

Survey Report on the Actual State of Tendering and Contracting System in the Public Procurement

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Japan Fair Trade Commission

1. Object and purpose

The Japan Fair Trade Commission (“JFTC”) has been conducting questionnaire surveys regarding tendering system towards local governments and other ordering parties, in light of the fact that many bid-rigging cases have much to do with the public procurement system.

We have conducted questionnaire surveys towards local governments in 2003 and 2004, mainly regarding what type of bidding systems they were implementing. In 2005, we conducted a questionnaire survey towards local governments and government-sponsored corporations, regarding measures taken by ordering parties for the compliance improvement.

Many bid-rigging cases have been uncovered lately, including so-called bid-rigging cases facilitated by government agencies (officials) such as those concerning electrical facilities construction ordered by the former New Tokyo International Airport Authority, air-conditioning system installation ordered by the Defense Facilities Administration Agency, etc., and other bid-rigging cases such as those concerning human waste disposal facilities construction, etc. ordered by municipalities and other parties. The government, with a view to taking relevant countermeasures, launched the Liaison Conference of Relevant Ministries and Agencies for Promoting Proper Public Procurement and established revision plans including the improvement of tendering and contracting system in February 2006.

Under such circumstances, the latest questionnaire survey targeted at local governments and government-sponsored corporations focused on 1) trends in tendering and contracting system reform conducted within ordering parties and 2) employees’ compliance improvement measures taken within ordering parties.

Hearing survey was also conducted towards 10 local governments with a view to grasping more specific issues.

2 Survey target

The latest questionnaire survey was targeted at parties which are subject to the Act concerning Elimination and Prevention of Involvement in Bid Rigging etc., 1) 350 local governments (collection rate: around 98%) and 2) 212

government-sponsored corporations in which the government has an equity of 50% or over (collection rate: around 97%), in order to grasp their actual state as of July 1, 2006.

3. Outline of the Survey Result

(Summary)

- **Many parties have already tried to expand, or plan to expand general competitive bidding. Many raised “complicated paperwork” and “difficulties in the elimination of bad/unqualified entrepreneurs” as issues in the expansion of general competitive bidding.**
- **About 60% prefectures, etc. have introduced a comprehensive evaluation method, while core cities, etc. and small cities have scarcely introduced such method. Many raised issues of “unclear weighing method of evaluation factors” and “unclear evaluation method of factors other than the price”.**
- **In response to the introduction of a leniency program, about 90% prefectures, etc. and about 50% of other parties have established a provision to shorten the suspension period of entrepreneurs’ nomination.**

As a reason for not establishing such provision, many answered the necessity of punishment for violating entrepreneurs and the difficulty of acquiring information on entrepreneurs that have been granted leniency.

- **Almost all prefectures, etc. and about 50% to 60% of other parties take nomination suspension measures at the point when cease and desist orders, etc. are issued.**
- **Among all parties, those which avoid nomination, etc. in response to the press report of spot inspection conducted by the JFTC significantly decreased compared to last year.**

(1) Tendering and contracting system reform

- All prefectures, etc. and core cities, etc., about 90% of small cities and 80% of government-sponsored corporations have implemented tendering and contracting system reform.
- Regarding specific contents of tendering and contracting system reform in prefectures, etc. and core cities, etc, the top and the second most common answers were “imposition of enhanced measures on bid rigging” and “change of the publication (method) of estimated prices”. Regarding small cities, the top was “change of the publication (method) of estimated prices” and the second was “imposition of enhanced measures on bid rigging”.

Regarding government-sponsored corporations, the top was “introduction and

expansion of general competitive bidding” and the second was “imposition of enhanced measures on bid rigging”.

(2) Expansion of general competitive bidding, etc.

- All prefectures, etc. and government-sponsored corporations, about 90% of core cities, etc. and over 80% of small cities adopt general competitive bidding.
- The top and the second common issues raised by local governments and government-sponsored corporations regarding the expansion of general competitive bidding were “complicated paperwork” and “difficulties in eliminating bad/unqualified entrepreneurs.

(3) Enhancement of a comprehensive evaluation method

- About 60% of government-sponsored corporations and prefectures, etc., 6% of core cities, etc. and 2% of small cities have introduced a comprehensive evaluation method.
- The top and the second common issues raised by prefectures, etc. regarding the utilization of a comprehensive evaluation system were “unclear weighting method of evaluation factors” and “unclear evaluation method of factors other than the price”. In addition to these issues, many of core cities, etc. and small cities raised “lack of human resources and know-how for making proper evaluation”.

Many of government-sponsored corporations also raised three issues stated above (“unclear weighting method of evaluation factors”, “unclear evaluation method of factors other than the price” and “lack of human resources and know-how for making proper evaluation”).

(4) Treatment of bidding information

- Regarding local governments, about 80% of prefectures, etc. and core cities, etc. and two-thirds of small cities publicize estimated prices before bidding. The proportion was almost unchanged in prefectures, etc. and core cities, etc. from last year, while it decreased by about 10 points in small cities.

Only two government-sponsored corporations publicize estimated prices before bidding.

- About 60% of prefectures, etc., core cities, etc. and small cities publicize names of designated entrepreneurs after bidding. The percentage decreased by about 15 points in prefectures, etc. and small cities and 5 points in core cities, etc. from last year.

About 5% of government-sponsored corporations publicize such information before bidding, a decrease of about 30 points from last year. And the proportion of government-sponsored corporations which publicize such information after bidding increased from one quarter to over 50%.

(5) Status of measures taken by ordering parties against bid rigging

- a. Nomination suspension measures, etc.
 - In response to the introduction of a leniency program, about 90% of prefectures, etc., under a half of core cities etc. and small cities, and over a half of government-sponsored corporations have established or will establish a provision to shorten the suspension period of entrepreneurs' nomination. .
 - Based on the model provided by the Liaison Council concerning Japan Public Works Contracting System Management, almost all prefectures, etc., about two thirds of core cities, etc., and around half of small cities amended the rule to take nomination suspension measures at the point when a cease and desist order, etc. is issued. Over 60% of government-sponsored corporations take nomination suspension measures at the point when a cease and desist order is issued.
 - The percentage that they avoid nomination aside from suspending nomination decreased from about 10% to about 3% in prefectures, etc , from about 40% to about 20% in core cities, from about 50% to about 20% in small cities, and from about 40% to about 10% in government-sponsored corporations.
- b. Special clauses on penalty charges and compensation claims
 - Almost all prefectures, etc., about 80% of core cities, etc., 60% of small cities and 60% of government-sponsored corporations regulate special clauses on penalty charges.
 - Nearly half prefectures, etc., over 10% of core cities, etc., about 2% of small cities and 5% of government-sponsored corporations have made compensation claims against entrepreneurs which were involved in bid rigging activities.

(6) Necessary measures for the prevention of bid-rigging activities

- The top and the second common answers raised by local governments regarding a necessary measure to prevent bid-rigging activities were “compliance improvement within entrepreneurs” and “further enhancement of measures under the Antimonopoly Act and criminal law imposed on bid-rigging activities of entrepreneurs”.

In addition to these two measures, many of government-sponsored corporations

also raised “improvement of the whole society’s legal compliance awareness”.

- Many local governments raised “expansion of general competitive bidding” and “further implementation of quality assurance measures including compliance with the Act for Promoting Quality Assurance in Public Works.

The top and the second answers raised by government-sponsored corporations were “expansion of general competitive bidding” and “enhancement of measures imposed on bid-rigging activities”.

4. Views based on the survey results stated above

(Summary-tendering and contracting system)

○To deal with complicated paperwork and difficulties in the elimination of bad/unqualified entrepreneurs, which are issues in the expansion of general competitive bidding, measures such as rationalization of paperwork through the introduction of information technology or implementation of spot inspection may be effective.

Regarding small parties, support by prefectures and competent authorities may also be effective.

○The central government and other big-scale ordering parties should gradually implement a comprehensive evaluation method and accumulate management experiences, and then transfer their know-how to small-scale ordering parties for the overall dissemination of such method.

○In order for central government and local governments to take integrated measures for the prevention of bid rigging, a leniency program and nomination suspension measures should be consistent.

○Nomination avoidance after the spot inspection report should be corrected.

(Summary-compliance issues)

○Compliance should be improved through the enhancement of measures which are not fully taken in ordering parties, such as 1) information dissemination and training provision for the prevention of bid-rigging activities, etc. and 2) mandatory submission of written reports when asked by entrepreneurs and predecessors.

(1) Expansion of general competition bidding

- It is good that many parties are taking measures to expand general competitive bidding or facilitate competition in designated bidding.
- Many parties raised “complicated paperwork” and “difficulties in the elimination of bad/unqualified entrepreneurs” as issues in the expansion of general competition bidding.

To deal with these issues, measures such as rationalization of paperwork through the introduction of information technology or implementation of spot inspection may be effective. Regarding small ordering parties, support by prefectures or competent authorities may also be effective.

(2) Promotion of a comprehensive evaluation method

- It was indicated that a comprehensive evaluation method is still in the trial stage and relevant experiences and know-how has not been fully developed in many of ordering parties.

The central government, prefectures, etc. and large-scale government-sponsored corporations should gradually implement a comprehensive evaluation method and accumulate management experiences, and then transfer their know-how to small-scale ordering parties for the overall dissemination of such method.

(3) Treatment of bidding information

- Many of local governments publicize estimated prices before bidding, while small cities tend to move the publication to after the bidding.

Publication of estimated prices before bidding should be avoided, since it may not only make bid-rigging activities easier but also cause contract prices to hover at high level.

- Among all groups, parties are increasing that publicize names of designated entrepreneurs after bidding, while some parties still publicize them before bidding.

Publication of names of designated entrepreneurs before bidding should also be avoided, since it may make bid-rigging activities easier.

(4) Measures taken by ordering parties against bid rigging activities

a. Nomination suspension measures

- In response to the cease and desist order introduced under the amended Antimonopoly Act enforced in January 2006, a provision on nomination suspension measures should be amended so that they would be issued

concurrently with cease and desist orders.

- In order for central government and local governments to take integrated measures for the prevention of bid rigging activities, a leniency program introduced under the amended Antimonopoly Act enforced in 2006 and nomination suspension measures should be consistent.
 - Ordering parties should not avoid entrepreneurs' nomination other than in the case of nomination suspension measures. Parties should make efforts for correcting such practice.
- b. Special clauses on penalty charges and compensation claims
- More ordering parties are introducing special clauses on penalty charges. It is a desirable trend since the introduction of such clauses is an effective measure for securing the collection of damages caused by bid-rigging activities.

(5) Compliance improvement of employees

- Less prefectures, etc. provide training for staff nor disseminate relevant information for the prevention of bid-rigging activities. (Note)

(Note) This is because many parties have not conducted training after the one conducted in response to the enforcement of the Act concerning Elimination and Prevention of Involvement in Bid Rigging etc. (January 2003).

So-called bid rigging cases facilitated by government agencies (officials) have been uncovered in the past year, too. Under such circumstances, ordering parties should actively provide training and information dissemination opportunities for staffs, for the prevention of bid-rigging activities.

- Parties that have established a compliance manual increased among all groups compared to the last survey. It is good that parties are making such efforts for legal compliance improvement.
- Ordering parties that have introduced mandatory submission of written reports, etc. when asked by entrepreneurs, predecessors, etc. increased only slightly. Parties should make further efforts for making organizational response for such demands.

5. Future measures by JFTC

From the perspective of competition policy, the JFTC established a study group in 2003 to make a recommendation regarding tendering systems of public procurement. Recently, we have also conducted questionnaire surveys towards local governments, etc. in order to present our views on desirable direction of tendering

system in light of competition policy.

In addition, we have supported the holding of liaison member conferences of related authorities among procurement departments at central and local level, as well as provision of training for procurement personnel at local governments, etc.

However, the result of the latest questionnaire survey indicated that some parties are not making sufficient efforts towards the implementation of a reform. Parties are required to make further efforts for the implementation of a reform based on government's guidelines on proper public procurement, which present desirable tendering system reform.

The JFTC will continue to provide information and making recommendations regarding desirable tendering and contracting system from the perspective of competition policy and measures for compliance improvement within ordering parties. At the same time, the JFTC will further make active efforts for the prevention of bid-rigging activities, by holding conferences, supporting training and offering relevant information, etc.

Summary of the survey report on the actual status of tendering and contracting system in the public procurement

Survey result	Our views
<p>(Expansion of general competition bidding)</p> <ul style="list-style-type: none"> ○ Many parties have already tried to expand, or plan to expand general competitive bidding. <p>Many parties raised “complicated paperwork” and “difficulties in the elimination of bad/unqualified entrepreneurs”, as issues in the expansion of general competition bidding.</p>	<ul style="list-style-type: none"> ○ Regarding complicated paperwork and difficulties in the elimination of bad/unqualified entrepreneurs, rationalization of paperwork through the introduction of information technology and implementation of spot inspection, etc. may be effective. <p>For small parties, support by prefectures and competent authorities may also be effective.</p>
<p>(Enhancement of a comprehensive evaluation method)</p> <ul style="list-style-type: none"> ○ About 60% government-sponsored corporations and prefectures, etc. have introduced a comprehensive evaluation method, and less than 10% of core cities, etc. and small cities have introduced such method. <p>Many parties pointed out “unclear weighing method of evaluation factors” and “unclear evaluation method of factors other than the price”, as issues of a comprehensive evaluation method.</p>	<ul style="list-style-type: none"> ○ The central government and other big-scale ordering parties should gradually implement a comprehensive evaluation method and accumulate management experiences, and then transfer their know-how to small-scale ordering parties for the overall dissemination of such method.
<p>(Leniency program and nomination suspension measures)</p> <ul style="list-style-type: none"> ○ In response to the introduction of a leniency program, about 90% of prefectures, etc. and about 50% of other parties have established or will establish a provision to shorten the suspension period of entrepreneurs’ nomination. <p>As a reason for not establishing such provision, many raised the necessity of</p>	<ul style="list-style-type: none"> ○ In order for central government and local governments to take integrated measures for the prevention of bid rigging, a leniency program and nomination suspension measures should be consistent.

<p>punishment for violating entrepreneurs and the difficulty of acquiring information on entrepreneurs that have been granted leniency.</p>	
<p>(Implementation timing of nomination suspension measures)</p> <ul style="list-style-type: none"> ○ Almost all prefectures, etc. and from about a half to two-thirds of other parties suspend nomination of entrepreneurs at the point when cease and desist orders are issued. 	<ul style="list-style-type: none"> ○ Under the current system in which the JFTC issues cease and desist orders, which are administrative measures, a provision on nomination suspension measures should be amended so that they would be issued concurrently with cease and desist orders.
<p>(Nomination avoidance)</p> <ul style="list-style-type: none"> ○ Among all parties, nomination avoidance in response to the press report of the spot inspection conducted by the JFTC significantly decreased from last year. 	<ul style="list-style-type: none"> ○ Nomination avoidance after the spot inspection report should be corrected.
<p>(Dissemination and training for the prevention of bid rigging activities)</p> <ul style="list-style-type: none"> ○ Among all ordering parties, those conducting dissemination or training activities for employees for the prevention of bid rigging activities decreased compared to last year. 	<ul style="list-style-type: none"> ○ Considering the fact that so-called bid rigging cases facilitated by government officials have been uncovered recently, parties should make positive efforts for conducting dissemination and training activities.
<p>(Establishment of a compliance manual)</p> <ul style="list-style-type: none"> ○ Parties that have established a compliance manual increased in local governments and government-sponsored corporations. 	<ul style="list-style-type: none"> ○ It is good that more parties are establishing a compliance manual.
<p>(Responses for demands of entrepreneurs and predecessors)</p> <ul style="list-style-type: none"> ○ Parties that have introduced mandatory submission of written reports when asked by entrepreneurs and predecessors slightly increased from last year. 	<ul style="list-style-type: none"> ○ Ordering parties should make organizational efforts for introducing mandatory submission of written reports, etc.

