

Actions on the Issues of Low-Price Bids for Public Construction Projects

June 26, 2007
Japan Fair Trade Commission

Part 1. Background to the Investigation

1. The number of examinations by procurement agencies into low-price bids for public construction projects has been growing in recent years. Starting October 2006, the Japan Fair Trade Commission (JFTC) has therefore asked procurement officials at prefectures and ordinance-designated cities to provide information on public construction projects that was subject to examinations under the system of reviews into low-price bids, among calls for tender made during the period from April 1, 2005 to September 30, 2006, as a means of dealing with the issues of low-price bids, also known as dumping bids, for public construction projects from the perspective of the regulations on unjust low-price sale under the Antimonopoly Act. In response to the request, procurement officials provided information on approximately 2,300 projects and around 1,100 entrepreneurs. Based on this information, the JFTC sent survey questionnaires in December 2006 to 68 entrepreneurs including those with influence in their business regions and those that won orders for multiple projects with low-price bids. In so doing, the JFTC asked the addressees of the survey questionnaires to report the profitability, etc. of the projects they won during the period from April 1, 2004 to September 30, 2006.
2. Based on the replies from the entrepreneurs receiving the surveys in 1 above, the JFTC decided to conduct a more detailed investigation of eight entrepreneurs based in different regions in light of the Statement Concerning Unjust Low Price Sales in Public Construction Projects (See Appendix). These entrepreneurs were selected considering whether or not their contract prices were lower than the project cost so called the working budget, the degree to which they were lower, the ratios of contract prices to the target prices predetermined by procurement agencies, the frequency and amount of projects won with low bids. In addition to the questionnaire survey, the JFTC has been questioning the entrepreneurs since February 2007.

Part 2. Investigation Results

As a result of the investigation explained in 2 of Part 1 above, the JFTC today issued a warning to five entrepreneurs listed in 1 below (hereinafter referred to as “the five entrepreneurs”) as their acts may fall under Item 6 (Unjust Low Price Sales) in the Designation of Unfair Trade Practices and may violate the provision of Article 19 of the Antimonopoly Act.

1. Parties concerned

No.	Entrepreneur	Head Office Location	Representative
1	Taisei Corporation	1-25-1 Nishi Shinjuku, Shinjuku-ku, Tokyo	Takashi Yamauchi, Representative Director
2	Obayashi Corporation	4-33 Kitahama Higashi, Chuo-ku, Osaka	Norio Wakimura, Representative Director
3	Hazama Corporation	2-2-5 Toranomom, Minato-ku, Tokyo	Junichi Shinmyo, Representative Director
4	Mabuchi Construction Co., Ltd.	2-26 Hananokicho, Minami-ku, Yokohama	Yoshikane Mabuchi, Representative Director
5	Maruhongumi Corporation	1-7-1 Hachimancho, Ishinomaki, Miyagi Prefecture	Teruo Suda, Representative Director

2. Summary of the warning

- (1) The JFTC examined the public construction projects, orders of which were received by the five entrepreneurs during the period from April 1, 2004 to September 30, 2006, and confirmed the following facts.
 - a Taisei Corporation got an order for the public construction project specified in Schedule 1 procured by the Hokkaido Development Bureau of the Ministry of Land, Infrastructure and Transport by way of general competitive bidding at an unreasonably low price. It is suspected that this act may impede the business activities of other entrepreneurs.
 - b A joint venture represented by Obayashi Corporation got an order for the public construction project specified in Schedule 2 procured by the Hokkaido Development Bureau of the Ministry of Land, Infrastructure and Transport by way of general competitive bidding at an unreasonably low price. It is suspected that this act may impede the business activities of other entrepreneurs.
 - c Joint ventures represented by Hazama Corporation got orders for two public construction projects specified in Schedule 3 procured by the City of Chiba by way of general competitive bidding at unreasonably low prices. It is suspected that these acts may impede the business activities of other entrepreneurs.
 - d Independently or by means of joint ventures that it represents, Mabuchi Construction Co., Ltd. repeatedly got orders for five public construction projects specified in Schedule 4 procured by the City of Yokohama by way of general competitive bidding (conditional) at prices that are far lower than the cost necessary for supply or at unreasonably low prices. It is suspected that these acts may impede the business activities of other entrepreneurs.
 - e Maruhongumi corporation repeatedly got orders for nine public construction projects specified in Schedule 5 procured by Miyagi Prefecture by way of conditional general competitive bidding at prices that are excessively below the cost necessary for supply. It is suspected that these acts may impede the business activities of other entrepreneurs.
- (2) The acts of the five entrepreneurs stated in (1) above each fall under Item 6 (Unjust Low Price Sales) in the Designation of Unfair Trade Practices and may violate the provision of Article 19 of the Antimonopoly Act. The JFTC, therefore, warned these five entrepreneurs not to conduct any such act in the future.

Part 3. Future Action

The JFTC will continue to take necessary measures if it finds any questionable act considered to be unjust low price sales prohibited by the Antimonopoly Act.

Schedule 1: Taisei Corporation

Procurement agency	Day of Tender	Ordering Method	Project Name
Ministry of Land, Infrastructure and Transport	March 8, 2006	General competitive bidding	Project for Phase 1 Construction of the Dam Body of the Yubari Shuparo Dam

Note 1: The date specified in the Day of Tender field refers to the date when electronic bids were opened.

Note 2: The order for the project was received by a joint venture.

Schedule 2: Obayashi Corporation

Procurement agency	Day of Tender	Ordering Method	Project Name
Ministry of Land, Infrastructure and Transport	February 22, 2006	General competitive bidding	Project for Phase 1 Aggregate Production for the Yubari Shuparo Dam

Note 1: The date specified in the Day of Tender field refers to the date when electronic bids were opened.

Note 2: The order for the project was received by a joint venture.

Schedule 3: Hazama Corporation

No.	Procurement agency	Day of Tender	Ordering Method	Project Name
1	City of Chiba	September 16, 2005	General competitive bidding	Project for Sewerage and Water Discharge Facilities (Section 2 of Central Rainwater Storage Line 1)
2	City of Chiba	May 26, 2006	General competitive bidding	Project for Construction of Boxes and Others in Section 2 of the Shimminato-Yokodocho Line

Note: The orders for Projects 1 and 2 were received by joint ventures.

Schedule 4: Mabuchi Construction Co., Ltd.

No.	Procurement agency	Day of Tender	Ordering Method	Project Name
1	City of Yokohama	August 17, 2004	General competitive bidding (conditional)	Project (8) for Street Enhancement of Urban Planning Road Yokohama-Kamakura Line (Kajigaya District)
2	City of Yokohama	October 12, 2004	General competitive bidding (conditional)	Project for Reimprovement of the Sewerage in Maita District of the South Treatment Zone
3	City of Yokohama	February 14, 2005	General competitive bidding (conditional)	Project for Renovation of the Maiokagawa River

4	City of Yokohama	April 13, 2006	General competitive bidding (conditional)	Project for Renovation of Kamigo Elementary School (construction work)
5	City of Yokohama	April 20, 2006	General competitive bidding (conditional)	Project for Improvement and Others of Residential Buildings in the Kami-Iida Housing Complex in Phase 6 (construction work in Zone 2)

Note 1: The date specified in the Day of Tender field refers to the date when electronic bids were opened.

Note 2: The order for the project was received by a joint venture.

Schedule 5: Maruhongumi

No.	Procurement agency	Day of Tender	Ordering Method	Project Name
1	Miyagi Prefecture	July 29, 2004	Conditional general competitive bidding	Project for Development of Coastal Sea Farm in the Oshika District
2	Miyagi Prefecture	August 20, 2004	Conditional general competitive bidding	Project for Improvement and Others of West Breakwater of the Aji Fishing Port
3	Miyagi Prefecture	March 3, 2005	Conditional general competitive bidding	Project for New Paving at Washizuka
4	Miyagi Prefecture	March 3, 2005	Conditional general competitive bidding	Project for Road Paving in Reclaimed Area F of the Ishinomaki Port
5	Miyagi Prefecture	August 4, 2005	Conditional general competitive bidding	Project for Land Readjustment in the Ainoya District
6	Miyagi Prefecture	September 15, 2005	Conditional general competitive bidding	Project for Superstructure of the Pier (-10m) at the Ishinomaki Port
7	Miyagi Prefecture	October 20, 2005	Conditional general competitive bidding	Project for Renovation of the Auditorium of Yamato High School
8	Miyagi Prefecture	January 5, 2006	Conditional general competitive bidding	Project for Road Improvement at Namiita
9	Miyagi Prefecture	March 9, 2006	Conditional general competitive bidding	Project for Road Improvement at Myojin

Statement Concerning Unjust Low Price Sales in Public Construction Projects
(Japan Fair Trade Commission; September 15, 2004)

1. Unjust low price sales prohibited by the Antimonopoly Act

Any act of supplying a commodity or service at a price which is excessively below the cost incurred in the supply without proper justification (price requirement) and of tending to cause difficulties to the business activities of other entrepreneurs (impact requirement) corresponds to unjust low price sales prohibited by the Antimonopoly Act. (Item 6 in the Designation of Unfair Trade Practices)

2. Viewpoint Concerning Unjust Low Price Sales in Public Construction Projects

Viewpoint concerning unjust low price sales in public construction projects is detailed as follows in light of the characteristics of such projects:

(1) Cost structure in public construction projects

Project cost = direct work cost + common temporary work cost + on-site management cost

Project price = project cost + administrative and general expenses

(2) Viewpoint based on characteristics of public construction projects

- a The “cost incurred in the said supply” in the price requirement in 1 above is generally regarded as gross sales cost. In public construction projects, the combination of the project cost and administrative and general expenses are thought to correspond to this. Whether or not the contract price is below the project cost in the working budget (See Note)—consisting of the direct work cost, common temporary work cost and on-site management cost—is a criterion for determining whether or not it is “excessively below cost incurred in the said supply.”
- b Whether or not the impact requirement stated in 1 above is met is determined by examining individually the position of the entrepreneur making the low price bid in the market, the frequency of its low bids, the extent of low prices, potential for ripple effects, the number of entrepreneurs affected by the low price bid and other factors.

Note: Working budget

The successful bidder prepares detailed estimates of the respective expenses on the basis of the contract price after concluding the contract with the procurement agency. These detailed estimates of expenses are generally called the working budget, and the project is actually carried out in accordance with it.

Examples of unjust low price sales in past public construction projects

Party warned (Warning date)	Description
Moriya Corporation (April 28, 2004)	The company was suspected of engaging in a conduct tending to impede the business activities of competing entrepreneurs in construction work projects ordered by Nagano Prefecture, by repeatedly getting orders for construction work procured by Nagano Prefecture at prices excessively below the cost incurred in the supply.
Isobe Corporation (September 15, 2004)	The company was suspected of engaging in a conduct tending to impede the business activities of other entrepreneurs by getting orders for five public construction projects procured by way of designated competitive bidding by the Utsunomiya National Highway Work Office, the Kanto Regional Development Bureau, the Ministry of Land, Infrastructure and Transport, Tochigi Prefecture and Imaichi City in Tochigi Prefecture at prices excessively below the costs incurred in the supply.