

Policy on Handling the Names and Details of Business Operators Subject to Immunity
or Reductions under the Leniency Program
(Tentative Translation)

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Japan Fair Trade Commission

The Japan Fair Trade Commission (“JFTC”) does not actively disclose details of business operators subject to immunity or reductions under the leniency program. However, the government’s Guidelines on the Promotion of Proper Tendering and Contracting for Public Works (approved by the Cabinet May 23, 2006) states that “efforts should be made to take action accordingly when applying the leniency program in relation to the suspension of designations in response to violations under the Antimonopoly Act” (Attachment 1). Further, the Agreement on the Implementation of the Central Public Works Contract System Operational Liaison Council Model (final version: July 4, 2006) states that “the period of the suspension of designation in the event that the leniency program is applied and the details disclosed should be equivalent to half the period if the relevant program had not been applied” (Attachment 2). Therefore, if requested to do so by an entrepreneur subject to immunity or reductions under the leniency program, the JFTC will disclose details as outlined below in the event of a surcharge payment order being issued.

1. Parties subject to disclosure

Entrepreneurs subject to immunity or reductions under the leniency program that have filed a request for disclosure with the JFTC

2. Details disclosed

Name and address of an entrepreneur, name of representative and details of immunity/rate of reduction

3. Method of disclosure

Details will be accessible on a permanent basis via a new section on the JFTC’s website.

(URL: <http://www.jftc.go.jp/genmen/kouhyou.html>)

(Tentative Transaction)

Guidelines on the Promotion of Proper Tendering and Contracting for Public Works
(approved by the Cabinet May 23, 2006)

Section 2: Measures to ensure proper tendering and contracting

3. Items relating to the eradication of bid rigging and other illegal acts, primarily from tendering and contracting

(1) ~ (3) (Omitted)

(4) Strict action in the event of illegal acts

Illegal acts in relation to public works tendering or contracting, such as bid rigging, bribery and bulk subcontracting, are subject to criminal or administrative punishment under the Penal Code (Act No.45 of 1907), the Antimonopoly Act, the Construction Industry Law and any other relevant legislation. In addition to rigorously enforcing punishment in accordance with the Construction Industry Law and disclosing the relevant details, government licensing agencies for the construction industry should ensure the adequate execution of public works, clearly adopt a firm stance against the party or parties responsible for ordering any illegal acts and strictly enforce suspensions of designations issued by the head of the relevant government agency or equivalent senior official in order to prevent a reoccurrence.

In cases of particularly malicious large-scale or organized bid rigging, strict action should be taken to issue suspensions of designations in line with the relevant circumstances. Efforts should also be made to take action accordingly when applying the leniency program in relation to the suspension of designations in response to violations under the Antimonopoly Act.

(5) (Omitted)

(Tentative Translation)

Agreement on the Implementation of the Central Public Works Contract System Operational Liaison Council Model for the Suspension of Designation and Other Measures relating to Works Contracting (adopted: April 20, 1994; final version: July 4, 2006)

7. Items relating to Appendix 2 of the Model

- (1) (Omitted)
- (2) In the event of any violation of Section 3 of the Antimonopoly Act (Paragraphs 5 through 7 and 12a), a suspension of designation should be issued promptly as soon as any of the circumstances listed under points (a) to (d) below become apparent.
 - (a) Cease and desist order
 - (b) Surcharge payment order
 - (c) Criminal charges
 - (d) The arrest of a representative of a qualifying company, a qualifying individual or a representative, employee or other member of staff working for a qualifying company or individual on suspicion of violating the Antimonopoly Act
- (3) In the event of any violation of Section 8-1-1 of the Antimonopoly Act (related to Paragraphs 5 and 6), a suspension of designation should be issued promptly as soon as it becomes apparent that a surcharge payment order has been issued.
- (4) In the event that an operator meets the requirements for action set out in Paragraphs 2-5 through 2-7 and Paragraph 12(a) of the Appendix, the period of the suspension of designation in the event that the leniency program is applied and the details disclosed should be equivalent to half the period if the relevant system had not been applied. In cases such as this, if the period specified in the first part of this paragraph is shorter than the shortest period stipulated in Paragraphs 2-5 through 2-7 and Paragraph 12(a) of the Appendix, the regulations set out in Section 3-3 of the Model shall come into effect.
- (5) ~ (7) (Omitted)