

Implementation Rules concerning the Disqualification for Participation in Tendering and Contracting

(Provisional Translation)

***In case there is a discrepancy between the original sentences in Japanese version and this provisional translation, the Japanese version shall prevail.**

Article 1 (Purpose)

These rules set forth the procedures for the Review Committee on Penalty established in Japan International Cooperation System (hereinafter referred to as “JICS”), in relation to imposing the penalty to disqualify a party from participation in a Competitive Bidding or nomination in a Bidding which is conducted for a project funded by Japan’s Official Development Assistance extended for a recipient country (hereinafter referred to as the “Penalty”).

Article 2 (Consent of the Recipient Country)

2.1 JICS shall impose the Penalty on a party participating in the tendering or in the selection procedure for a contract concerning the procurement of goods or services, the construction of facilities or the employment of consultants, necessary for the implementation of assistance projects or a party in the process of concluding such a contract (hereinafter referred to as the “Qualified Participant”); provided that the Government of Japan has requested the government of recipient country of the said project to impose the Penalty to the Qualified Participant and the said recipient country has expressed its assent to it.

2.2 JICS may, notwithstanding Article 2.1, impose the Penalty to a Qualified Participant, in case that the said Qualified Participant is deemed to fall under any of items of the Table of Criteria of Penalty (See Attachment-1), provided that the government of recipient country has requested the application or expressed its assent to the application in writing.

Article 3 (Penalty)

3.1 In the case where a Qualified Participant falls under any of items of the Table of Criteria of Penalty attached hereto, JICS may impose the Penalty on the said

Qualified Participant for the period determined in accordance with conditions set forth in the Table of Criteria of Penalty.

3.2 In the case where JICS conducts a Competitive Bidding in the period in which a certain Qualified Participant is being imposed the Penalty as set forth in Article 3.1 (hereinafter referred to as the “Period of Disqualification”), the Qualified Participant under the Penalty shall not be allowed to participate in the said bidding.

3.3 In the case where JICS nominates tenderers for a contract during the Period of Disqualification, the Qualified Participant under the Penalty shall not be nominated. If the Qualified Participant under the Penalty has been nominated as a contractor, the nomination shall be cancelled.

3.4 In the case where a Qualified Participant is under the Penalty imposed by the Government of Japan and Japan International Cooperation Agency, JICS shall not allow the Qualified Participant to participate in a Competitive Bidding and shall not nominate the Qualified Participant in the Bidding.

3.5 In the case where a Qualified Participant is under the Penalty of disqualification for tendering in a recipient country imposed by the government of the recipient country or any other concerned authority, JICS shall not allow, during the period of disqualification, the Qualified Participant to participate in a Competitive Bidding or shall not nominate the Qualified Participant for a Bidding.

Article 4 (Penalty against Subcontractors and Joint Ventures)

4.1 In the case where the Penalty is imposed as set forth in Article 3.1, if it becomes apparent that the disqualified prime contractor has a subcontractor that is also responsible for the Penalty; JICS shall impose the Penalty on the said subcontractor for a period equal to or less than the Period of Disqualification determined for the said disqualified prime contractor.

4.2 In the case where the Penalty as set forth in Article 3.1 is imposed against a joint venture, JICS shall impose the Penalty on each of the partners of such joint venture for a period equal to or less than the Period of Disqualification determined for the said joint venture, except for a partner that is apparently not

responsible for the Penalty imposed on the joint venture.

4.3 In the case where the Penalty is imposed as set forth in Article 3.1 or Article 4.1 and 4.2, JICS shall impose the Penalty on the joint venture which includes the disqualified party as a partner for a period equal to or less than the Period of Disqualification determined for the said partner.

Article 5 (Exceptions Concerning the Period of Disqualification)

5.1 In the case where the Qualified Participant engages in a practice that falls under two or more items listed in the Table of Criteria of Penalty, the minimum and maximum Period of Disqualification applied to the said Qualified Participant will be determined by quoting the longest period of the minimum and maximum Period of Disqualification specified for the respective items.

5.2 In the case where the Qualified Participant falls under any of the following provisions, the minimum Period of Disqualification will be twice of that corresponding to the relevant practice in the Table of Criteria of Penalty (1.5 times of that corresponding to such relevant practice if the Period of Disqualification originally imposed is less than one month):

- (1) The Qualified Participant engages again in a practice listed in any item of the Table of Criteria of Penalty during the Period of Disqualification relating to a practice listed in such item or not more than one year after expiration of the Period of Disqualification.
- (2) The Qualified Participant engages again in a practice listed in Item 1 of the Table of Criteria of Penalty more than one year but not more than three years after expiration of the Period of Disqualification relating to a practice listed in Item 1.
- (3) The Qualified Participant engages again in a practice listed in Item 2 of the Table of Criteria of Penalty more than one year but not more than three years after expiration of the Period of Disqualification relating to a practice listed in Item 2.

5.3 If there are particular reasons justifying mitigating factor of the Qualified

Participant under the Penalty, JICS may shorten the Period of Disqualification set forth in the Table of Criteria of Penalty for each practice and in Article 5.1 and 5.2, up to one half of the minimum Period of Disqualification as would otherwise be applied.

5.4 If the Qualified Participant to under the Penalty has engaged in particularly malicious conduct or brought about a particularly serious consequence, JICS may extend the Period of Disqualification set forth in the Table of Criteria of Penalty and in Article 5.1, up to twice the maximum Period of Disqualification as would otherwise be applied.

5.5 In the case where it becomes apparent during the Period of Disqualification that there are particular reasons justifying mitigating factor of the Qualified Participant under the Penalty or there is particularly malicious conduct on the part of such Qualified Participant, JICS may modify the Period of Disqualification within the period specified in the relevant item of the Table of Criteria of Penalty and in any of the preceding paragraphs in this Article.

Article 6 (Exceptions Concerning the Applied Countries or Areas of Penalty)

6.1 In the case where the Qualified Participant falls in Item 5 of the Table of Criteria of Penalty, JICS may limit the Penalty for the Qualified Participant to the tendering for projects in designated countries and areas, in view of the degree of inappropriateness of the security management conducted by the Qualified Participant.

6.2 In the case where it becomes apparent during the Period of Disqualification of the Qualified Participant imposed the Penalty as set forth in Article 6.1 that there are particular reasons which shall be taken into account for the measures of the security management conducted by the Qualified Participant, JICS may change the designation of countries and areas for which the Qualified Participant is disqualified to participate in a tendering.

Article 7 (Lifting of Penalty)

JICS shall lift disqualification if it becomes apparent during the Period of Disqualification that the Qualified Participant is found to be not responsible for

the practices that resulted in the Penalty.

Article 8 (Notification of Penalty)

8.1 JICS shall promptly notify the Qualified Participant in writing in the event that it has imposed the Penalty in accordance with Article 2 or Article 3, or modified the Period of Disqualification in accordance with Article 5.5, or changed the designation of target countries and areas in accordance with Article 6.2, or lifted the Penalty in accordance with Article 7.(see Attachment-2)

8.2 In the case where the Penalty has resulted from the Qualified Participant's practice concerning the works conducted under the contract with JICS, JICS may require the Qualified Participant to report on their remedial actions if needed, in giving the notice of the Penalty as set forth in Article 8.1.

Article 9 (Restriction on Direct Contracting)

JICS shall not conclude a contract by Direct Contracting with a Qualified Participant during the Period of Disqualification. However, if the contract satisfies the conditions concerning Direct Contracting as stipulated in JICS's guidelines on procurement, JICS may conclude the contract with the Qualified Participant only after the due process of approval.

Article 10 (Prohibition of Subcontracting)

JICS shall not give approval for a Qualified Participant during the Period of Disqualification to be an assignor for the whole or a part of a contract as subcontractor, to be a contractor or to be a guarantor for the completion of contract.

Article 11 (Measures other than Penalty)

11.1 In the case where JICS will not impose the Penalty against the Qualified Participant for its conduct, JICS may take measures to issue a warning or bring the matter to the attention of the Qualified Participant in writing or in oral communication, if it deems such action necessary.

11.2 In the case where the Qualified Participant who has received the measures as set forth in Article 11.1 engages repeatedly in a conduct to receive measures as set forth in Article 11.1 within one year from the date of the said measures, JICS may impose the Penalty on the said Qualified Participant within the period specified in the relevant item of the Table of Criteria of Penalty.

Attachment -1: The Table of Criteria of Penalty

Attachment -2: The Form of Notification of Disqualification for Participation in Competitive Bidding

The Table of Criteria of Penalty

Item Number	Condition of Penalty	Period of Disqualification
1	The Qualified Participant, in relation to the works concerning Japan's ODA projects, has conducted a practice in violation of Penal Code, Article 198 (Giving of Bribes) or Unfair Competition Prevention Act, Article 18 (Prohibition of provision of illicit profit, etc. to foreign public officials, etc.).	Not less than two months and not more than twelve months
2	The Qualified Participant, in relation to the works concerning Japan's ODA projects, has conducted a practice in violation of Act on Prohibition of Private Monopolization and Maintenance of Fair Trade, Article 3 (Prohibition of private monopolization or unreasonable restraint of trade) or Article 8-1(1) (Substantial restraint of competition).	Not less than two months and not more than nine months
3	The Qualified Participant, in relation to the works concerning Japan's ODA projects, has conducted a practice in violation of Penal Code, Article 96-3.(2) (Collusion).	Not less than two months and not more than twelve months
4	The Qualified Participant, in relation to the works concerning Japan's ODA projects, has conducted unfaithful or unfair act for a government of recipient country, the Government of Japan, Japan International Cooperation Agency or any other organization designated by the Government of Japan, or Japan International Cooperation System, such as the submission of bid documents with false information, shoddy works, defects and breach of contract.	Not less than two weeks and not more than twelve months
5	The Qualified Participant, in relation to the works concerning Japan's ODA projects, has caused damages or losses due to inappropriate safe management.	Not less than two weeks and not more than six months
6	The Qualified Participant, in relation to the works concerning Japan's ODA projects, has conducted a practice in violation of any foreign law or regulation which is equivalent to such provision of Japanese law referred to in aforementioned items 1 to 3.	Not less than two months and not more than twelve months

Form

To:

No.
Date:

Notification of Disqualification for Participation in Competitive Bidding
(or Nomination in the Bidding)

Dear Sirs:

It is regrettable that your company has _____¹.

In consideration of the above fact, we, JICS, hereby notify you of imposing the Penalty of disqualification for participation in tendering or nomination for Selective Tendering on your company as follows:

1. Period of Disqualification:²
2. Target Countries and Areas of Penalty:³
3. Reason of Penalty:⁴

We would like you to make sure that we do not have this kind of situation anymore (and request you to promptly report on details of your planned remedial actions)⁵.

Sincerely yours,

Vice President
Japan International Cooperation System

¹ Describe the fact for which the Penalty is imposed.

² Present the commencement and termination dates of the period of disqualification.

³ Present the name of designated countries and areas.

⁴ Present the fact for which the Penalty is imposed including the date and place of occurrence and the summary of the Qualified Participant's conduct.

⁵ The phrase in parenthesis will be added in the case of Article 8.2.