



JICS PROCUREMENT GUIDELINE

JAPAN INTERNATIONAL
COOPERATION SYSTEM

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Preamble

The Basics of JICS Procurement

Japan International Cooperation System (hereinafter referred to as

"JICS"), a public service corporation authorized by the Ministry of Foreign Affairs, assists the recipients of Japan's Official Development Assistance (ODA) with the acquirement of goods and services, appropriately and efficiently.

Procurement generally refers to the act of acquiring goods and/or services needed to achieve a specific purpose, in exchange for adequate payment. In order to secure certain standards of quality, it is necessary for JICS to fix in advance some rules concerning the procurement purpose, procedure, economic process and so forth.

In addition to this, it should be noted that procurements implemented by JICS are public ones, utilizing public funds for public purposes and therefore, need to satisfy the following factors:

Impartiality	to be always impartial in the procurement process such as determining specifications of the goods and designating suppliers
Fairness	to be always fair and equitable in the procurement process
Competitiveness	to ensure a sufficient number of suppliers or contractors in a price competition
Compliance	to be in conformity with all the related laws
Transparency	to ensure the transparency of the whole procurement process
Independence	to ensure independence in the procurement process

JICS Procurement Concept

JICS puts great emphasis on helping the people of the recipient countries. This core idea shall at all times be kept in mind when implementing public procurements aimed at the assistance of developing countries. The present guideline embodies the regulations for procurement and gives essential information on its process.

JICS PROCUREMENT CONCEPT

JICS shall timely implement procurements of the goods and services required for the purpose of supplying them to the people of the recipient

countries, maximizing economy and efficiency in procurements, and ensuring impartiality, fairness, competitiveness and transparency. Besides implementing ordinary procurements, JICS shall provide necessary services and make all possible efforts in order to help people in the recipient countries to benefit from the various projects.

I Basic Principles

1. Introduction

Japan International Cooperation System (hereinafter referred to as “JICS”), a public service corporation, implements projects as stipulated in Article 4 of the “The Articles of Foundation of Japan International Cooperation System (JICS).” The JICS Procurement Guideline sets forth the general rules to be followed by for the implementation of the said projects.

2. Applicability of this Guideline

This guideline sets forth the regulations concerning the procurements of goods, work, and services (hereinafter referred to as “goods”) implemented by JICS. This guideline shall be applied to all the procurements in which JICS is concerned, except in the case where guidelines issued by the Ministry of Foreign Affairs of Japan or other institutions prevail.¹

3. Methods of Procurement Contract

JICS procurement shall, in principle, be implemented through Competitive Tendering². However, a tender method other than Competitive Tendering, such as Selective Tendering³, Shopping⁴, or Direct Contracting,⁵ can be used if such Competitive Tendering is not deemed most economical and efficient. The order of priority in determining which method to be used is 1. Selective Tendering, 2. Shopping, and 3. Direct Contracting. The procurement procedures other than Competitive Tendering are used under the following

¹ This guideline is not applicable to procurements of consultant services.

² In Competitive Tendering, the tender opportunity is announced and open to all potential tenderers who are qualified for the tender, and the contract is awarded to the tenderer who offers the most advantageous conditions for the contracting entity.

³ Selective Tendering is competitive tendering by direct invitation of tenderers, according to certain qualifications, without open advertisement.

⁴ Shopping is a procurement contract method based on the comparison of price quotations obtained from several (generally at least three) tenderers to ensure competitive prices.

⁵ Direct Contracting is the procurement method of negotiating directly with the supplier before placing orders and concluding a contract without competition of suppliers.

circumstances:

- 1) where the number of qualified suppliers is limited;
- 2) where the scale of procurement is so small that it is duly doubtful that potential tenderers would be interested, and the advantages of Competitive Tendering would be outweighed by the administrative burden involved;
- 3) where all or part of the initial tenders is rejected or not completed and there is a need for re-tendering;
- 4) where spare parts for existing equipment are procured, or where equipment can be procured only from specified manufacturer(s);
- 5) where emergency procurement is required⁶; or
- 6) where JICS considers that Competitive Tendering is inappropriate for any other reasons.

4. Prevention of Unfairness and Corruption

The staff of JICS must conduct its duties, constantly observing the will for securing fair competition in international trade, conforming to definite standards of ethics, and make every effort to prevent the procurement process from being unfair and corrupted.

⁶ Where humanitarian and urgent support is required, such as emergency support and urgent recovery support after a disaster.

II Procurement Procedures

1. Tender Documents

(1) General

The tender documents shall contain all the information necessary to enable tenderers to prepare valid tender offers for the goods to be procured. Tender instructions or specifications shall include tender evaluation criteria. The tender documents shall generally include such information as:

- 1) Instruction to Tenderers
- 2) Tender Schedule
- 3) Formality of Tender⁷
- 4) Award of Contract
- 5) Delivery Requirements
- 6) Technical Specifications or Drawing of Goods to be Procured
- 7) List of Goods or Detailed Bill of Quantities
- 8) Primary Contents and Form of Contract
- 9) Shipment and Delivery or Fulfillment Period, etc.

If a fee is charged for the tender documents, it shall be reasonable.

(2) Validity of Tender and Tender Bond

Tenderers are requested to make sure that their tenders are valid for the period stipulated in the tender documents. In some cases, they can also be requested to submit a tender bond or the like, which fee or percentage shall be reasonable, taking into account the contractual amount, and be stipulated in the tender documents.

(3) Language

The language used for the procurement process and the prequalification documents, tender documents, contract documents and those incidental to tendering, etc. shall be the appropriate language for each project with which the tender is concerned.

⁷ As for tendering open to foreign companies, submission of the tender documents by mail, etc. can be accepted.

(4) Clarity of Tender Documents

The tender documents shall not contain factors to hinder competition unnecessarily, and shall describe as clearly and precisely as possible the goods to be procured, contract obligations, performance method, period of execution, minimum requirements for performance, warranty as well as other pertinent items.

(5) Technical Specifications

Technical specifications in tender documents shall specify clearly and precisely the significant items concerning the procurement of goods, shall identify the main factors such as quantity, essential functions, materials and equipment, and shall encourage the broadest possible competition without giving preference to a product or a particular brand.

(6) Use of Brand Names

Brand names shall be quoted only in the case where it seems difficult to identify goods without mentioning them. In such a case, technical specifications shall quote several brand names or include a list of equivalent ones.

(7) Delivery Requirements

The tender documents shall give relevant indications regarding delivery requirements essential for tenderers to quote their tender prices and risk responsibility, such as the names of the goods, technical specifications, trade terms (e.g. INCOTERMS), as well as terms of payment, transportation requirements, performance bonds and delivery schedule.

(8) Contract Draft

The contract draft shall be attached to the tender documents so that tenderers are aware of the content of the contract to be signed with the successful tenderer.

2. Tender Procedure

(1) General

Procedures for Competitive Tendering comprise tender notice, prequalification of tenderers, distribution and selling of tender documents, questions and replies, notification of amendments in tender documents, submission of tenders, tender opening, tender evaluation, determination of successful tenderer, award of contract, and contract conclusion. In the tender procedures, fairness, transparency and impartiality shall be secured. In addition, with sufficient time, JICS shall take into account the special circumstances, the complexity, the magnitude of the project etc., to provide tenderers with fair and appropriate information.

(2) Public Announcements

Public announcements shall be carried out as to basic information of the tender, such as the name of the project, the outline of the goods to be procured, the eligibility of tenderers and the time and date of the tender documents distribution. Public announcements shall be published in such a way that all potential tenderers will have fair opportunities to learn about and participate in the tender. The public announcements for tender shall give potential tenderers sufficient time, and be advertised in the appropriate widely known media.

(3) Prequalification of Tenderers

JICS may conduct prequalification⁸ of potential tenderers prior to tendering. Prequalification shall be based solely on the capabilities and resources of potential tenderers to perform the contract, taking into account, in principle:

- 1) Their experience and past performance⁹ on similar contracts;
- 2) Their capabilities¹⁰ with respect to personnel, equipment and construction or manufacturing facility; and

⁸ Its evaluation is based on JICS' s evaluation criteria, conversing designated factors into numerical points.

⁹ Experience in exportation to the country the tender is for, project performance related to ODA, etc.

¹⁰ Their equipment, engineers, registered branch office or agent, etc. in the recipient country.

- 3) Their financial status¹¹.
- (4) Questions, Replies and Amendments Concerning Tender Documents

After selling tender documents and a sufficient time interval, JICS shall accept questions concerning the tender documents from those who purchased them. In the case there is a question from one of the potential tenderers, JICS shall reply to it and notify all the documents purchasers of both the question and reply. Similarly, in the case where there is an amendment to the tender documents, JICS shall notify all of them of the amendment. After answering questions or notifying the purchasers of an amendment, a sufficient time period shall be allowed before tender opening.

- (5) Procedures for Tender Opening

All tenders shall, in principle, be opened in public. The date, time and place for tender opening shall be announced in the tender documents. All tenders shall be opened at a fixed time and place. Representative(s) of the recipient country, tenderers or their representatives, or the person who is permitted to be present, shall be allowed to attend the procedure.

- (6) Confidentiality of Tender Process

After the public opening of the tenders, information relating to tender examination, tender evaluation, and award of contract to the successful tenderer shall not be disclosed to tenderers or other persons not officially concerned with the process.

- (7) Tender Examination

Regarding examination of tender documents, the following shall be ascertained:

- 1) all the required documents have been submitted;
- 2) they meet the eligibility requirements in the case where qualification is conducted at the same time as tender opening, without prequalification;
- 3) they have been properly signed; and
- 4) they are substantially responsive to the tender documents.

¹¹ Their capital, sales amount, company history, etc.

(8) Tender Evaluation and Determination of Successful Tenderer

1) The tender evaluation of the prequalified tenderers shall be implemented on the basis of the conditions specified in the tender documents.

2) The successful tenderer shall be the tenderer who offers the lowest price within the ceiling price that JICS has set in advance, satisfying technical specifications and other requirements in the tender documents, except for the cases¹²where:

(a) the goods to be procured are sold in the market, such as petroleum, raw materials, and grain, so that it may be difficult to set a ceiling price¹³;

(b) emergency procurement is required (refer to page 4, footnote 6); and

(c) the goods that need to be procured are specially conditioned, so that it might not be appropriate to determine the successful tenderer solely through price competition.

3) As for tendering divided into plural lots, the tender evaluation and contract award shall be carried out lot by lot.

(9) Notification and Announcement of Tender Result

1) After the successful tenderer is designated, the Contract shall be awarded to the successful tenderer and the unsuccessful tenderers shall be notified that they have failed the evaluation.

2) In the case where the tenderer who offered the lowest price is not designated as the successful tenderer, JICS shall give him the reasons for his rejection.

3) After signing the Contract with the successful tenderer, the following shall be announced: the outlines of the project the tender is concerned with (the name of the project or the required equipment), the names of the tenderers, their tender prices, the successful tenderer, his price, contract parties and the contract price. If prequalification is carried out, the number of tenderers

¹² In cases that fall into (a), (b) or (c), the successful tenderer may be designated according to the reference price (even if a tender price exceeds the reference price, the tender may be accepted within a certain amount) or comprehensive evaluation (the successful tenderer shall be designated through comprehensive evaluation referring to his goods' specifications, security, price and delivery schedule, based on the terms and conditions of the tender).

¹³ The highest tender price that is estimated to provide goods the most economically, prior to tender opening.

who have applied, as well as the qualified tenderers, shall also be announced.

(10) Rejection of All Tenders

- 1) When the lowest tender offer is within the ceiling price, all tenders shall, in principle, not be rejected, except in the case where:
 - 1 all tenders do not comply with the requirements in the tender documents;
 - 2 it is clear that tenders competition is impeded; and
 - 3 it becomes clear during the tender procedure that there is a rational reason to believe that the aim of procurement will not be achieved through the tender procedure.
- 2) In the case where all bids are rejected because the case falls into 2 or 3, the condition to re-tender shall be decided upon after having duly reviewed the causes for rejection and reconsidered the general and/or technical and/or delivery specifications.

3. Procurement Contract

(1) General

The procurement contract shall be agreed upon and concluded in an appropriate and expeditious manner between the employer or his representative and the successful tenderer in the stipulated manner based on the tender documents, and carried out accordingly.

(2) Type of Contract

The procurement contract shall be made on the basis of a lump-sum or unit price. The procurement procedures for the contract shall be in accordance with the regulated forms.

(3) Contract

The contract shall be made based on the contents of the draft contract attached in the tender documents, and shall state the following:

1) Date of Contract

The date the parties concerned formally sign the contract.

2) Contract Price

Contract price agreed between the parties.

3) Rights and Obligations

Rights and obligations divided between the parties concerned.

4) Terms of Payment

The terms of payment such as the time of payment, the scope of payment and the method of payment (lump-sum payment or installment payment).

In case of installment payment, the amount to be paid in each period shall be clearly stated.

5) Period of Execution

The period of execution such as delivery or shipment period of the equipment, and the date of completion of the works.

6) Performance Security

The performance bond and other performance security. In the event that a performance bond is deposited by the supplier, the said performance bond shall be of an appropriate amount. After the completion of the contract, the performance bond shall be returned immediately to the supplier.

7) Force Majeure

Failure of the executing party to fulfill obligations under the contract shall not be considered a default if such failure is the result of an event of force majeure.

8) Applicable Law and Settlement of Disputes

The applicable law and organization taking care of disputes between the parties concerned in the contract.

III Supervision of Procurement

1. General

JICS shall supervise the progress of the project, and secure proper management, use of the fund and proper implementation of the project so that the goods to be procured will surely be manufactured, transported, and delivered or completed, communicating well with those who are concerned. JICS shall evaluate the completed procurement as much as possible to ensure that the procured goods will be properly utilized by the end-users.

2. Supervision of Performance

JICS shall supervise the performance of the parties concerned so that the contract obligations, such as the delivery of the goods will be performed in a sound manner from the date of contract until the completion of the said contract.

3. Confirmation of Performance Completion

JICS shall confirm that there is no discrepancy between the performance of the supplier and the contents of the contract. To achieve this aim, it is entitled to inspect the equipment where necessary and will make an overall review concerning the trade terms, the specific characteristics of the procured goods, the intention of the employer, the requirements of the end-users, etc.

4. Evaluation of Completed Procurement and Follow-Up

JICS shall from time to time communicate with the recipient countries and end-users in order to evaluate whether the procured material is used in the most appropriate way, and if the population fully benefits from it.