

The JFTC issued cease and desist orders, surcharge payment orders to bidders for floodgate projects procured by the Ministry of Land, Infrastructure and Transport, the Japan Water Agency and the Ministry of Agriculture, Forestry and Fisheries, and other directions to the procurement agencies.

(Tentative Translation)

March 8, 2007  
Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC), in accordance with the provisions of the Antimonopoly Act (AMA), had investigated the bid participants for: (1) specific dam floodgate projects procured by regional development bureaus (See Note 1), (2) specific river floodgate projects procured by regional development bureaus (See Note 2), (3) specific dam floodgate projects procured by the Japan Water Agency (See Note 3), and (4) specific floodgate projects procured by regional agricultural administration offices. As a result of investigation, the JFTC today found violations of Section 3 of the AMA prohibiting unreasonable restraint of trade. As detailed in Part I below, the JFTC issued cease and desist orders pursuant to Section 7 (2) of the AMA as well as surcharge payment orders pursuant to Section 7-2 (1) of the same Act.

As detailed in Part II below, the violations concerned with (1) and (2) above were confirmed to include involvement in bid rigging by former government officials. Thus, in accordance with the provisions in the Act Concerning Elimination and Prevention of Involvement in Bid Rigging and the Like (hereinafter referred to as "Involvement-in-Bid-Rigging Prevention Act"), the JFTC today demanded that the Minister of Land, Infrastructure and Transport take improvement measures.

In addition to that, as detailed in Part III below, the JFTC today filed a request to the Ministry of Land, Infrastructure and Transport and to the Japan Water Agency, which was operated under the name of the Water Resources Development Public Corporation until September 30, 2003, with regard to the violations concerned with (1), (2) and (3) above.

#### Part I: Cease and Desist Orders and Surcharge Payment Orders

1. Number of violating companies, number of companies subject to the cease and desist orders and the surcharge payment orders, surcharge amounts and other details (the names of companies subject to such orders and specific surcharge amounts of individual companies are stated in the Schedule.)

		Number of violating companies	Number of companies subject to cease and desist orders	Number of companies subject to surcharge payment orders	Penalty amounts	Request for improvement measure	Requests
(1)	Specific dam floodgate projects procured by different regional development bureaus	14	10	9	512.27 million yen	Ministry of Land, Infrastructure and Transport	Ministry of Land, Infrastructure and Transport
(2)	Specific river floodgate projects procured by different regional development	23	15	12	413.59 million yen	Ministry of Land, Infrastructure and Transport	Ministry of Land, Infrastructure and Transport

	bureaus						
(3)	Specific dam floodgate projects procured by the Japan Water Agency	13	9	6	286.72 million yen	-	Ministry of Land, Infrastructure and Transport Japan Water Agency
(4)	Specific floodgate projects procured by different regional agricultural administration offices	8	8	8	458.75 million yen	-	-
	Total	58 in cumulative total; 23 in real total	42 in cumulative total; 15 in real total	35 in cumulative total; 14 in real total	1,671.33 million yen	-	-

- Note 1: Projects to construct new floodgates (or add and install floodgates), renew, modify, repair or replace floodgates for dams procured by the Ministry of Land, Infrastructure and Transport through regional development bureaus by means of general competitive bidding, designated competitive bidding through public invitation or general competitive bidding with inspection of the detailed conditions (including comprehensive evaluation bidding)
- Note 2: Projects to construct new floodgates, renew, modify, repair and replace floodgates for rivers procured by the Ministry of Land, Infrastructure and Transport through regional development bureaus by means of general competitive bidding, designated competitive bidding through public invitation, general competitive bidding with inspection of the detailed conditions (including comprehensive evaluation bidding) or competitive bidding with the designated work specified.
- Note 3: Projects to construct new floodgates for dams procured by the Japan Water Agency, formerly known as the Water Resources Development Public Corporation until September 30, 2003, through the Finance and Accounting Department of the Headquarters (or the Accounting Department of the Headquarters until September 30, 2003) by means of general competitive bidding, designated competitive bidding through public invitation or designated competitive bidding.
- Note 4: Projects to newly construct, renew, modify, repair and maintain floodgates for dams, rivers, water channels and coasts with the estimated price over 90 million yen procured by the Ministry of Agriculture, Forestry and Fisheries through regional agricultural administration offices by means of general competitive bidding, public invitation type designated competitive bidding or general competitive bidding with inspection of the detailed conditions

## 2. Outline of the violation

### (1) Specific dam floodgate projects procured by different regional development bureaus

On and after August 1, 2001 at the latest, fourteen companies collaboratively determined the prospective bid winners so that they could win specific dam floodgate projects procured by different regional development bureaus for the purpose of preventing decrease of bid price, and accordingly, they substantially restrained competition in the field of projects concerned contrary to the public interest.

### (2) Specific projects to construct floodgates for rivers procured by different regional development bureaus

On and after July 1, 2001 at the latest, twenty-three companies collaboratively determined prospective bid winners so that they could win specific river floodgate projects procured by different regional development bureaus for the purpose of preventing decrease of bid price, and accordingly, they substantially restrained competition in the fields of projects concerned contrary to the public interest.

### (3) Specific projects to construct floodgates for dams procured by the Japan Water Agency

On and after September 1, 2001 at the latest, thirteen companies collaboratively determined prospective bid winners so that they could win specific dam floodgate projects procured by the Japan Water Agency for the purpose of preventing decrease

of bid price, and accordingly, they substantially restrained competition in the field of projects concerned contrary to the public interest.

- (4) Specific projects to construct floodgates procured by different regional agricultural administration offices

On and after mid-August in 2002 (and on or after June 18, 2003 with regard to Nitto Kasen Industries Co., Ltd.) at the latest, eight companies collaboratively determined prospective bid winners so that they could win specific floodgate projects procured by different regional agricultural administration offices for the purpose of preventing decrease of bid prices, and accordingly, they substantially restrained competition in the fields of projects concerned contrary to the public interest.

### 3. Overview of the cease and desist orders

- (1) The companies subject to the orders shall have a resolution to confirm that they have ceased the act stated in Section 2 above adopted by their respective boards of directors.
- (2) The companies subject to the orders shall issue a notification to each of the rest of the companies and procuring parties of the measures taken in accordance with (1) above, that they will conduct similar acts mentioned in 2 above and that they will engage in independent activities to win orders. They shall also make the matter fully known to their respective employees.
- (3) The companies subject to the orders shall no longer conduct similar acts mentioned in Section 2 in collaboration among them or with any other company.
- (4) The companies subject to the orders shall take necessary action to ensure the items listed below.
  - a. Formulation or revision of the action guidelines for compliance with the AMA in connection with acquisition of orders for public works
  - b. Regular training of sales personnel and regular audit performed by legal personnel concerning compliance with the AMA in connection with acquisition of orders for public works
  - c. Improvement of the regulations on disciplinary action against officers and employees involved in any violation of the AMA
  - d. Introduction of an effective system of acquiring internal information including immunity for whistleblowers regarding violations of the AMA

### 4. Deadline of payment of the surcharge

June 11, 2007

## Part II: Demand for improvement measure to the Minister of Land, Infrastructure and Transport

### 1. Outline of the involvement in bid rigging by former government officials

It has been confirmed that a person who then worked for the Ministry of Land, Infrastructure and Transport conducted the following act in connection with the violation stated in (1) and (2) in Section 2 of Part I above.

- (1) A specific staff member of the Construction Planning Division, Policy Bureau in the Ministry of Land, Infrastructure and Transport informed the coordinator (See Note 5) of which company or joint venture would be the successful bidders for public works projects prior to placement of procurements for such projects in the following manner:
  - a. On and after around May 7, 2001, information was indirectly provided via specific persons who had served and already retired from machinery and other divisions in the Roads Division of the Tohoku Regional Construction Bureau in the former Ministry of Construction with regard to projects procured by the Tohoku Regional Development Bureau among those specified as Item 1 in the table below. The

information was directly provided with regard to projects procured by other regional development bureaus among those mentioned in Item 1 of the table below and those projects specified as Item 2 in the table below.

b. On and after around April 9, 2003, information in connection with projects stated as Items 1 and 2 below was provided through the persons stated in a. above.

(2) On and after April 1, 2001 at the latest, specific staff members in the machinery and other divisions under the Roads Department of the Kinki Regional Development Bureau in the Ministry of Land, Infrastructure and Transport offered information about prospective successful bidders for projects stated as Item 3 in the table below to coordinators of such projects before the procurements were placed for these projects.

Note 5: "Coordinators" refer to those companies called coordinators or suchlike designated to serve the purpose of making smooth coordination for winning contracts on specific river or dam floodgate projects procured by regional development bureaus and for specific dam floodgate projects procured by the Japan Water Agency.

No.	Projects concerned
1	Specific river floodgate projects by regional development bureaus other than the Kinki Regional Development Bureau for which the auction took place on and after July 1, 2001; excluding those projects to renew, modify, repair and replace existing floodgates the bidders for which include the companies that constructed the existing floodgates in question
2	Specific dam floodgate projects procured by regional development bureaus that meet <i>either</i> conditions (a) and (b) <i>or</i> conditions (a) and (c) below: (a) The auction took place on or after August 1, 2001. (b) The objective of the project was to renew, modify, repair or replace any existing dam floodgate. And the company that constructed the existing floodgate in question did not participate in the bidding for the project. (c) The objective of the project was to newly construct and install a floodgate on a dam.
3	Specific river floodgate projects procured by the Kinki Regional Development Bureau for which the auction took place on and after July 1, 2001

## 2. Applicable law and provisions and demand for improvement measure

The acts of personnel in the Ministry of Land, Infrastructure and Transport stated in Section 1 above fall under the provision in Item 2, Paragraph 5, Section 2 of the Involvement-in-Bid-Rigging Prevention Act and are all deemed as involvement in bid-rigging by government officials as defined in the said provision.

Pursuant to the provisions in Paragraph 2, Section 3 of the Involvement-in-Bid-Rigging Prevention Act, the JFTC demanded the Ministry of Land, Infrastructure and Transport to take necessary improvement measure immediately so as to prevent similar acts stated in Section 1 above from happening and to ensure that the involvement in bid-rigging by government officials would be eliminated from specific river or dam floodgate projects procured by regional development bureaus and to notify the JFTC of the findings of the investigation to be conducted under the provision of Paragraph 6, Section 3 of the same Act as well as of the details of the improvement measure implemented.

## Part III: Demand for the Ministry of Land, Infrastructure and Transport and for the Japan Water Agency

### 1. Outline of the acts which is a target of the demands

It has been confirmed that some retired officials of the Ministry of Land, Infrastructure and Transport and the Japan Water Agency conducted the following acts in connection with the violations stated in (1) to (3), Section 2 in Part I above.

- (1) A specific retired official of the Construction Planning Division, Policy Bureau in the Ministry of Land, Infrastructure and Transport informed coordinators of the prospective successful bidders of the projects concerned in the following manner before the respective procurements for such projects were placed.
  - a. On and after around April 1, 2004 after his retirement, the information on those projects specified as Items 1 and 2 in the above table was offered via specific persons who worked for and already retired from machinery and other divisions under the Roads Department of the Tohoku Regional Construction Bureau in the former Ministry of Construction.
  - b. On and after around April 1, 2005, the information on those projects defined as Item 1 in the above table was directly provided.
- (2) Specific former and retired officials of the machinery and other divisions under the Roads Department of the Tohoku Regional Construction Bureau in the former Ministry of Construction provided coordinators with information supplied from the specific staff member serving the Construction Planning Division, Policy Bureau in the Ministry of Land, Infrastructure and Transport on prospective successful bidders of such projects as specified below before respective procurements for such projects are placed.
  - a. On and after around May 7, 2001, information was provided concerning those projects specified as Item 1 of the above table which were procured by the Tohoku Regional Development Bureau.
  - b. On and after around April 9, 2003, information was provided concerning the projects specified as Items 1 and 2 in the aforementioned table.
- (3) A certain person, now retired, who had been Director General of the Geographical Survey Institute under the former Ministry of Construction and another retired person who served as a Vice Minister of Construction for Engineering Affairs in the former Ministry of Construction received from coordinators information on prospective successful bidders for those specific projects to construct new floodgates, the bidding for which took place on and after August 1, 2001, except those for adding and installing new floodgates to existing dams and granted their approval to them.
- (4) Around September 2001, a currently retired person who had previously been a

permanent counselor of the former Water Resources Development Public Corporation provided coordinators with the information on the prospective successful bidder of a specific dam floodgate project that was expected to be procured by the Japan Water Agency before the procurement was placed.

- (5) Around January 2004, a currently retired person who once served as a director of the Water Resources Development Public Corporation provided coordinators with the information on the prospective successful bidder of a specific dam floodgate project expected to be procured by the Japan Water Agency before the procurement was placed.

All persons stated in (1) to (4) above conducted the abovementioned acts while they served respective public corporations under the control of the Ministry of Land, Infrastructure and Transport.

The acts mentioned in aforementioned Section 1 all conflict with the objective of the competitive bidding system. These acts are regarded as having induced and facilitated the violation given that the violation stated in (1) to (3) in Section 2 of Part I is based on them.

## 2. Outline of the demand

In connection with the fact explained in Section 1 above, the JFTC made the following demands to the Ministry of Land, Infrastructure and Transport and to the Japan Water Agency.

### (1) Outline of the demands to the Ministry of Land, Infrastructure and Transport

- a. Necessary action should be taken to prevent any personnel of the Ministry of Land, Infrastructure and Transport from conducting any act similar to those stated in (1) to (3) in aforementioned Section 1 after their retirement.
- b. To prevent any officer or staff member of non-profit corporations once served by the former personnel of the Ministry of Land, Infrastructure and Transport and the Water Resource Development Public Corporation mentioned in Section 1 above from conducting any similar act stated in (1) to (4) in the above Section 1, the non-profit corporations concerned should be immediately informed of the details of the cease and desist orders and be given appropriate guidance.
- c. As a ministry mainly responsible for the Japan Water Agency, the Ministry of Land, Infrastructure and Transport should provide it with appropriate guidance to ensure that no similar act stated in (4) and (5) in Section 1 above is conducted by any officer or staff member of the Japan Water Agency after their retirement.

### (2) Outline of the demand to the Japan Water Agency

Necessary action should be taken to prevent any officer or staff member of the Japan Water Agency from conducting any similar act stated in (4) and (5) in Section 1 above after their retirement.