

DEBARMENT GUIDELINES

(as of November 6, 2023)

PURPOSE

Article1 These guidelines set forth rules necessary for Sanction Board of Japan International Cooperation System (hereinafter referred to as “JICS”), which is established in accordance with JICS’s organization regulations “Establishment of Sanction Board” (Notification No. 1 of 1 February 2007) (hereinafter referred to as “Sanction Board”), to determine and impose debarment against a Respondent (as defined in Article 2) from being awarded or nominated for a contract, or cancelation of the contract procedure or the contract therein (hereinafter referred to as “Debarment”), for projects and/or programs (collectively, hereinafter referred to as “Project”) to be implemented by funds granted to recipient countries.

ACCEDENCE AND INDICATION OF INTENTION BY RECIPIENTS, ETC.

Article 2 (1) JICS shall impose Debarment against a firm or an individual (hereinafter referred to as “Respondent”) that competes or is nominated for a contract relating to supply of materials and equipment, provision of services, construction works, or employment of consultants, which are necessary for the Project, in the case where the Debarment against the Respondent is demanded by the Government of Japan to the government of the recipient country, and such recipient country indicates its intention to agree with such Debarment.

(2) JICS, notwithstanding paragraph (1) above, may impose Debarment against a Respondent when the Respondent is determined to fall under any of items in the “Table of Sanction Criteria” attached herewith (hereinafter referred to as “Appended Table”), provided that the government of the recipient country or the international organization as an orderer for the Project (hereinafter collectively referred to as “Recipient, etc.”) indicate in writing its intention to demand or consent to the Debarment.

(3) In the case where the Recipient, etc., imposes, or indicates their intention to impose, Debarment against a Respondent, JICS may impose the Debarment or any sanction equivalent to the Debarment against such Respondent (Appended Table 3).

(4) In the case where the Government of Japan demands that JICS impose Debarment against a Respondent by canceling contracts regarding procurement with such Respondent, JICS shall take action in accordance with such demand after obtaining the consent of the Recipient, etc.

DEBARMENT

Article3 (1) JICS shall prescribe a period of Debarment (hereinafter referred to as “Debarment Period”) against a Respondent under Article 2 (hereinafter, Respondent subject to Debarment Period

referred to as “Debarred Respondent”) in accordance with the measures taken by the Government of Japan and/or the Recipient, etc. under Article 2 or in the case where such measures are not taken, in accordance with the items in the Appended Table.

(2) JICS shall not invite a Debarred Respondent to any general competitive bidding process conducted by JICS during his/her/its Debarment Period.

(3) JICS shall not nominate a Debarred Respondent for a contract during his/her/its Debarment Period in the case of any competition including limited competitive bidding, shopping, and request for proposal to be conducted by JICS. JICS shall withdraw such nomination when any Debarred Respondent has been nominated during his/her/its Debarment Period.

(4) JICS may not invite or nominate any Respondent to any general competitive bidding process conducted by JICS during the period when such Respondent is debarred by the Government of Japan or the Japan International Cooperation Agency (hereinafter referred to as “JICA”).

(5) JICS shall not invite or nominate any Respondent to any general competitive bidding process conducted by JICS during the period when such Respondent is debarred by the Recipient, etc.

(6) If a presently Debarred Respondent falls under any of the sanction criteria anew for any reason separate from the reasons he/she/it became subject to Debarment, JICS may impose further sanctions on such Respondent without waiting for the expiration of the active Debarment. (These cases shall not prevent Debarment Periods from exceeding 36 consecutive months.)

DEBARMENT OF SUBCONTRACTOR AND JOINT-VENTURE

Article 4 (1) In the case where JICS imposes Debarment against a Respondent in accordance with Article 2 and 3, in the event that it becomes clear that a subcontractor of Respondent is also responsible for such Debarment, JICS shall also impose Debarment against such subcontractor for a period no more than the Debarment Period imposed against the prime contractor.

(2) In the case where JICS imposes Debarment against a joint venture in accordance with Articles 2 and 3, JICS shall also impose Debarment against members of joint venture for a period no more than the Debarment Period imposed against the joint venture (except for any member who is determined not to be responsible for such Debarment).

(3) JICS shall impose Debarment against a joint venture that includes any member against whom the Debarment is imposed in accordance with paragraph (3-1), (4-1) or (4-2), for a period no more than the Debarment Period imposed against the said member.

Debarment Against Corporate Groups, etc.

Article5 (1) If a Debarred Respondent includes a corporation or individual listed below, JICS may determine a Debarment Period in response to the circumstances and impose Debarment against such corporation or individual within the range of Debarment Periods for such Respondent.

(i) A joint-stock company in which a Debarred Respondent holds a majority of shareholders' voting rights, or other corporation the management of which such Respondent substantially controls

(ii) A corporation or individual the management of which a Debarred Respondent substantially controls (excluding national or local governments or analogous groups.)

(iii) A corporation in which a corporation or individual as defined in the previous items holds a majority of shareholders' voting rights, or other corporation whose management is substantially controlled by such corporation or individual

(2) In the case when a Debarred Respondent has caused its business, assets, or rights and obligations to pass to another corporation or individual through merging, dividing, transferring ownership, dissolving, or the like, and JICS deems that the state of management or operation under such corporation or individual is identical or similar to such state under such Respondent (including the case when such Respondent and such corporation or individual belong to the same corporate group [referring to a group that comprises the entities set out in items (i) through (iii) of the previous paragraph]), JICS may determine a Debarment Period in response to the circumstances and impose Debarment against such corporation or individual within the range of the remaining Debarment Period imposed against such Respondent.

Exceptions to Debarment Period

Article6 (1) If a Respondent falls under two or more sanction criteria for a single case, the shortest and longest requisite Debarment Periods for such case shall be the longest of each of the shortest and longest requisite Debarment Periods approved by the Government of Japan or JICA.

(2) If a Respondent falls under any of the following items, the shortest of the requisite Debarment Periods shall be extended as defined in the following paragraph.

(i) If the Respondent falls under any of the sanction criteria anew during a Debarment Period or before one year has passed since the expiration of such Debarment Period.

(ii) If the Respondent falls under the criteria of item 1 of Appended Table 2 anew after one year has passed but before three years have passed since the expiration of Debarment Periods involving such criteria.

(iii) If the Respondent falls under the criteria of item 2 of Appended Table 2 anew after one year has passed but before three years have passed since the expiration of Debarment Periods involving such criteria.

(iv) If the Respondent falls under the criteria of items 3, 4, or 5 of Appended Table 2 anew after one year has passed but before three years have passed since the expiration of Debarment Periods

involving such criteria.

(v) If the Respondent falls under any of the criteria of items 1 through 5 of Appended Table 2 anew before five years have passed since the expiration of any of the Debarment Periods set out in the previous items (excluding cases set out in the previous items).

(3) The shortest of the requisite Debarment Periods set out in the previous paragraph shall be extended as defined in the following items.

(i) If the Respondent falls under the criteria of item 3 or 5 of Appended Table 1: 1.5 times

(ii) If the Respondent falls under the criteria of item 2 or 5 of Appended Table 2: 2.5 times

(iii) If the Respondent falls under sanction criteria other than those set out in the previous items: 2 times

(4) If a Respondent is under special circumstances worthy of extenuation, JICS may refrain from imposing Debarment, or shorten the shortest requisite Debarment Period up to half.

(5) If it is necessary to set a Debarment Period longer than the longest requisite Debarment Period set out in each of the Appended Tables and paragraphs (1) and (2) of this Article due to reasons of extremely malicious nature or extremely serious consequences, JICS may double such longest requisite Debarment Period (or set it to 36 months in the case that such longest requisite section period would exceed 36 months when doubled).

(6) When it has become apparent that a Debarred Respondent is under special circumstances warranting extenuation or special circumstances warranting extension of the Debarment Period with relation to the circumstances under which he/she/it became subject to Debarment, JICS may change the Debarment Period within the ranges set out in each of the Appended Tables, the previous paragraphs, and Article 7.

(7) When it has become apparent that a Respondent that has completed a Debarment Period under the criteria of item 2 or 5 of Appended Table 2 has reasons of extremely malicious nature, JICS may impose a new Debarment with the initial Debarment Period deducted from the period of the envisioned change to the initial Debarment Period.

(8) When it has become apparent that a Debarred Respondent is not liable for the circumstances under which he/she/it became subject to Debarment, JICS shall lift the Debarment against such Respondent.

Exceptions to Debarment Periods Imposed for Violations of the Antimonopoly Act and Other Misconduct

Article 7 If a Respondent falls under any of the following items due to violations of the Act on

Prohibition of Private Monopolization and Maintenance of Fair Trade (Law No. 54 of 1947, hereinafter referred to as “the Antimonopoly Act”), JICS shall extend the shortest requisite Debarment Period on determination by the Government of Japan or JICA as set out in the corresponding items.

- (2) When it has become apparent in a final and binding judgment of a violation of the Antimonopoly Act, a final cease-and-desist order or penalty payment order, or a final and binding judgment (including a final and binding judgment in a foreign country) on interference with a public action or tender (Article 96, paragraph (6-1) of the Penal Code (Law No. 45 of 1965), same hereinafter), collusion (Article 96, paragraph (6-2) of the Penal Code, same hereinafter), or obstruction of business (Articles 233 and 234 of the Penal Code, same hereinafter) that a Respondent that falls under the criteria of items 3, 4, or 5 of Appended Table 2 is the leader of such violation of the Antimonopoly Act, interference with a public action or tender, collusion, or obstruction of business: 2 times (If such Respondent falls under item 5 of Appended Table 2: 2.5 times)
- (ii) If the provisions of Article 7, paragraph (2-7) of the Antimonopoly Act apply to a Respondent that falls under the criteria of items 3, 4, or 5 of Appended Table 2: 2 times (If such Respondent falls under item 5 of Appended Table 2: 2.5 times)
- (iii) In the case when the results of an investigation by the director of a government agency or the like based on Article 3, paragraph (4) of the Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that Harm Fairness of Bidding, etc. (Law No. 101 of 2002) have made it apparent that involvement in bid-rigging, etc. is occurring or has occurred, and reasons of malicious nature with regard to the involvement in the bid-rigging, etc. exist with a Respondent that falls under the criteria of item 3 or 5 of Appended Table 2: Add 1 month (If such Respondent falls under item 5 of Appended Table 2: Add 1.5 months)

EXCEPTIONS TO COUNTRIES AND REGIONS SUBJECT TO DEBARMENT

Article 8 In the case where a Respondent falls under item 5 of Appended Table 1 in imposing Debarment under Articles 2 and 3, JICS may limit the countries and/or regions where the Debarment will be imposed, by taking into account the degree of inappropriateness of the safety control measures taken by the Respondent.

- (2) In the event that it becomes clear during Debarment Period that there is any special reason which should be considered in relation to safety control measures taken by Debarred Respondent against whom the Debarment limited to certain countries and/or regions under paragraph 1 above has been imposed, JICS may change the countries and/or regions which are subject to the Debarment in relation to such Debarred Respondent.

LIFT OF DEBARMENT

Article 9 JICS shall lift Debarment imposed against Debarred Respondent when it is determined that such Debarred Respondent is not responsible for the case in question.

NOTICE OF DEBARMENT

Article 10 (1) JICS shall notify the Debarred Respondent in writing without delay when JICS imposes Debarment under Articles 2 and 3, changes the Debarment Period under Article 6, paragraph (6), changes debarred countries and/or regions under Article 8, paragraph (2), or lifts Debarment under Article 9.

(2) In the case where JICS notifies Debarment under Article 8, paragraph (1), JICS shall request the Debarred Respondent to submit a report on remedial measures as necessary in the event that the reason for the Debarment was relating to the Debarred Respondent's business under a contract with JICS.

RESTRICTIONS ON SINGLE TENDERING

Article 11 JICS shall not have a Debarred Respondent become a counterparty to a single tendering; provided, however, that JICS may have a Debarred Respondent become a counterparty to a single tendering if such single tendering falls under certain provisions of JICS's procurement guidelines and is approved by JICS in advance.

NO SUBCONTRACTING

Article 12 JICS shall not approve a counterparty of a contract to subcontract or assign the whole or a part of his/her/its contract to Debarred Respondent or to cause Debarred Respondent to guarantee the completion of performance of such contract.

OTHER SANCTIONS

Article 13 In case that JICS does not impose a Debarment against a Respondent, JICS may issue a written or verbal warning or reminder against such Respondent as it deems necessary.

(2) If a Respondent repeatedly falls into situations in which such Respondent receives a warning or reminder as prescribed in paragraph (1) above before the lapse of 1 year after the day when the Respondent received the first sanction under paragraph (1) above, JICS may impose Debarment to such Respondent for a period no more than the period prescribed in the items in the Appended Table.

Table 1 of Sanction Criteria on Accidents etc.

Sanction Criteria	Period
<p>(False Statements)</p> <p>2. When it is deemed that a Respondent has made false statements in the series of procurement-related documents and the like for a procurement contract for an ODA project or an OSA project of the Government of Japan.</p>	<p>Not less than 1 month and not more than 6 months</p>
<p>(Negligent Operations)</p> <p>2. When it is deemed that a Respondent's negligence has resulted in defective work in the course of operations for a procurement contract for an ODA project or an OSA project of the Government of Japan (except when the defects are deemed to be minor).</p>	<p>Not less than 1 month and not more than 6 months</p>
<p>(Breach of Contract)</p> <p>3. Apart from the cases described in the previous items, when a Respondent has violated a procurement contract for an ODA project or an OSA project of the Government of Japan in the course of operations under the contract, and is deemed improper to be a party to the contract.</p>	<p>Not less than 2 weeks and not more than 4 months</p>
<p>(Accidents that Damage the Public)</p> <p>4. When it is deemed that a Respondent has caused the death of or injury to a member or members of the public, or damage (excluding minor damage) in the course of operations under a procurement contract for an ODA project or an OSA project of the Government of Japan due to the inappropriateness of safety control measures.</p>	<p>Not less than 1 month and not more than 6 months</p>
<p>(Accidents with People Involved in Operations)</p> <p>5. When it is deemed that a Respondent has caused the death of or injury to a person or people involved in contract operations in the course of operations under a procurement contract for an ODA project or an OSA project of the Government of Japan due to the inappropriateness of safety control measures.</p>	<p>Not less than 2 weeks and not more than 4 months</p>

Table 2 of Sanction Criteria on Bribery and illegal act etc.

Sanction Criteria	Period
<p>(Bribery)</p> <p>1. When, in relation to operations for an ODA project or an OSA project of the Government of Japan, a director or employee of a corporation, or an individual or their employee violates or is suspected of violating Article 198 (Bribery) of the Penal Code.</p> <p>2. When, in relation to operations for an ODA project or an OSA project of the Government of Japan, a director or employee of a corporation, or an individual or their employee violates or is suspected of violating Article 18 (Prohibition of the Offering of Illegal Profits to Foreign Public Officials) of the Unfair Competition Prevention Act (Law No. 47 of 1993).</p>	<p>Not less than 2 months and not more than 18 months</p> <p>Not less than 6 months and not more than 36 months</p>
<p>(Violations of the Antimonopoly Act)</p> <p>3. When a Respondent has violated Article 3, Article 6, or Article 8, paragraphs (1) or (2) of the Antimonopoly Act in relation to a procurement contract for an ODA project or an OSA project of the Government of Japan, and is deemed improper to be a party to the contract.</p>	<p>Not less than 3 months and not more than 12 months</p>
<p>(Interference with a Public Action or Tender, Collusion, or Obstruction)</p> <p>4. When an entity described in a. or b. below has violated or is suspected of violating Article 96, paragraph (6-1) (Interference with a Public Action or Tender), paragraph (6-2) (Collusion), or Articles 223 or 234 (Obstruction) of the Penal Code in relation to a procurement contract for an ODA project or an OSA project of the Government of Japan.</p> <p>a. An individual, or a director with the right to represent a corporation (including directors with positions that are acknowledged as having the right of representation)</p> <p>b. A director (including executive directors), or person or employee that represents the branch office or business office, and is not described in a. above</p>	<p>Not less than 4 months and not more than 12 months</p> <p>Not less than 3 months and not more than 12 months</p>
<p>(Serious Violations of the Antimonopoly Act)</p> <p>5. When a Respondent has received criminal punishment for a violation of Article 3, Article 6, or Article 8, paragraphs (1) or (2) of the Antimonopoly Act in relation to a procurement contract for an ODA project or an OSA project of the Government of Japan</p>	<p>Not less than 6 months and not more than 36 months</p>
<p>(Illegal or Dishonest Acts)</p> <p>6. Apart from the cases described in Appended Table 1 and the previous items, when a Respondent has committed illegal or dishonest acts in relation to operations, and is deemed unfit to be a party to the contract.</p> <p>7. Apart from the cases described in Appended Table 1 and the previous items, when a representative director or the like has been indicted on suspicion of a crime subject to a penalty at least as severe as incarceration, or has been sentenced to a penalty at least as severe as incarceration or a fine under the Penal Code, and is deemed improper to be a party to the contract.</p>	<p>Not less than 1 month and not more than 18 months</p> <p>Not less than 1 month and not more than 9 months</p>

Table 3 of Sanction Criteria on other cases

Sanction Criteria	Period
<p>In relation to operations for a project of an international agency, in the case when a Respondent has made false statements on tender-related documents to be submitted to the government of the recipient country, the international agency acting as the client for the project, or Japan International Cooperation System; engaged in negligent operations; caused defects; or violated contracts or committed other dishonest or illegal acts.</p>	<p>Not less than 2 weeks and not more than 12 months</p>