

**The JFTC ordered surcharge payment against 4 participants  
in the bid-rigging for tunnel ventilation construction**

September 8, 2006  
Japan Fair Trade Commission

The Japan Fair Trade Commission (hereinafter “JFTC”), based on the provisions in the Antimonopoly Act, had investigated bid participants for tunnel ventilation construction procured by the Metropolitan Expressway Public Corporation (hereinafter “MEPC”)<sup>1</sup>. As a result of the investigation, the JFTC found violation of Section 3 of the Antimonopoly Act (unreasonable restraint of trade) and on September 8, ordered 4 participants, who won the contracts, to pay surcharge according to Section 7-2 (1) of the Antimonopoly Act. The outline of the violation is as follows.

(note 1) MEPC was privatized into the Metropolitan Expressway Co., Ltd. on October 1, 2005.

- List of companies subject to surcharge payment order

Name of company	Representative Directors	Place of head office	The amount of surcharge (thousand yen)
Ebara Corporation (“Ebara”)	Fumio SHIMAKAWA	Tokyo	381,150
Hitachi, Ltd. (“Hitachi”)	Kazuo FURUKAWA	Tokyo	319,410
Ishikawajima Harima Heavy Industries, Co., Ltd. (“IHI”)	Mototsugu ITO	Tokyo	180,810
Kawasaki Heavy Industries Ltd.(“Kawasaki”)	Tadaharu OHASHI	Kobe	128,330
Total			1,009,700

- Violation related to the surcharge

1 Since June 24, 2004, the MEPC had procured a series of tunnel ventilation constructions for Shinjuku highway line by means of general competitive bidding.

The MEPC had sought application for bid participation by public notice with requirements, where applicants who fulfill those requirements had been automatically admitted as participants for the competitive bidding.

The total amount of procurement of the tunnel ventilation constructions for Shinjuku highway line accounted for a large part of all tunnel ventilation constructions procured in Japan in FY2004.

- 2 In order to prevent decrease of bid price, 7 companies had reached the following agreement by holding meetings on or about April 12 and June 9, 2004, where staffs from sales department in each company attended;
  - (1) Considering each company's request, past record of bid winning, and so on, 7 companies had prearranged the winner for each bid for tunnel ventilation construction in Shinjuku highway line as follows;
    - Construction of ventilation placed in Naka-Ochiai, Kaname-cyo tunnel ... won by Ebara
    - Construction of ventilation placed in Nishi-Shinjuku, Honmachi tunnel ... won by Hitachi
    - Construction of ventilation placed in Higashi-Nakano, Kami-Ochiai tunnel ... won by IHI
    - Construction of ventilation placed in Kamiyama-cho, Yoyogi tunnel ... won by Mitsubishi Heavy Industries
    - Construction of ventilation placed in Ohashi tunnel ... won by Kawasaki
  - (2) Each prearranged winner decided its winning price for each bid, and other participants cooperated for the prearranged winner to win the bid with the arranged price successfully.
- 3 While Hitachi did not personally attend the meetings held on or about April 12 and around June 9, a staff from sales department of Ebara confirmed requests for bid from Hitachi in advance, and the staff attended those meetings and mentioned the Hitachi's requests, after those meetings, the staff reported the result back to the sales staff of Hitachi.

According to the agreement, each prearranged winner successfully obtained its designated order of tunnel ventilation construction in Shinjuku highway line.

- Application of the leniency program

Incidentally, this is the first case that newly introduced leniency program has been applied. Three companies successfully enjoyed immunity from or reduction of surcharge by applying the new leniency program.

The JFTC has decided to take a policy that it publishes the names, the places of the head offices, the representative directors and the immunity or the percentage of deduction from surcharge of the successful leniency applicants at the JFTC's Japanese Website (<http://www.jftc.go.jp/genmen/kouhyou.html>) if the undertaking offers the JFTC to publish them.

The reason why the JFTC has decided to reveal them is that public entities, including the Ministry of Land Infrastructure and Transport, made it clear that successful leniency applicants could have an advantage that a period of debarment from participation in bids for public works would be significantly shorten.