

Cease and desist order, Penalty payment order, etc. Against Corporate Bidders
for Civil Engineering and Construction Projects Commissioned
by the Defense Facilities Administration Agency

June 22, 2007
Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC), in accordance with the provisions of the Antimonopoly Act (AMA), investigated the corporate bidders for specific civil engineering and construction projects ^(Note 1) commissioned by the Defense Facilities Administration Agency (DFAA) and found that they had committed an act in violation of the provision of Article 3 (Prohibition of Unreasonable Restraint of Trade) of the AMA. Accordingly, on June 20, 2007, the JFTC issued against the corporate bidders a cease and desist order pursuant to the provision in Paragraph 2, Article 7 of the AMA and a surcharge payment order pursuant to the provision in Paragraph 1, Article 7-2 of the AMA as detailed in Part I below.

In connection with the aforementioned violation, it was found that some personnel of the DFAA had been involved in bid riggings. On June 20, 2007, the JFTC notified this fact to the DFAA and another institution as detailed in Part II.

(Note 1) Refers to any comprehensive civil engineering or construction project that is commissioned by the DFAA through its regional branch, namely a Defense Facilities Administration Bureau (including Defense Facilities Administration Branches under the control of the Defense Facilities Administration Bureau) in the manners of general competitive bidding, public offering type of designated competitive bidding with enhanced competitiveness, public offering type of designated competitive bidding or designated competitive bidding (including a case in which the winner of a contract is determined on the basis of quotations collected from bidders participating in a bid that was unsuccessful because of the absence of a bidding price below the target price set by a procurement agency) and that falls under any of the following:

1. The estimated construction cost is 500 million yen or more.
2. The estimated construction cost is 300 million yen or more without exceeding 500 million yen and the project is concerned with any facility of special importance, which refers to any fuel facility, oil storage facility and other storage facility for comprehensive civil engineering projects, or to an agency or bureau building or a garage for comprehensive construction projects.
3. According to the eligibility criteria to participate in biddings, eligible bidders are required to have an overall assessment score of 1,150 or more as calculated pursuant to the provision in Paragraph 2, Article 29 of the Rules on the Contract under the Jurisdiction of the Cabinet Office. For any project in which bidding is open to joint ventures established for specific construction, any entrepreneur with the score of 1,150 or more may represent such a venture.

Part I Cease and Desist Order and Surcharge Payment Order

1. The numbers of corporations involved in the violation and corporations subject to the cease and desist order and to the surcharge payment order, and the amount of the surcharge

Number of entrepreneurs in violation	Number of entrepreneurs subject to the cease and desist order	Number of entrepreneurs subject to the surcharge payment order	Amount of surcharge
60	56	51	3,050,740,000 yen

2. Outline of the violation

Concerning specific civil engineering and construction projects procured by the DFAA for which DFAA personnel had designated predetermined winners of bid ^(Note 2), liaison personnel in the industry side ^(Note 3) conveyed the designation to the predetermined winners of bid. The 60 entrepreneurs agreed that other entrepreneurs than the predetermined winners of bid would cooperate to ensure that the predetermined winners or joint ventures that the predetermined winners of bid joined as a member would receive the orders. Such a conduct, which is contrary to the public interest, substantially restrained competition in the field of specific civil engineering and construction projects commissioned by the DFAA.

(Note 2) Referring to the practice of designating a predetermined winner of bid in consideration of how many former DFAA and other personnel have been employed by the corporation, continuity of and relevance to the project with its past commissioned projects, its demonstrated aspiration to win orders, among other factors.

(Note 3) Referring to personnel of Kajima Corporation or Taisei Corporation at the rank of officer responsible for sales functions or to those of Obayashi Corporation at the rank of sales manager in the Chugoku region.

3. Outline of the cease and desist order

(1) The respective boards of directors of the 56 entrepreneurs shall adopt a resolution to confirm that they have stopped engaging in the conduct mentioned in 2 above.

(2) Fifty-five entrepreneurs, excluding one ^(Note 4) from the group of 56, shall each notify to the other 54 entrepreneurs the measures taken in accordance with (1) above and a statement that they will never engage in any similar conduct. The one remaining entrepreneur shall notify the measures taken in accordance with (1) above to the other 55 entrepreneurs. Moreover, each of the 56 entrepreneurs shall make their respective employees fully understood their measures taken in accordance with the cease and desist order.

(3) The 55 entrepreneurs shall not designate any predetermined winner of bid for any similar project among themselves or in collaboration with any other entrepreneur.

(4) The 55 entrepreneurs shall take measures necessary to implement what is described from a. to d. below.

a. Formulation or revision of action guidelines concerning the receipt of orders from the public sector for compliance with the AMA;

b. Regular training for sales personnel on compliance with the AMA regarding the receipt of orders from the public sector as well as implementation of periodic audits performed by legal affairs personnel;

c. Development or revision of regulations on disciplinary action against officers and employees involved in any violation of the AMA;

d. Establishment or revision of effective internal notification or investigation systems, including indemnification, etc. for those reporting any violation of the AMA and those subject to internal investigations.

(Note 4) Referring to an entrepreneur that has decided to hand over its construction-related business to another entrepreneur by means of absorption-type split.

4. Due date of surcharge payment

September 21, 2007

Part II Notification to the DFAA and another institution

1. Summary of the involvement in bid rigging

It has been recognized that former DFAA staff members committed the following acts in connection with the violation stated in 2 of Part I above:

(1) The Senior Planning Officer of the Construction Planning Division, the Construction Department of the DFAA (hereinafter referred to as “Senior Planning Officer”) determined, prior to the bidding, an allocation of entrepreneurs to win bids for the following types of specific civil engineering and construction projects commissioned by the DFAA from fiscal 2004, under the instructions of the DFAA’s Technical Councilor, the Director General of the DFAA’s Construction Department and the Director of the Construction Planning Division (or the Facilities Inspection Officer, General Affairs Department of the DFAA on and after August 8, 2005), to ensure that construction firms hiring former DFAA personnel could continuously receive orders at stable order prices.

a. Projects deemed appropriate that entrepreneurs employing former DFAA personnel receive orders within the limit of their respective annual target order amount calculated in consideration of the positions and ages of the former DFAA personnel at the time of retirement.

b. Projects deemed appropriate that top-ranked construction firms should win the bid.

The allocation results were communicated directly to the retired DFAA personnel acting as liaisons ^(Note 5) or through particular ex-DFAA personnel playing a supporting role to them. The former DFAA personnel acting as liaisons conveyed the allocation results to the liaison staff on the industry side, who then, as necessary, communicated the results to the relevant personnel of the predetermined winners of bid through relevant personnel acting as assistants to them or through relevant personnel of any construction firm other than the predetermined winner of bid.

(2) In order to ensure that the predetermined winners receive the orders certainly, the Senior Planning Officer informed the relevant director of the Defense Facilities Administration Bureau, a regional branch of the DFAA, of the name of any project ordered through designated competitive bidding as well as the predetermined winner of bid for the project. The Senior Planning Officer also gave them instructions to ensure the predetermined winners of bid to be designated as participants in bids.

(Note 5) These personnel refer to particular ex-DFAA personnel who have served as technical councilor or in similar positions.

2. Applicable laws and articles and the notification

The acts of the former DFAA personnel as described in 1, above, fall under the provisions of Items 1, 2 and 4 in Paragraph 5, Article 2 of the Act Concerning Elimination and Prevention of Involvement in Bid Rigging, etc. (hereinafter, the “Involvement Prevention Act”). All the acts have been recognized as constituting involvement in bid rigging defined in the Involvement Prevention Act.

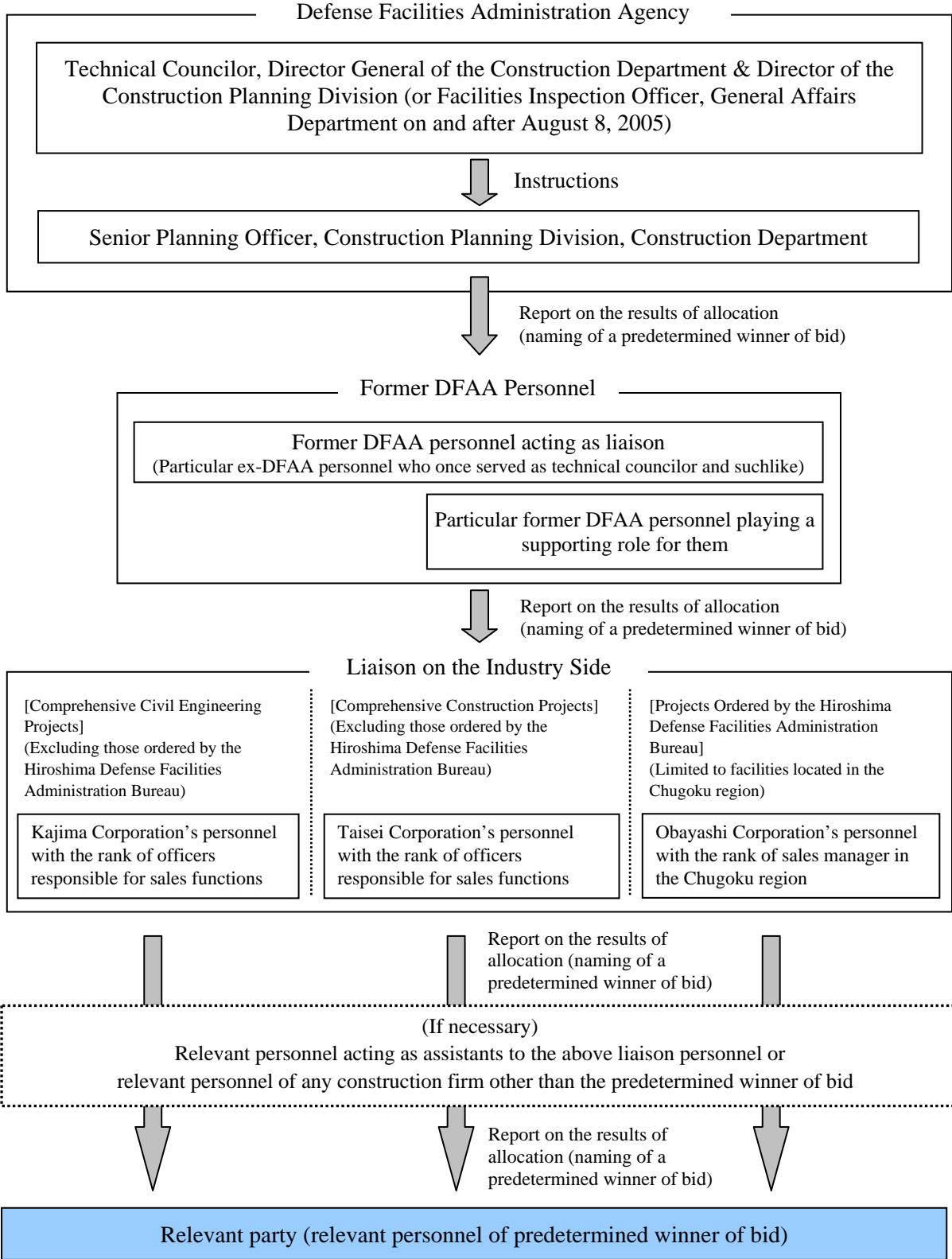
Meanwhile, the DFAA decided to take actions to remedy its bidding and other systems to prevent the recurrence of any involvement in bid rigging in accordance with the *Investigation of the DFAA’s Bid Rigging Cases* dated June 15, 2006, prepared by the investigation board on the DFAA’s bid rigging cases, and the *Report on Fundamental*

Measures to Prevent a Recurrence of the DFAA's Bid Rigging dated June 16, 2006, prepared by the study group on fundamental measures to prevent a recurrence of the DFAA's bid rigging cases. The DFAA announced this decision and briefed the JFTC. The DFAA introduced the remedial measures for bidding conducted from December 2006.

In light of this fact, the JFTC decided to refrain from requesting any remedial measures based on the provisions of the Involvement Prevention Act. On the other hand, to help the DFAA steadily implement the above-mentioned remedial actions and other measures, the JFTC notified the involvement in bid rigging stated in 1, above, to the DFAA.

The JFTC also notified the above mentioned facts on involvement in bid rigging to the Board of Audit of Japan for the purpose of ensuring elimination and prevention of any involvement in bid rigging.

Communication of Results of Allocation From Fiscal 2004



Past Similar Cases**– Bid Rigging Related to Orders Placed by the Defense Agency and Other Institutions**

Case Date of Action (Date of Decision)	Descriptions
Recommendation No. 35 of 2004 against three corporations including Bridgestone Corporation December 24, 2004 (January 31, 2005)	Jointly designated predetermined winners of bid to ensure that they would receive those orders for air-filled tires for aircrafts procured by way of competitive biddings which were handled by the Central Contract Office of the Defense Agency.
Recommendation No. 36 of 2004 against nine corporations including Bridgestone Corporation December 24, 2004 (January 31, 2005 and other dates)	Jointly designated predetermined winners of bid to ensure that they would receive those orders for air-filled tire tubes for non-aircraft applications procured by way of competitive biddings which were handled by the Central Contract Office of the Defense Agency.
Recommendation No. 14 of 2000 against three corporations including FDK Corporation December 4, 2000 (December 22, 2000)	Jointly designated predetermined winners of bid to ensure that they would receive orders for five models of batteries for communication equipments, which made up a large majority of those ordered by the Japan Ground Self-Defense Force in the manner of designated competitive bidding or general competitive bidding.
Recommendation No. 25 of 1999 against ten corporations including Cosmo Oil Co., Ltd. November 17, 1999 (December 20, 1999 and other dates)	Jointly designated predetermined winners of bid for individual oil types; namely automotive gasoline, kerosene, heavy oil A and aircraft turbine fuel; to ensure that they would receive such orders placed by the Central Procurement Office of the Defense Agency in the manner of designated competitive bidding.