

Detailed Regulations for Enforcement of Accounting Regulations (extract)

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Chapter 6 Contract

Article 22 (Persons Who Must Not Be Allowed to Participate in Open Tenders)

If a sales, lease, contracting, or other contracts is put out to Open Tender pursuant to the provisions of paragraph 1 of Article 30 of the Accounting Regulations, the Accounting Officer [may not permit a person who is incapable of concluding the relevant contract, and a person who received an order of commencement of bankruptcy proceedings and has not had the person's rights restored to participate, unless there are special grounds for doing so.

Article 22-2 (Persons Who May Be Prevented from Participating in Open Tender)

1 If the Accounting Officer determines that a person who wishes to participate in an Open Tender falls under any of the following items, the Accounting Officer may prevent the person from participating in Open Tender for a period of not more than three years. The same applies to a person who uses such person as an agent, manager or other employee.

- (1) if the person intentionally carried out construction, or manufacturing or any other service in a careless manner or acted fraudulently with regard to the quality or volume of an object in the course of performing a contract;
- (2) if the person has obstructed the fair implementation of a tender or has hindered a fair price from being reached or colluded with others to obtain an unlawful profit;
- (3) if the person has obstructed the successful bidder from entering into a contract or obstructed a party to a contract from performing the contract
- (4) if the person has obstructed an employee from performing the employee's duties in a supervision or inspection
- (5) if, without a justifiable reason, the person has not performed a contract; or
- (6) if the person has employed an agent, manager or other employee who is not eligible to participate in an Open Tender pursuant to this paragraph (not including this item) in the execution or performance of a contract.

2 The Accounting Officer may prevent a person who employs a person falling under any of the provisions of the preceding paragraph as a bid agent from participating in an Open Tender.

Article 23 (Eligibility as an Open Tender Participant)

- 1 The Accounting Officer may, when necessary, determine the eligibility required of persons participating in Open Tenders, with regard to particulars related to performance such as construction, manufacturing or sales, etc., number of employees, amount of capital and other particulars related to the scale of management and management circumstances, for each type of contract in terms of construction, manufacturing, the purchase of objects or lease of property and other contracts, in accordance with the price, etc. of the contract.
- 2 If eligibility has been determined pursuant to the preceding paragraph, the Accounting Officer must, pursuant to what she/he determined, gather applications from persons who seek to participate in Open Tenders, and examine whether such persons are eligible to do so.
- 3 The Accounting Officer shall prepare a name list of the persons who are eligible as referred to in paragraph (1).

Article 24

If the Accounting Officer seeks to put a contract out to Open Tender and finds it necessary for the appropriate and reasonable implementation of the tender based on the nature or purpose of the contract, she/he may further determine the eligibility required of persons participating in the tender with regard to persons who are eligible pursuant to paragraph (1) of the preceding Article, and may have persons with the relevant eligibility engage in the tender pursuant to what is set forth by she/he.

Article 25 (Cases in which a Contract May Be Put Out to Selective Tender)

In addition to the cases provided for in Article 31, paragraph 1 of the Accounting Regulations, the Accounting Officer may put a contract out to Selective Tender in the following cases:

- (1) when having construction or manufacturing done at a target price that does not exceed 5,000,000 yen;
  - (2) when purchasing assets at a target price that does not exceed 3,000,000 yen;
  - (3) when borrowing an object at an annual or total target lease charge that does not exceed 1,600,000 yen;
  - (4) when lending out an object at an annual or total target lease charge that does not exceed 500,000 yen;
  - (5) when selling of assets at a target price that does not exceed 1,000,000 yen; or
  - (6) when the target price of a contract other than a work contract for construction or manufacturing, a sale and purchase contract for assets, or a contract to lend or borrow an object does not exceed 2,000,000 yen.
- 2 When a contract may take the form of a discretionary contract, this does not preclude the contract from being put out to selective tender.

Article 26 (Eligibility as a Selective Tender Participant)

- 1 The Accounting Officer may determine the eligibility required of persons participating in Selective Tender, as provided for in paragraph 1 of Article 23.
- 2 The Accounting Officer must gather applications from persons who seek to participate in Selective Tenders, and examine whether such persons are eligible to do so, as provided for in paragraph 2 of Article 23.
- 3 The Accounting Officer shall prepare a name list of the persons who are eligible as referred to in paragraph 1.

Article 27 (Selection Standards)

The Accounting Officer shall determine the standards by which she/he will select persons to participate in tenders from among those who are eligible under the preceding Article.

Article 28 (Cases when Discretionary Contracts May Be Used)

In addition to the cases provided for in Article 32 of the Accounting Regulations, the Accounting Officer may

use a discretionary contract in the following cases:

- (1) when it is necessary to keep confidential in connection with the management of business of the Government Pension Investment Fund (hereinafter, the “GPIF”);
- (2) when having construction or manufacturing done at a target price that does not exceed 2,500,000 yen;
- (3) when purchasing assets at a target price that does not exceed 1,600,000 yen;
- (4) when borrowing an object at an annual or total target lease charge that does not exceed 800,000 yen;
- (5) when lending out an object at an annual or total lease charge that does not exceed 300,000 yen;
- (6) when selling off assets at a target price that does not exceed 500,000 yen;
- (7) when the target price of a contract other than a work contract for construction or manufacturing, a sale and purchase contract for assets, or a contract to lend or borrow an object does not exceed 1,000,000 yen;
- (8) when, relating to a construction, manufacturing or supply of fixed asset, etc. set forth under Article 7, paragraph 2, Item 3 of the Accounting Regulations (hereinafter, “Fixed Asset, etc.”) which is currently being performed, she/he deems it disadvantageous to have another person perform it; or
- (9) when having something transported or stored

#### Article 29 (Special Cases when Discretionary Contracts May Be Used)

- 1 If there are no bidders even though the Accounting Officer has put a contract out to tender or if there is no successful bidder even though the Accounting Officer has called for subsequent bidding, the contract may take the form of a discretionary contract. When this is the case, the target price and other conditions of the initial tender may not be changed, except for the contract guarantee and performance period.
- 2 If the successful bidder does not enter into the contract, the Accounting Officer may have the contract take the form of a discretionary contract, within the scope determined by the successful bid amount. When this is the case, the conditions determined for the initial tender may not be changed, except for the performance period.

#### Article 30 (Publication of Contract)

- 1 With respect to a contract which are the cause of expenditure and the target price of which exceeds 1,000,000 yen (or, in the case of borrowing an object, 800,000 yen), the following matters shall be made public without undue delay after the execution of the contract:
  - (1) the name or content of the contract;
  - (2) the name and location of the Accounting Officer;
  - (3) the date of execution;
  - (4) the trade name or name and address of the counterparty of the contract;
  - (5) Whether it was an Open Tender bid or selective tender bid, and whether the comprehensive evaluation method is used (excluding the cases where a discretionary contract is made);
  - (6) the contract price;
  - (7) the target price (limited to the cases where it is deemed there is no risk that the target price of other contract is estimated or where it is deemed there is no risk that the business of the GPIF will be interfered with, even if it is published);
  - (8) successful bid rate (meaning the rate obtained by dividing the contract price by the target price, and then multiplying the resultant figure by 100) (excluding the case where the target price is not published);
  - (9) the relevant provision of the Accounting Regulations which constitutes the grounds for and the reason of the discretionary contract being used (the reason shall be stated specifically and in detail; in the cases where a request for proposals or public offering procedure is used, such fact shall be stated);
  - (10) in the cases where a discretionary contract is executed with a public interest corporation under the jurisdiction of the Ministry of Health, Labour and Welfare, if a person who was a full-time employee of the State holds an office at such corporation as an officer as of the date on which the contract is executed, number of such persons; and
  - (11) other matters deemed necessary.
- 2 The publication shall be made via a method in which separate tables shall be prepared for contracts under

tender bid and discretionary contracts, and separate tables shall be prepared for construction (including investigation and design work, etc. related to construction) and goods, etc. or service (Form no. 16, Form no. 17-1, Form no. 17-2, Form no. 18, Form no. 19-1, Form no. 19-2).

3 In the case where the particulars set forth under the preceding two paragraphs are published on the website of GPIF (hereinafter, the "Website"), such particulars shall be posted on the Website until the day on which at least one year has elapsed from the day immediately following the day on which such particulars were published.

#### Article 31 (Divisible Contract)

In the case referred to in Article 29, if it is possible to calculate the target price or the successful bid amount by dividing it, the contract may be divided among and entered into with a number of persons, within the scope of the target price or successful bid amount.

#### Article 32 (Bid)

1 Tender shall be made by way of a bid except for the cases where there is a special necessity and it is put up for auction.

2 When a bid is made pursuant to the preceding paragraph, the Accounting Officer may not allow a bidder to exchange, amend or revoke the bid document submitted by the bidder.

#### Article 33 (Public Notices, Etc. of Bids)

1 If the Accounting Officer seeks to put a contract out to Open Tender by bidding, she/he shall issue a public notice by newspaper, posting, or in other ways at least ten days prior to the bid date; provided, however, that in urgent cases, this period may be shortened to five days.

2 The following particulars must be stated in a public notice set forth under the preceding paragraph:

- (1) the particulars of the tender bidding;
- (2) the particulars of the eligibility required of persons participating in the tender;
- (3) the location where the terms and conditions of the contract are displayed;
- (4) the location, time, and date of the tender;
- (5) the particulars of the security deposit; and
- (6) other matters deemed necessary.

#### Article 34

The Accounting Officer shall distribute a bidding explanation document stating the specification document, drawing, sample or actual goods or site, draft of contract and other necessary conditions to a person who seeks to participate in the bid.

#### Article 35 (Invalid Bids)

The Accounting Officer shall clearly state in the public notice prescribed in Article 33 that bids submitted by persons without the eligibility required of persons participating in the tender which is set out in the public notice, and bids that breach the bid requirements set out in the public notice are invalid.

#### Article 36 (Formation of Written Statement of Target Price)

Each Item below shall apply to the target price established pursuant to the provisions of Article 34 of the Accounting Regulations:

- (1) The Accounting Officer must plan the price of the item to be contracted based on the specification document, design document, etc. related to such item, and prepare a document stating the price so planned (hereinafter, the "Written Statement of Target Price").

- (2) The target price shall be determined with respect to the aggregate price of the subject matter of contracts to be executed; provided, however, that a target price may be set on a unit price basis for any contract for manufacturing, repairs, processing, sales and , supply or use, etc. that continues for specified period of time
- (3) The target price shall be appropriately determined by taking into account the prices of actual transactions, supply and demand conditions, difficulty of performance, volume, length of performance period, etc. for the object or service that is the subject of the contract.
- (4) In the case of a tender bid, the Accounting Officer must seal the Written Statement of Target Price set forth under Item 1 and place such statement at the place of opening at the time of opening of bids.

Article 37 (Opening of Bids)

The Accounting Officer shall open the bids in the presence of the bidders at the place, time and date of the execution of the tender bid, as specified in the public notice. In this case, if no bidders are in attendance, an employee who has no connection with the administrative affairs relating to the bidding shall be in attendance.

Article 38 (Subsequent Bidding Process)

- 1 In the event that, upon opening the bids, there are no successful bidders as a result of opening of bids of the Open Tender bid, the Accounting Officer may immediately pursue a subsequent bidding process.
- 2 In the case where a subsequent bid is conducted pursuant to the provisions of the preceding paragraph, a person who has submitted an invalid bid with respect to such bidding matter shall not be allowed to participate in the subsequent bid.

Article 39 (Treatment of Same Price Bidding)

- 1 When two (2) or more persons submit a bid at the same price and that bid should be the successful bid in an Open Tender bid, the Accounting Officer shall immediately decide the successful bidder by having the relevant bidders draw lots.
- 2 When the lots under the preceding paragraph are drawn, if there is a person among such bidders who does not attend or who does not draw lots, an employee with no connection to the administrative affairs involved in the bidding may be made to draw a lot on behalf of such bidder.

Article 40 (Contracts for Which It Is Permitted Not to Select the Bidder with the Lowest Price as the Successful Bidder)

A contract separately specified that is the cause of payment that is referred to in proviso of paragraph 1 of Article 35 of the Accounting Regulations is a construction, manufacturing, or other contract for work with a target price that exceeds 10,000,000 yen.

Article 41 (Cases When Bidder With the Lowest Price is Not Selected as the Successful Bidder Due to the Likelihood that the Terms of the Contract Will Not Be Satisfactorily Performed)

The standards for determining whether it is likely that the person who should be the counterparty to a contract set forth under the preceding Article, will not be satisfactorily perform the terms of the contract for the price that the person has offered shall be that the price that the person has offered for each contract is less than, in the case of a contract for work on construction, the amount of the target price multiplied by the ratio designated by the Accounting Officer within the range of two-thirds to 85%, or, in the case of manufacturing and other contract for work, the amount of the target price multiplied by 60%.

Article 42 (Performance of Investigation, Etc. Into Whether There Is the Likelihood that the Terms of the

Contract Will Not Be Satisfactorily Performed)

- 1 When a tender for a contract prescribed in Article 40 has been conducted, the Accounting Officer shall examine whether it is likely that the person who should be the counter party to a contract will not satisfactorily perform the terms of the contract, if the price that the person has offered falls within the standards referred to in the preceding Article.
- 2 If, as a result of the examination referred to in the preceding paragraph, the Accounting Officer finds it to be likely that the relevant person will not satisfactorily perform the terms of the contract, the Accounting Officer shall submit documentation specifying or recording the results of the examination and the opinion of the Accounting Officer to all the members constituting the Contract Assessment Committee (hereinafter, the "Contract Assessment Commissioners"), and request their opinions.

Article 43 (Presentation of Opinion)

When the Accounting Officer requests the Contract Assessment Commissioners' opinions pursuant to paragraph 2 of the preceding Article, the Contract Assessment Commissioners shall conduct an assessment and express their opinions in writing.

Article 44 (Treatment to Make the Next Bidder the Successful Bidder)

- 1 When the majority of the opinions of the Contract Assessment Commissioners have expressed pursuant to the provisions of the preceding Article are the same as those of the Accounting Officer, the Accounting Officer shall not select the person who offered the lowest price within the range determined by the target price as the successful bidder, but shall select as the successful bidder the person who offered the lowest price from among the other persons who made offers within the range determined by the target price (hereinafter referred to as, the "Next Bidder").
- 2 Even when the majority of the opinions of the Contract Assessment Commissioners differ from that of the Accounting Officer, if there are reasonable grounds to determine that the person who should be the counterparty to the contract is unlikely to satisfactorily perform the terms of the contract, the Accounting Officer may select the Next Bidder as the successful bidder.

Article 45 (Procedures for Not Selecting the Bidder with the Lowest Price as the Successful Bidder Due to the Likelihood of Disrupting the Fair Establishment of a Transaction)

- 1 If a tender has been carried out for a contract prescribed in Article 40 and the Accounting Officer finds it to be extremely inappropriate to execute the contract with the person who should be the counterparty, due to the likelihood that doing so will disturb the establishment of a fair transaction, the Accounting Officer shall submit documentation specifying or recording the reasons for this and the opinion of the Accounting Officer to the President, and request the President's approval for not selecting that person as the successful bidder.
2. If the Accounting Officer is given the approval referred to in the preceding paragraph, the Accounting Officer shall select the Next Bidder as the successful bidder.

Article 46 (Comprehensive Evaluation Bidding Method and Multiple Successful Bidders Method)

In the case where a contract set forth under paragraph 2 of Article 35 of the Accounting Regulations is entered into, the method set forth under any of the following items below shall be used:

- (1) Comprehensive Evaluation Bidding Method: A method under which price, skill, capability, etc. shall be evaluated comprehensively with respect to persons who made effective applications within the scope of the target price, and a person who made the most advantageous application shall be made as the counterparty to the contract
- (2) Multiple Successful Bidders Method: A method under which, in the cases where a contract purporting to sale and purchase of a quantity of properties at the same time is put out to tender, having a participant to the tender bid with the quantity and unit price as the participant desires, and bidders with

the most advantageous unit price shall be made as the successful bidders until the quantity required to be sold and purchased (hereinafter, "Required Quantity") is reached, within the scope of the Required Quantity

Article 47 (Return of Bid Deposit)

- 1 The bid deposit for an Open Tender bid shall be returned to the successful bidder after the payment of the contract deposit (in the case where payment of contract deposit is exempted, after the execution of the contract) and to other persons after the completion of the bid.
- 2 The bid deposit of the successful bidder may be transferred to all or part of the contract deposit upon demand.

Article 48 (Selection of Tender Participants)

- 1 When the Accounting Officer puts a contract out to selective tender, she/he shall select preferably 10 or more persons to participate in the tender.
- 2 In the event of the preceding paragraph, the matters set forth in Item 1 and Item 3 through Item 6 of paragraph 2 of Article 33 shall be notified to the selected persons.
- 3 The notice set forth under the preceding paragraph shall be made at least 10 days prior to the day immediately preceding the day of bidding; provided that, if urgent necessity exists, such period may be shortened to two days.

Article 49 (Mutatis Mutandis Application of Provisions on Open tender)

The provisions of Article 22, Article 22-2 and Article 34 through Article 47 shall apply *mutatis mutandis* to the case of selective tender.

Article 50 (Omission of Written Statement of Target Price)

Pursuant to the provisions of proviso of Article 34 of the Accounting Regulations, in the following cases, the Accounting Officer may omit the Written Statement of Target Price:

- (1) when the transaction price (fee) is prescribed under laws;
- (2) when it is deemed that entering into a contract is extremely difficult with a price other than the specific transaction price (fee) due to special circumstances
- (3) when the target price of a contract prescribed in Article 28 is less than 1,000,000 yen

Article 50-2 (Collection of Quotations)

When the Accounting Officer seeks to have a contract take the form of a discretionary contract, she/he shall collect quotations from preferably two (2) or more persons.

Article 51 (Preparation of Contract)

- 1 When the Accounting Officer has determined the successful bidder in a tender or the counterparty to a discretionary contract, she/he shall prepare a written contract pursuant to the provisions of the following paragraph; provided, however, that a written contract may be omitted if it falls under any of the following items:
  - (1) when entering into a contract for an amount not exceeding 1,500,000 yen;
  - (2) when putting the contract put up for auction;
  - (3) when a Fixed Asset, etc. is sold off and the purchaser immediately pays the price and receives the Fixed Asset, etc.; or
  - (4) when the President determine that it is not necessary to draw up an written contract for a discretionary contract other than one prescribed in item 1.
- 2 The following particulars shall be included in a written contract executed pursuant to the preceding

paragraph; provided, however, that this does not apply to particulars that are not applicable in view of the nature or purpose of the contract.

- (1) the contract purpose;
- (2) the contract price;
- (3) the performance period;
- (4) the contract guarantee;
- (5) the place of contract performance;
- (6) the time, date, and form for the payment or receipt of the contract price;
- (7) supervision and inspection;
- (8) assignment, etc. of rights and obligations;
- (9) re-entrustment and measure to ensure proper re-entrustment;
- (10) cancellation or termination of contract;
- (11) interest for delay, penalties and other damages in cases of a fraudulent act, delay in performance or other default;
- (12) risk of loss;
- (13) warranty against defect;
- (14) method of resolving disputes related to the contract; and
- (15) other necessary particulars.

3 If a written contract is omitted pursuant to the provisions of proviso of paragraph 1, a letter of acknowledgement (*ukesho*) shall be collected in order to ensure proper performance of the contract; provided, however, that with respect to a contract the contract amount of which is less than 500,000 yen, a document which clearly indicates the fact of the contract, such as a written quotation and written invoice may be substituted for a letter of acknowledgement.

#### Article 52 (Return of Contract Deposit)

If performance of a contract is completed or a penalty is collected pursuant to the provisions of Article 55, the Accounting Officer shall return the contract deposit to the counterparty.

#### Article 53 (Preparation of Inspection Reports)

1 The person who undertook inspections pursuant to the provisions of paragraph 2 and paragraph 3 of Article 37 of the Accounting Regulations shall prepare a document stating the results of inspection (hereinafter, the "Inspection Report, etc."); provided, however, that if the price of the construction or manufacturing or purchase of assets related to such inspection does not exceed 2,000,000 yen, preparation of Inspection Report, etc. for such inspection (excluding inspections regarding the contracts in which partial payment is required) may be omitted.

2 When an Inspection Report, etc. is to be prepared pursuant to the provisions of paragraph 1, payment may not be made unless based on such Inspection Report, etc.; provided, however, that in the case of a contract for work, purchase of assets or other contract, if the result of confirming the completion of performance is notified to the counterparty to the contract in writing, a copy or office copy of such documents may be substituted for an Inspection Report, etc.

#### Article 54 (Cancellation or Termination of Contract)

1 If any of the following Items arises with respect to a contract, the Accounting Officer shall cancel or terminate the contract; provided, however, that this shall not apply where continuation of the contract suits the interest of the GPIF:

- (1) when performance has not been completed or there is no expectation of completion of performance within the contract period without justifiable reason;
- (2) when there is a fraudulent act in the performance of contract; or
- (3) in addition to those set forth in the preceding two Items, when it is deemed necessary for the reasons

of the Accounting Officer.

- 2 If the Accounting Officer cancels or terminates a contract pursuant to the provisions of the preceding paragraph, he/she shall notify the counterparty without delay, unless he/she notifies the counterparty prior to cancellation or termination.

#### Article 55 (Penalty)

- 1 If the Accounting Officer cancels or terminates a contract due to an event attributable to the counterparty, he/she shall collect a penalty of 10% or more of the contract price; provided, however, that the Accounting Officer may reduce or exempt the penalty upon obtaining approval by the President, if she/he considers such reduction or exemption is appropriate in light of circumstances.
- 2 When a penalty needs to be collected pursuant to the provisions of the preceding paragraph, the contract deposit collected pursuant to the provisions of Article 37 of the Accounting Regulations may be applied to all or part of the penalty.

#### Article 56 (Delay Damages)

If performance is not completed by the due date of performance of contract due to an event attributable to the counterparty, the Accounting Officer shall collect delay damages calculated based on the number of days during the period from the day following the due date of performance until the date of completion at the rate of 0.1% of the amount of contract price corresponding to the part for which performance is delayed or not completed; provided, however, that if the total amount of delay damage is less than 100 yen or there is an amount less than 100 yen in delay damages, the Accounting Officer may choose not to collect such amount.

#### Article 57 (Loss of Eligibility for Contract)

The Accounting Officer may prohibit a person who is deemed by her/he to fall under any of the following Items from participating as a counterparty to a contract or bidder or their agent during a certain period of time:

- (1) a person who has made a false statement during examination or investigation by GPIF concerning a contract;
- (2) a person who has caused disadvantage to the GPIF by conducting bid-rigging concerning a contract, etc.;
- or
- (3) a person who is the counterparty to a contract that is cancelled or terminated by GPIF pursuant to the provisions of paragraph 1 of Article 54.

#### Article 58 (Earnest Money, Etc.)

If there is a custom that earnest money or guarantee money needs to be delivered when purchasing or making a lease contract of land or building, earnest money or guarantee money may be delivered only if execution or performance of the contract is advantageous by such delivery. In this case, the amount delivered shall be applied to part of the contract price.