

JFTC Recommendation for participants in tenders for construction material price survey activities ordered by government offices under the jurisdiction of the Ministry of Land, Infrastructure and Transport's Kanto Regional Development Bureau

June 12, 2003

Fair Trade Commission

The Japan Fair Trade Commission has completed an investigation into the Economic Research Association and the Construction Research Institute (hereunder “the two organizations”) based on the provisions of the Antimonopoly Act and determined that the construction material price survey activities<sup>(Note 1)</sup> ordered by government and municipal offices under the jurisdiction of Kanto Regional Development Bureau, the Ministry of Land, Infrastructure and Transport violate the provisions of Section 3 (Prohibition of Unreasonable Restraint of Trade) of the Act, and today issued its recommendations to the two organizations as described in Part One below, based on the provisions of Section 48 paragraph 2 of the Act.

The Commission also determined that the public works labor cost survey activities<sup>(Note 2)</sup> ordered by entities such as national organizations throughout Japan, local public entities, public corporations financed by such local public entities and government corporation public offices are in danger of violating the provisions of Section 3 (Prohibition of Unreasonable Restraint of Trade) of the Antimonopoly Act, and issued a warning to the two organizations as described in Part Two below. Furthermore, the Commission requested the Ministry of Land, Infrastructure and Transport to adopt measures that it will make use of a competitive bidding function.

<sup>(Note 1)</sup> “Construction material price survey activities” are surveys of current market prices of construction materials required for public offices to establish predetermined prices for public works construction

<sup>(Note 2)</sup> “Public works labor cost (charge) survey activities” are surveys of current actual wages of construction workers required for public offices to establish predetermined prices for public works construction; the survey results are collected and published by the Ministry of Land, Infrastructure and Transport.

Part One      Recommendations (construction material price survey activities)

## 1 Concerned parties

Economic Research Association (Keizai Chosakai)

(Chuo-ku, Tokyo )

Construction Research Institute (Kensetsu Bukka Chosakai)

(Chuo-ku, Tokyo)

## 2 Summary of the violations

The two organizations substantially restricted competition, contrary to the public interest, in the field of trade regarding construction material price survey activities (in the case of activities ordered by the metropolitan areas and prefectures indicated below, limited to activities ordered by civil engineering and agriculture and forestry-related departments) ordered through procedures to match the designated competitive bidding or designated estimating (hereunder “designated bidding, etc.”) of national organizations under the jurisdiction of the Ministry of Land, Infrastructure and Transport’s Kanto Regional Development Bureau, Ibaraki Prefecture, Tochigi Prefecture, Gunma Prefecture, Saitama Prefecture, Chiba Prefecture, the Tokyo Metropolitan Government, Kanagawa Prefecture, Yamanashi Prefecture, Nagano Prefecture and government corporation public offices, from April 1, 1999 at the latest , by jointly deciding the parties that would receive orders, and acting to enable such parties to actually receive orders, in order to prevent a decline in the prices for orders received.

## 3 Summary of measures to eliminate the violations

- (1) The two organizations shall verify that the two forms of conduct described above have been halted.
- (2) The two organizations shall notify purchasers of the measures adopted based on item 3(1) above and explain that in the future the two organizations will not engage in conduct identical to the conduct in “2 Summary of the violations” above.
- (3) The two organizations shall not engage in conduct identical to the conduct in “2 Summary of the violations” above in the future.

## 4 Expiration date for assent or rejection of the recommendations

June 26, 2003

(Will issue a Recommendation decision to the same effect as the recommendations when the two organizations comply with the recommendations, or initiate hearing procedures when the two organizations do not comply with the recommendations )

Part Two Warning (public works labor cost survey activities)

1 Concerned parties

The two organizations described in Part One (1) above.

2 Summary of conduct suspected as violation

The Commission determined there was activity in which the two organizations, with regard to Public works labor cost survey activities ordered by designated bidding, etc. procedures by entities such as national organizations throughout Japan, local public entities, public corporations financed by such local public entities and government corporation public offices, were suspected of acting in concert from April 1, 1999 at the latest to decide on the parties that would receive orders and soliciting bids in a manner that would enable such parties to actually receive orders.

3 Summary of warning

The two organizations shall not engage in conduct identical to the conduct in “2 Summary of the violations” above in the future.

4 Requests to purchasers

Because conduct by the staff members of the Ministry of Land, Infrastructure and Transport concerning orders for public works labor cost survey activities to provide to the two organizations

information on expenses and other matters that serve as references when government offices and other entities ordering the survey activities in question determine predetermined prices

information concerning parties that would receive orders to the effect it is preferable that the parties receiving the orders by region issued by the Regional Development Bureau and the parties receiving orders such as the government offices in question are the same by

region

violates the intent of the competitive bidding system, and may promote conduct that may be in violation of the Antimonopoly Act, the Fair Trade Commission requested the Ministry of Land, Infrastructure and Transport to implement measures that will make use of functions such as competitive bidding, including steps to ensure similar conduct does not occur again in the future and thorough information management, and to notify all government offices ordering public works labor cost survey activities of the intent and details of the Commission's request.