisors etc. in cases where an official is encouraged by outsiders to conduct any act that may violate laws and regulations.” 70.1% of “Prefectures or ordinance-designated cities” and 50.0% of “local governments with population of 200,000 or more” answered “(1) Taken,” while the percentages of “Governmental agencies” and “local governments with population of less than 50,000” are 36.0% and 9.0%, respectively.



(1) Taken (2) Not taken

Preparation of manuals for procurement personnel

As for the question “Whether an agency prepares manuals for officials in charge of procurement in which matters requiring special attention are clearly stated to prevent officials in charge of procurement from being involved in the case of government-assisted bid rigging”, “Governmental agencies” and “Prefectures or ordinance-designated cities,” which answered “(1) Prepared,” showed relatively high percentages (44.0% and 44.8%, respectively). However, both categories could not attain even 50%.



(1) Prepared (2) Not prepared

1 Improvement of rules to be observed to prevent officials from being involved in bid rigging etc.

Primary examples of measures

Measures relating to the management of confidential information

- We keep documented bidding information in lockers etc. under lock and key, and electronic files are password-protected. Documented bidding information is always delivered by hand when forwarding such documents to other departments or offices for approval.
- Aiming to inhibit any fraudulent act, such as the viewing by an official of documents that are beyond the scope of his/her responsibility, we make and keep records, by storing access logs for shared folders, as to when each official accessed any folder/file and which folders/files such official accessed.
- To prevent the leakage of information, we set commercial USB memories to be not loadable. In addition, we set data to be automatically erased when an official enters wrong passwords for a certain number of times even if a authorized USB memory is used.

Responses to approaches from outsiders/Points of attention regarding contact with outsiders

- Meeting with a business operator shall be, in principle, conducted by more than one official. In order to ensure this, managers request in advance that the official in charge ask managers to sit at the same table as the official if the official in charge is unable to respond to a business operator together with other officials.
- We formulate a rule to record any contact with outsiders by an official, whether there is any approach or not, and the General Affairs Division confirms the result thereof every month.
- We prohibit the use of private personal computers and mobile phones in communicating with any business operator, and will formulate a rule to include other officers in “CC” when an officer sends an e-mail to business operators as well as to promptly forward an e-mail to managers when an officer receives any e-mail.

Preparation and review of compliance manuals

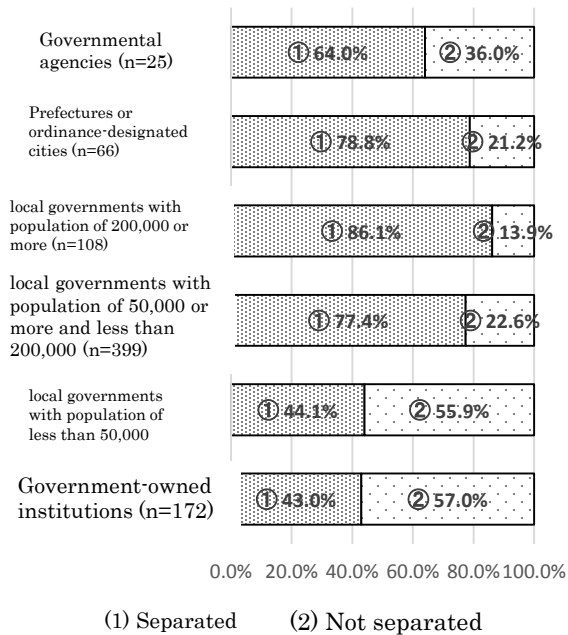
- The reason why we prepared manuals was that manuals for officials became necessary, since a significant change in contractual arrangements was going to be made in connection with the introduction of open tendering. However, we also can utilize such manuals as educational tools for officials as a result of including in the manuals matters to be observed by officers under the Act on Elimination and Prevention of Involvement in Bid Rigging etc.
- We were able to prepare manuals efficiently by using the manuals of governmental agencies published on their websites as a reference.
- We stated in manuals points of attention at each stage of procurement affairs, while adding Q&A. The Q&A has been confirmed and reviewed by an official in charge, in each personnel change, as to whether there are any obscure points.

II Results of Survey (3)

2 Development of systems to prevent officials from being involved in bid rigging etc.

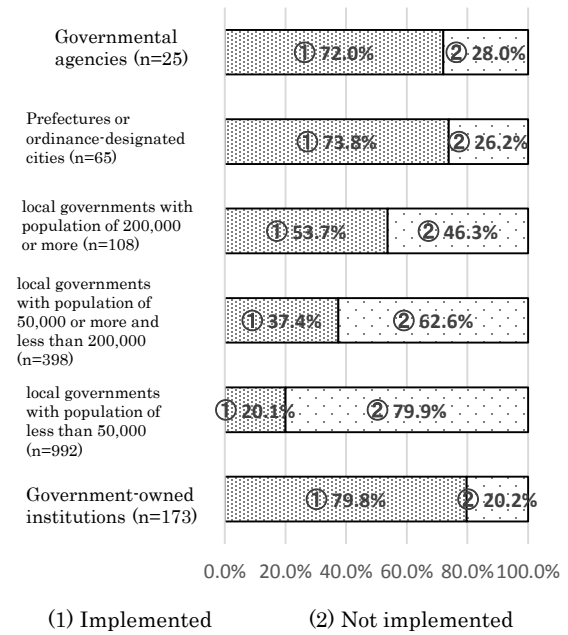
Separation of procurement and contracting department

In “Prefectures or ordinance-designated cities,” “local governments with population of 200,000 or more,” and “local governments with population of 50,000 or more and less than 200,000,” the percentage of separation of procurement department and contracting department shows around 80%. On the other hand, the percentage of the separation in “local governments with population of less than 50,000” and “Government-owned institutions” shows only about 40%.



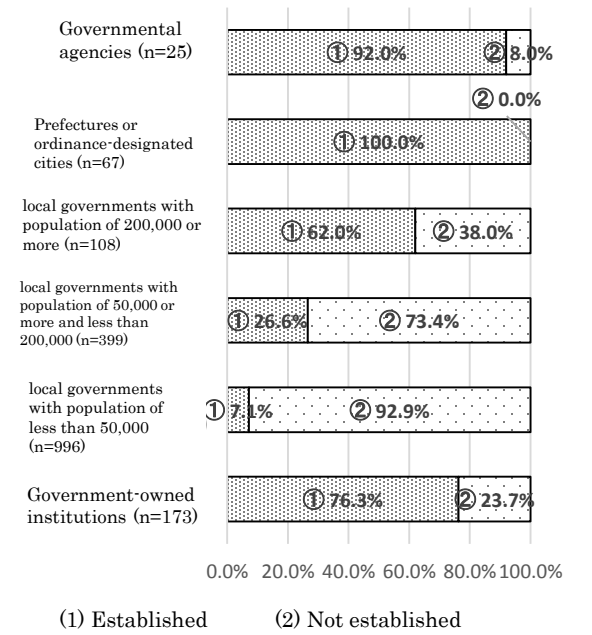
Consideration in personnel matters

With regard to whether personnel consideration is implemented to avoid the situation in which an officer in charge of procurement is assigned to the same post for a long period of time, the percentage of “Implemented” shows over 70% in “Governmental agencies,” “Prefectures or ordinance-designated cities,” and “Government-owned institutions.” On the other hand, the percentage in “local governments with population of less than 50,000” shows only about 20%.



Establishment of a third-party organization

With regard to the establishment of a third-party organization composed of external experts as members, where they consider issues relating to bidding etc., almost all procuring agencies have established a third-party organization in “Governmental agencies” and “Prefectures or ordinance-designated cities.” However, the percentage of “Established” in “local governments with population of 50,000 or more and less than 200,000” and “local governments with population of less than 50,000” shows 26.6% and 7.1%, respectively.



2 Development of systems to prevent officials from being involved in bid rigging etc.

Primary examples of measures

Checking of specifications etc. / Verification of unnatural bidding results etc.

- The department in charge of construction inspection and the department in charge of bidding execution check specifications etc., in addition to the checking done by the procurement department and contracting department.
- More than one internal committee (contract review committee, vender selection committee, etc.) check if bidding procedures that meet the criteria specified by our city are performed and if there is any problem in specifications etc.
- Regardless of whether any unnatural situation was observed in bidding results, we analyze the actual number of participants in the previous biddings and review the participation requirement.

Consideration in personnel matters

- With respect to an official who is in charge of business that is closely related to business operators, such as an official who belongs to the department in charge of applications for permission in the construction business, we ensure that such official will be, in principle, transferred in three years and not fixed to the same post.
- We rotate the business of an official in charge of contracting affairs (construction/service/goods) every other year to prevent an official in charge of checking from being fixed in the same post.

Establishment of a third-party organization

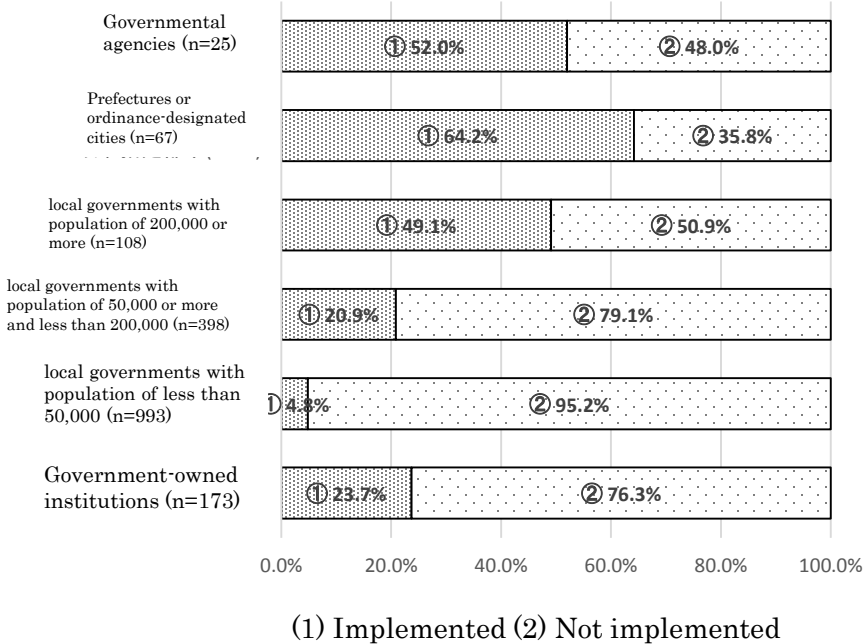
- We established a third-party committee where the appropriateness of measures to prevent involvement in bid rigging etc. and other related matters are discussed, in addition to a third-party committee where discussions are conducted based on bidding results etc.
- We established separate third-party committees and held respective meetings. One is the committee where the results etc. of bidding for construction works are discussed, and another is the committee where the results of bidding for goods/business are discussed.
- Several procuring agencies jointly established a third-party organization where overall issues relating to bidding results etc. have been discussed. To share administrative costs equally, each procuring agency plays the role of the secretariat in rotation.
- All matters related to the selection of bidding cases to be discussed are delegated to the third-party committee to eliminate arbitrary elements and ensure objectivity, so that issues can be raised freely.

II Results of Survey (5)

3 Education of officials to increase awareness of compliance with laws and regulations

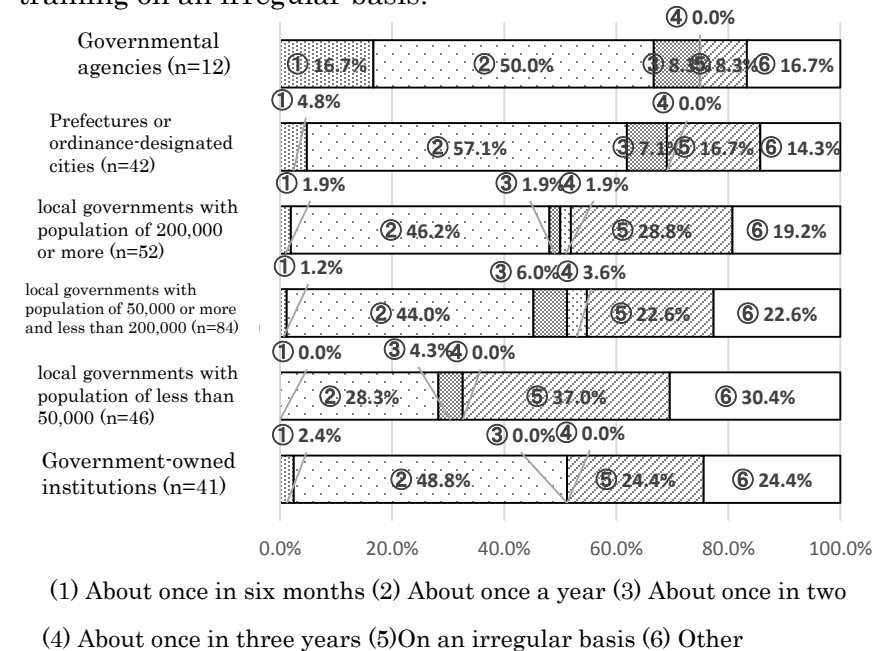
Implementation of training concerning the Involvement Prevention Act.

With regard to the implementation of training in the most recent three-year period, 64.2% of “Prefectures or ordinance-designated cities” implemented training, while only 4.8% of “local governments with population of less than 50,000” implemented training.



Frequency of training

The most common response from procuring agencies other than “local governments with population of less than 50,000” was that they implement training about once a year, while the most common response from “local governments with population of less than 50,000” was that they implement training on an irregular basis.



(Reference)

In econometric analyses, significant results have been obtained showing that the implementation of training is an effective measure to prevent collusive bidding cases.

3 Education of officials to increase awareness of compliance with laws and regulations

Primary examples of measures

Training on the Involvement Prevention Act.

- Since the official of the neighboring local government is involved in bid-rigging etc. and the details thereof were widely reported in the media, we implemented training because we thought the case was not somebody else's problem.
- We also asked neighboring local governments to participate in a training session on the Involvement Prevention Act, which is held by our city inviting an external lecturer on a regular basis.
- As it is difficult to hold training sessions regularly at our own expense, we make a request for the participation of the officials of our city in any training sessions that will be held at any local government in collaboration with other local governments within the settlement and independence areas.
- We provided all officials with training concerning the Involvement Prevention Act because providing it after any problem arises would be too late and all officials should comply with said Act.
- Since we need to raise the awareness of officials on a regular basis, we ensure that we provide training to officials in a certain month every year specified as a promotion month for reviewing compliance activities.
- Since the collusive bidding case occurred in the neighboring local government and the scandal was widely reported in the media, we organized a study session to raise the awareness of legal compliance among officials in addition to the training session on the Involvement Prevention Act. In the study session, we required officials to discuss based on press articles as to why the scandal occurred and what we should keep in mind in the future, and thereafter to report the opinion of each official.

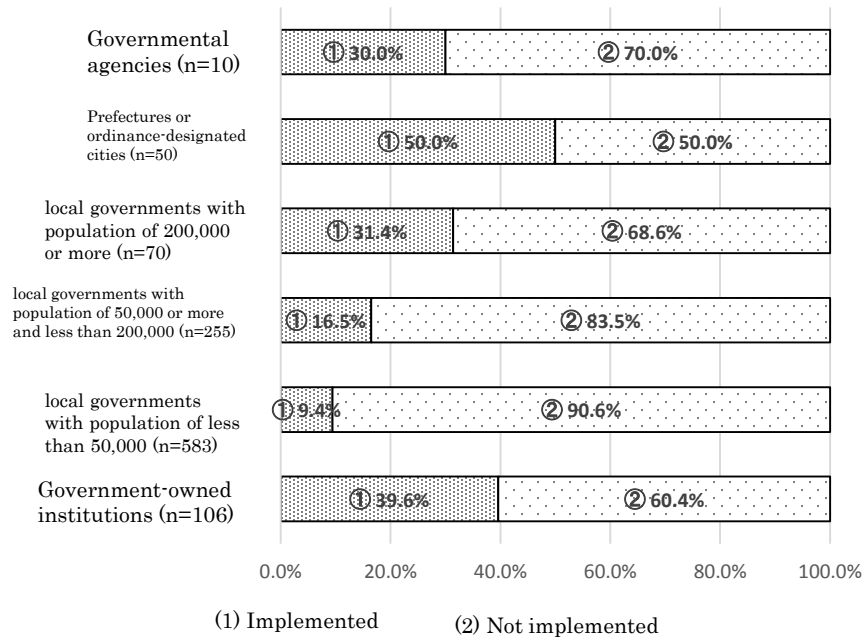
II Results of Survey (7)

4 Other measures deemed necessary to prevent officials from being involved in bid rigging etc.

Measures against outsourcing contractors of procurement related affairs

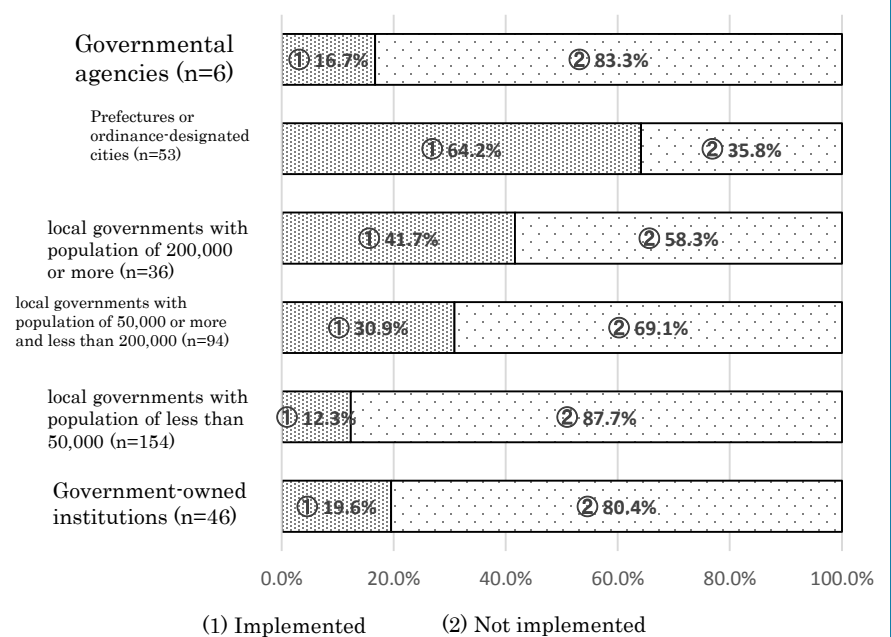
Despite the percentage of outsourcing procurement affairs, such as design, integrating cost, vendor selection, supervision, and inspection being high in either of the procuring agency categories, measures against outsourcing contractors taken by procuring agencies concerning the prevention of bid rigging etc. have not been sufficiently implemented as shown in the graph below.

In addition, with regard to procuring agencies that responded that they take measures to prevent bid rigging etc. for outsourcing contractors of procurement related affairs, most responses describe that they only set forth in agreements etc. a prohibition on the leakage of confidential information.



Monitoring the re-employment of OB

According to responses from procuring agencies, whose OB were re-employed by business operators etc. participating in bidding, as to whether procuring agencies implement any measures toward the prevention of collusive bidding cases, "Prefectures or ordinance-designated cities" responding with "(1) Implemented" stood at the high percentage of 64.2%. On the other hand, only 16.7% of "Governmental agencies" and 12.3% of "local governments with population of less than 50,000" responded with "(1) Implemented."



4 Other measures deemed necessary to prevent officials from being involved in bid rigging etc.

Prime examples of measures

Measures against outsourcing contractors of procurement-related affairs

- We cause outsourcing contractors not only to set forth in agreements with them a prohibition on the leakage of confidential information but also to set forth specific preventive measures in their business plans.
- We also invite the staff of outsourcing contractors of procurement-related affairs to the training session on the Act on Elimination and Prevention of Involvement in Bid Rigging etc. that is provided to our officials.
- The staff of outsourcing contractors often work with our officials in the same office and have opportunities to routinely learn confidential information (and this is naturally a risk). Therefore, we changed the setup, in which documents printed by staff from their computers are automatically printed out by a printer at a distant location, to one in which documents will not be printed out without placing a staff ID card in front of the printer so that the documents are not seen by other persons except the person who printed them.

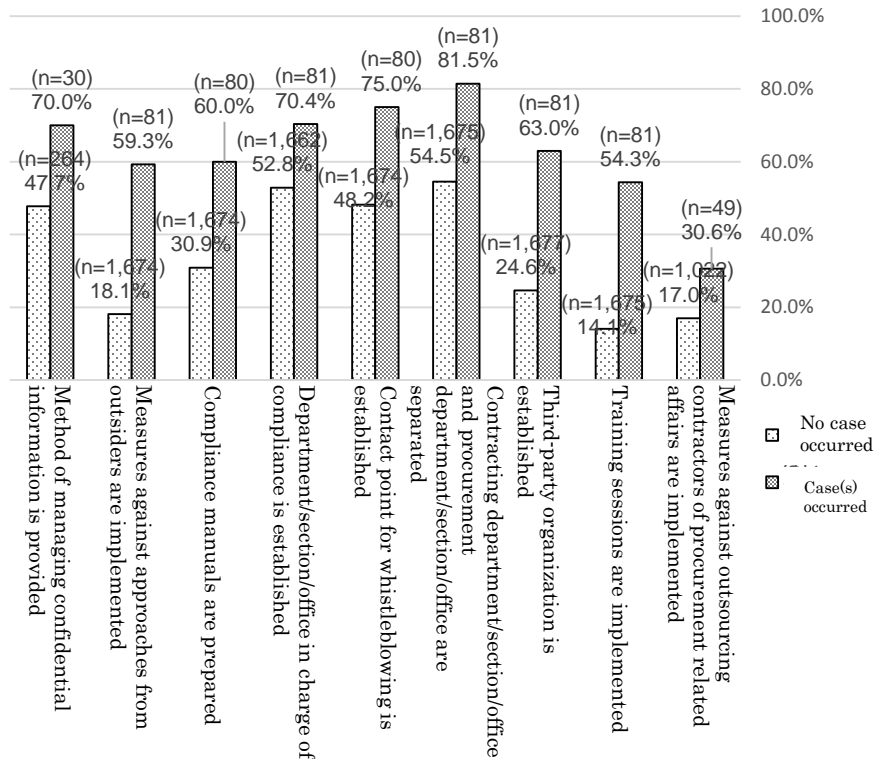
Measures against OB

- We distribute, to officials who are scheduled to retire at the mandatory retirement age, pamphlets relating to regulations on re-employment etc. six months prior to their retirement and explain to them about such regulations at the retirement ceremony. Since much attention is focused on re-employment etc. after retirement, we repeatedly explain about systems etc. to officers who are going to retire. In addition, we publicize pamphlets to make the systems etc. widely known.
- We distribute, to officials who desire to be re-employed and business operators that hire retirees, materials in which restrictions etc. on the approaches by OB influencing current officials are summarized.
- We distribute materials in which points of attention etc. regarding relationships between retirees and procurement agencies are described, and explain about such points of attention to the retirees.
- We demanded that OB submit to us a written pledge stating to the effect that OB shall not commit any wrongful act including approaches. We also demanded that companies that employ employed retirees submit to us a written pledge stating to the effect that such companies will not commit any wrongful act including approaches.

5 Comparison of various measures other than by category of procuring agencies

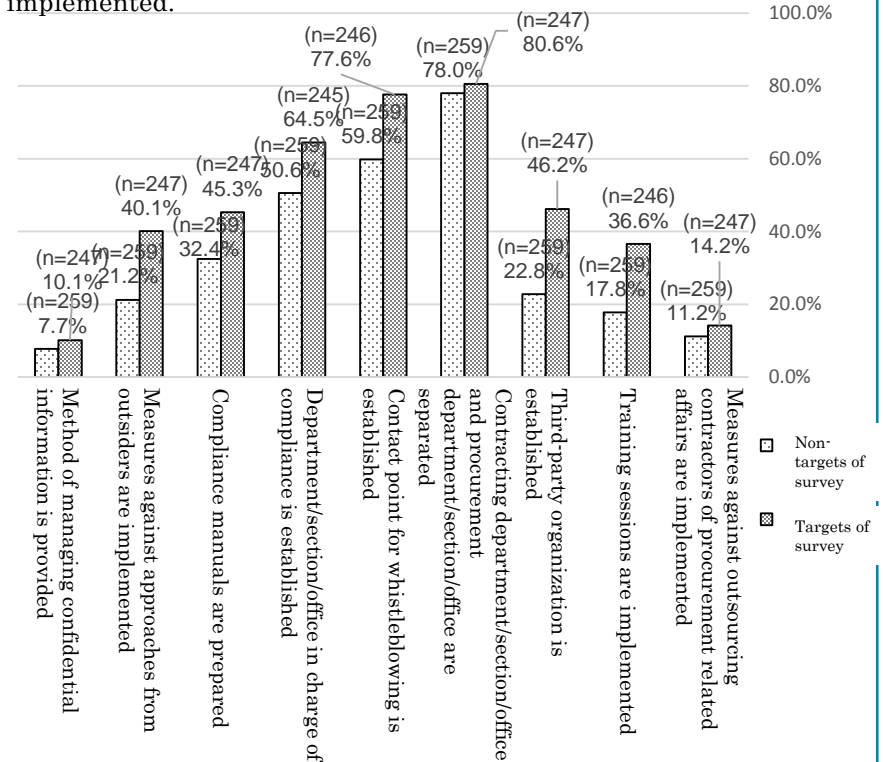
Comparison between procuring agencies where a collusive rigging case occurred and procuring agencies where no such case occurred in the past 10 years

Looking at differences in various measures as to whether the collusive bidding case in which officials were involved occurred in the past 10 years, results show that in general, the percentage of procuring agencies where such case occurred surpasses the percentage of procuring agencies where no case occurred.



As for local governments with population of 50,000 or more (excluding prefectures and ordinance-designated cities), comparison was made between local governments that were the targets of the survey conducted in 2011 and local governments that were not the targets of the survey

The comparison was made with regard to various measures between local governments that were the targets of the survey conducted in 2011 and local governments that were not the targets of the survey, and the results show that in general, the percentage of procuring agencies where measures were implemented surpasses the percentage of procuring agencies where no measures were implemented.



No. 3 For the prevention of involvement in bid rigging etc. and other similar acts

○Risk associated with the occurrence of a case where an official of a procuring agency is involved in bid rigging etc.

⇒That is not just the personal matter of the official involved in the bid rigging etc.

Each procuring agencies need to undertake actions on the case as an issue of the entire organization of procuring agencies, such as identifying the cause and formulating measures to prevent recurrence. In addition, the entire organization will significantly lose the public's trust.

○For the prevention of involvement in bid rigging etc. and other similar acts

	(1) Improvement of rules (Establish rules on procedures for bidding etc. to be observed by officials of procuring agencies and stipulate to that effect)	(2) Improvement of systems (Establish systems to check if rules set forth relating to bidding etc. are observed (both internally and externally))	(3) Implementation of training (Provide officials with opportunities to correctly understand rules etc. set forth relating to procedures for bidding etc.)	(4) Other measures deemed necessary (Measures against outsourcing contractors of procurement-related affairs, etc.)
Example of measures	○Prepare rules in reference to the manuals of governmental agencies published on their websites	○ (Internally) If it is not possible to implement all measures because some measures require manpower, perform a checking function by implementing any possible measures ○(Externally) Establish a third-party organization jointly with more than one procuring agency	○ Hold training sessions jointly with one or more procuring agencies ○ Implement training sessions based on the collusive rigging case that occurred in the neighboring local governments	○ Staff of outsourcing contractors are also the targets of training ○Set forth in agreements etc. that outsourcing contractors include measures to be taken in their business plans and report the contents of the measures

You are required to **implement, starting from possible measures,** and it is important to **review on a regular basis.**

⇒Risk arises equally **regardless of the size of procuring agency.**

No. 4 Actions of the JFTC

In this survey on measures to prevent procurement officials from being involved bid-rigging in procuring agencies, the JFTC significantly expanded the targets of the survey comparing to the survey conducted in 2011. Based on the results thereof, the JFTC introduces a number of measures to prevent involvement in bid rigging etc. and other similar acts that will be useful for procuring agencies as a reference. At the same time, the JFTC prepared supporting tools, such as “the Imvovlement Prevention Act in one minute” and “Test to determine the level of understanding” (refer to the reference materials for the report 4), since the JFTC received requests from many procuring agencies for the preparation of supporting tools that can be available at training sessions etc., and also obtained results from econometric analyses that the provision of training is effective for the prevention of involvement in bid rigging etc.

The JFTC will take strict actions against bid rigging etc., while proactively continuing measures to support the compliance activities of procuring agencies, in addition to preparing supporting tools, through various activities including the provision of various training sessions and information, taking into consideration the results of this survey.

For the details of the survey,
please refer to the report.

