

Cabinet Order on Budgets, the Settlement of Accounts, and Accounting (Summary Chapter VII (contract relation))

(Imperial Order No. 165 of April 30, 1947)

Chapter VII Contracts

Section 1 General Provisions

(Delegation of Administrative Processes for Contracts)

Article 68 (1) Heads of Ministries and Agencies, when delegating or allotting administrative processes relating to contracts to officials in their ministries or agencies pursuant to the provisions of Article 29-2, paragraph (1) or paragraph (3) of the Public Accounting Act, may if necessary delegate the authority prescribed in paragraph (1) or paragraph (3) of the same Article to the commission chairperson or director-general prescribed in Article 50 of the Act for Establishment of the Cabinet Office (Act No. 89 of 1999), the head of the local branch office prescribed in Article 43 or Article 57 of the same Act (including, when applied mutatis mutandis pursuant to Article 18, paragraph (1) of the Imperial Household Agency Act (Act No. 70 of 1947)), the head of the Imperial Household Agency, the head of the local branch office prescribed in Article 17, paragraph (1) of the Imperial Household Act, the commission chairperson or director-general prescribed in Article 6 of the National Government Organization Act (Act No. 120 of 1948), the head of the local branch office prescribed in Article 9 of the same Act, or other official equivalent to the foregoing (referred to in Article 139-3, paragraph (3), as the "head of an external organ, etc.").

(2) The provisions of Article 26, paragraph (3) apply mutatis mutandis when the Heads of Ministries and Agencies delegate or allot a portion of the administrative processes relating to contracts to officials of other ministries or agencies pursuant to the provisions of Article 29-2, paragraph (2) or paragraph (3) of the Public Accounting Act, and the provisions of Article 26, paragraph (4) apply mutatis mutandis when administrative processes relating to such contracts are delegated or a portion of such processes is allotted to officials of other ministries and agencies by designating government position pursuant to the provisions of Article 4-2, paragraph (4) of the same Act as applied mutatis mutandis pursuant to Article 29-2 paragraph (4) of the same Act.

(Designation of Contract Assessment Commissioners)

Article 69 (1) The Heads of Ministries and Agencies must, when necessary,

designate officials from among the officials from their ministry or agency or officials from other ministries or agencies, and the officials from the ministries and agencies delegated by them must, when necessary, designate officials from the relevant ministries and agencies to express opinions when requested by a Contract Officer, etc. (hereinafter referred to as a "Contract Assessment Commissioner"), pursuant to the provisions of Article 86, paragraph (2) (including when these are applied mutatis mutandis to Article 98).

- (2) If the Heads of Ministries and Agencies seek to designate an official from another ministry or agency as a Contract Assessment Commissioner pursuant to the provisions of the preceding paragraph, the Heads of Ministries and Agencies must obtain consent for the officer and the officer's official duties in advance from the relevant head of the other ministry or agency.
- (3) In a case under paragraph (1), the Heads of Ministries and Agencies or the officials delegated by them may appoint a person with certain official duties as a Contract Assessment Commissioner by designating the official duties of a position in the relevant ministry or agency or other ministry or agency. When this is the case, it suffices for consent pursuant to the provisions of the preceding paragraph to be obtained for such official duties.
- (4) There are three (3) Contract Assessment Commissioners for every one (1) Contract Officer, etc.; provided, however that this does not preclude a Contract Assessment Commissioner from simultaneously acting as a Contract Officer, etc.
- (5) When the Heads of Ministries and Agencies or officials delegated by them designate a Contract Assessment Commissioner, they must notify the relevant Contract Officer, etc. that they have done so.

Section 2 Contracts under Open Tender

Subsection 1 Eligibility as an Open Tender Participant

(Persons Who Must Not Be Permitted to Participate in Open Tenders)

Article 70 If a sales, lease, contracting, or other contract is put out to tender pursuant to Article 29-3 , paragraph (1) of the Public Accounting Act (hereinafter referred to as an "Open Tender"), the Contract Officer, etc. may not permit a person who falls under any of the following items to participate, unless there are special grounds for doing so:

- (i) a person who is incapable of concluding the relevant contract;
- (ii) a person who received an order of commencement of bankruptcy proceedings and has not had the person's rights restored;
- (iii) a person who falls under any of the items of Article 32, paragraph (1) of the Act on Prevention of Unjust Acts by Organized Crime Group Members (Act No. 77 of 1991).

(Persons Who May Be Prevented from Participating in Open Tenders)

Article 71 (1) If a Contract Officer, etc. determines that a person who wishes to participate in an Open Tender falls under any of the following items, the Contract Officer, etc. may prevent the person from participating in Open Tenders for a period of not more than three years. The same applies to the proxies, managers, and employers of such a person:

- (i) if the person has 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;
 - (ii) 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;
 - (iii) if the person has obstructed the successful bidder from entering into a contract or obstructed a party to a contract from performing the contract;
 - (iv) if the person has obstructed an official from performing the official's duties in a supervision or inspection;
 - (v) if, without a justifiable reason, the person has not performed a contract;
 - (vi) if, under a contract, the price is to be fixed after the signing of the contract, and the person has intentionally claimed an excessive amount as such price based on false facts;
 - (vii) if the person has employed a proxy, manager, or other employee who is not eligible to participate in an Open Tender pursuant to this paragraph (not including this item) in the conclusion or performance of a contract.
- (2) A Contract Officer, etc. may prevent a person who employs a person falling under any of the provisions of the preceding paragraph as a bid proxy from participating in an Open Tender.

(Eligibility as an Open Tender Participant as Determined by Heads of Ministries and Agencies)

Article 72 (1) Heads of Ministries and Agencies or officials delegated by them may, when necessary, determine the eligibility required of persons participating in Open Tenders, with regard to particulars related to performance such as construction, manufacturing and 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, and other contracts, in accordance with the price, etc. of the contract.

- (2) If eligibility has been determined pursuant to the preceding paragraph, the Heads of Ministries and Agencies or officials delegated by them must periodically or when necessary and pursuant to what they have determined,

gather applications from persons who seek to participate in Open Tenders, and examine whether such persons are eligible to do so.

(3) Heads of Ministries and Agencies or officials delegated by them are to prepare a name list of the persons who are eligible as referred to in paragraph (1).

(4) If the eligibility required of persons participating in Open Tenders has been determined pursuant to the provisions of paragraph (1), the Heads of Ministries and Agencies or officials delegated by them must issue a public notice with regard to the fundamental particulars and the timing and manner, etc. of application prescribed in paragraph (2).

(Eligibility as an Open Tender Participant as Determined by a Contract Officer, etc.)

Article 73 If a Contract Officer, etc. 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 and purpose of the contract, the Contract Officer, etc. 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 the Heads of Ministries and Agencies.

Subsection 2 Public Notices and Tenders

(Public Notices for Bids)

Article 74 If a Contract Officer, etc. seeks to put a contract out to Open Tender by bidding, the Contract Officer, etc. must issue a public notice by Government Gazette, 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.

(Particulars Related in a Publicly Notice with Regard to Bidding)

Article 75 A public notice pursuant to the preceding Article must relate the following particulars:

- (i) the particulars of the tender bidding;
- (ii) the particulars of the eligibility required of persons participating in the tender;
- (iii) the location where the terms and conditions of the contract are displayed;
- (iv) the location, time, and date of the tender;
- (v) the particulars of the security deposit prescribed in Article 29-4, paragraph (1) of the Public Accounting Act (hereinafter referred to as a "Bid Deposit").

(Invalid Bids)

Article 76 A Contract Officer, etc. must clearly specify in the public notice prescribed in Article 74 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.

(Exemption from Payment of a Bid Deposit)

Article 77 A Contract Officer, etc. need not collect a Bid Deposit, either in whole or in part, in the following cases, pursuant to the proviso to Article 29-4, paragraph (1) of the Public Accounting Act:

- (i) if a person who seeks to participate in an Open Tender has concluded a Bid Deposit Insurance Contract with an insurance company, naming the national government as the insured party;
- (ii) if a contract has been put out to Open Tender for persons who are eligible as referred to in Article 72, paragraph (1), and it has been determined that there is no risk of the successful bidder failing to enter into the contract.

(Bonds in Lieu of a Bid Deposit)

Article 78 (1) A Contract Officer, etc. may permit government bonds and the following items to be provided as bonds in lieu of a Bid Deposit, pursuant to the provisions of Article 29-4, paragraph (2) of the Public Accounting Act:

- (i) debentures guaranteed by the government;
 - (ii) debentures issued by a bank, the Shoko Chukin Bank, the Norinchukin Bank, or a nationwide federation of Shinkin Banks;
 - (iii) checks issued or guaranteed by a bank;
 - (iv) any other item that the Minister of Finance determines to be a bona fide bond.
- (2) The valuation of a bond prescribed in the preceding paragraph and other procedures for submission are governed by the determination of the Minister of Finance, unless separately prescribed otherwise.

(Formation of a Target Price)

Article 79 A Contract Officer, etc. must set a target for the price of the subject matter of tender bidding (in the case of any tender as prescribed in Article 91, paragraph (1), the difference in the price of the assets that will be exchanged, and in case of any tender as prescribed in paragraph (2) of the same Article, as determined by the Minister of Finance; the same applies in paragraph (1) of the following Article) based on the specifications and design, etc. of such subject matters, and must, at the time the bids are opened, place a document specifying or recording the target price at the place of such opening, in such a

way that the contents of the document are not visible.

(Manners of Determining the Target Price)

- Article 80 (1) The target price must be determined with respect to the aggregate price of the subject matter of tender bidding; provided, however, that a target price may be set on a unit price basis for any contract for manufacturing, repairs, processing, sales, supply or use, etc. that continues for specified period.
- (2) The target price must 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.

(Opening of Bids)

Article 81 The Contract Officer, etc. must open the bids in the presence of the bidders at the place, time and date of the tender, as specified in the public notice. When this is the case, if no bidders are in attendance, an officer who has no connection with the administrative processes relating to the bidding must be in attendance.

(Subsequent Bidding Process)

Article 82 In the event that, upon opening the bids, there are none which fulfill the restrictions of the prescribed target price, the Contract Officer, etc. may immediately pursue a subsequent bidding process.

Subsection 3 Determination of Successful Bidders, etc.

(Determination of Successful Bidders)

- Article 83 (1) When two (2) or more persons submit a bid at the same price and that bid should be the successful bid, the Contract Officer, etc. must immediately decide the successful bidder by having the relevant bidders draw lots.
- (2) In a case referred to in the preceding paragraph, if a bidder does not draw lots, an officer with no connection to the administrative processes involved in the bidding may be made to draw a lot on behalf of the bidder.

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

Article 84 A contract specified by Cabinet Orders that is the cause of payment by the national government that is referred to in the proviso of Article 29-6, paragraph (1) of the Public Accounting Act is a construction, manufacturing, or other contract for work with a target price that exceeds ten million yen (or if

an amount exceeding ten million yen is decided on after discussion between the Heads of Ministries and Agencies and the Minister of Finance, the relevant amount).

(Procedures for Not Selecting the Bidder with the Lowest Price as the Successful Bidder Due to the Likelihood That the Terms of the Contract Will Not Be Satisfactorily Performed)

Article 85 The Heads of Ministries and Agencies are to, when necessary pursuant to the proviso to Article 29-6, paragraph (1) of the Public Accounting Act, develop standards for determining whether it is likely that the that the person who should be the counterparty to a contract set forth in the preceding Article will not satisfactorily perform the terms of the contract for the price that the person has offered.

Article 86 (1) If a tender for a contract prescribed in Article 84 has been conducted, the Contract Officer, etc. must examine whether it is likely that the that the person who should be the counterparty 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 Contract Officer, etc. finds it to be likely that the relevant person will not satisfactorily perform the terms of the contract, the Contract Officer, etc. must submit documentation specifying or recording the results of the examination and the opinion of the Contract Officer, etc. to the Contract Assessment Commissioners, and request their opinions.

Article 87 When a Contract Officer, etc. requests the Contract Assessment Commissioners' opinions pursuant to the provisions of paragraph (2) of the preceding Article, the Contract Assessment Commissioners must conduct an assessment and express their opinions in writing.

Article 88 (1) If the majority of the opinions that the Contract Assessment Commissioners have expressed pursuant to the provisions of the preceding Article are the same as those of the Contract Officer, etc., the Contract Officer, etc. is not to select the person who offered the lowest price within the range determined by the target price as the successful bidder, but is to 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 a "Next Bidder").

(2) Even when the majority of the opinions of the Contract Assessment Commissioners differ from those of the Contract Officer, etc., 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 Contract Officer, etc. may select the Next Bidder as the successful bidder.

(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)

Article 89 (1) If a tender has been carried out for a contract prescribed in Article 84 and the Contract Officer, etc. finds it to be extremely inappropriate to conclude the contract with the person who should be the counterparty, due to the likelihood that doing so will disrupt the establishment of a fair transaction, the Contract Officer, etc. must submit documentation specifying or recording the reasons for this and the opinion of the Contract Officer, etc. to the relevant Head of Ministry or Agency, and request the Head of Ministry or Agency's approval for not selecting that person as the successful bidder.

(2) If a Contract Officer, etc. is given the approval referred to in the preceding paragraph, the Contract Officer, etc. is to select the Next Bidder as the successful bidder.

(Documents Submitted When the Bidder with the Lowest Price Is Not Selected as the Successful Bidder)

Article 90 In a case set forth in any of the following items, the Contract Officer, etc. must, without delay, prepare an examination report for the relevant tender and submit it to the Minister of Finance and the Board of Audit via the relevant Head of Ministry or Agency, attaching a copy of the documentation set forth in the relevant item:

- (i) if the Next Bidder is selected as the successful bidder pursuant to the provisions of the Article 88: documentation specifying or recording the result of the examination and the opinion prescribed in the provisions of Article 86, paragraph (2) and documentation specifying or recording the opinion of the Contract Assessment Commissioner as prescribed in Article 87;
- (ii) if the Next Bidder is selected as the successful bidder pursuant to the provisions of the preceding Article: documentation specifying or recording the reason and the opinion prescribed in the provisions of the same Article and documentation evidencing that the relevant Head of Ministry or Agency has approved.

(Deciding the Successful Bidder When a Contract for Exchange, etc. Is Put Out for Tender)

Article 91 (1) A Contract Officer, etc. may, pursuant to the provisions of Article

29-6, paragraph (2) of the Public Accounting Act, select the person who makes the offer with the difference in the quotation amount for each asset that is the most favorable to the national government to be the successful bidder for a contract on the exchange of assets owned by the national government and assets owned by persons other than the national government.

(2) A Contract Officer, etc. may, pursuant to the provisions of Article 29-6, paragraph (2) of the Public Accounting Act, select the person who offers the price and other conditions that are the most favorable to the national government to be the successful bidder for a contract other than one set forth in the preceding Article which is difficult to treat pursuant to Article 29-6, paragraph (1) of the Public Accounting Act due to the nature and purpose of the contract, based on a decision made following discussions between the Heads of Ministries and Agencies and the Minister of Finance.

(Public Notice Period for a Subsequent Public Notice of a Call for Bids)

Article 92 If there are no bidders or no successful bidders or if the successful bidder does not enter into the contract, and the Contract Officer, etc. seeks to put the contract out for bid again, the Contract Officer, etc. may shorten the public notice period prescribed in Article 74 to five days.

(Auctions)

Article 93 If a Contract Officer, etc. finds it particularly necessary for selling off movable property, the movable property may be put up for auction in accordance with the provisions of this Subsection.

Section 3 Contracts under Selective Tender

(Cases in Which a Contract May Be Put Out to Selective Tender)

Article 94 (1) A contract may be put out to selective tender pursuant to the provisions of Article 29-3, paragraph (5) of the Public Accounting Act in the following cases:

- (i) when having construction or manufacturing done at a target price that does not exceed 5 million yen;
- (ii) when purchasing assets at a target price that does not exceed 3 million yen;
- (iii) when borrowing an object at an annual or total target lease charge that does not exceed 1.6 million yen;
- (iv) when selling off assets at a target price that does not exceed 1 million yen;
- (v) when lending out an object at an annual or total target lease charge that does not exceed five hundred thousand yen;
- (vi) 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 million 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.

(Eligibility as a Selective Tender Participant)

Article 95 (1) Heads of Ministries and Agencies or officials delegated by them must determine the eligibility required of persons participating in selective tenders with regard to the particulars prescribed in Article 72, paragraph (1), in connection with each type of contract in terms of construction, manufacturing, the purchase of objects, and other contracts, in accordance with the price, etc. of the contract.

- (2) The provisions of Article 72, paragraph (2) and paragraph (3) apply mutatis mutandis when the Heads of Ministries and Agencies or officials delegated by them determine eligibility pursuant to the preceding paragraph.

- (3) In the case referred to in the preceding paragraph and if it has been determined that an eligibility assessment or the preparation of a name list pursuant to the provisions of Article 72, paragraph (2) and (3) as applied mutatis mutandis to the preceding paragraph is not required due to factors such as eligibility pursuant to paragraph (1) being the same as eligibility pursuant to Article 72, paragraph (1), the eligibility assessment and preparation of a name list pursuant to the mutatis mutandis application set forth in the preceding paragraph is not conducted, and the eligibility assessment and the preparation of a name list pursuant to Article 72, paragraph (2), and paragraph (3) must be substituted therefor.

- (4) Heads of Ministries and Agencies or officials delegated by them may specify provisions contrary to those prescribed in paragraph (1) and paragraph (2) in regard to the determination and assessment of the eligibility required of persons participating in tenders, and may decide not to prepare a name list of persons who are eligible to participate in the tenders implemented by a Contract Officer, etc., due to the small number of annual contracts and other special circumstances involving the selective tenders implemented by that Contract Officer, etc.

(Selection Standards)

Article 96 (1) The Heads of Ministries and Agencies or officials delegated by them must determine the standards by which a Contract Officer, etc. will select persons to participate in tenders from among those who are eligible under the preceding Article.

- (2) If the standards prescribed in the preceding paragraph have been determined, the Heads of Ministries and Agencies or officials delegated by them must notify the Minister of Finance.

(Selection of Tender Participants)

Article 97 (1) When a Contract Officer, etc. puts a contract out to selective tender, the Contract Officer, etc. must select preferably ten (10) or more persons to participate in the tender based on the standards prescribed under paragraph (1) of the preceding Article, from among persons eligible under Article 95.

(2) In the event of the preceding paragraph, the Contract Officer, etc. must notify the selected persons of the matters set forth in Article 75, item (i) and items (iii) through (v).

(Mutatis Mutandis Application of Provisions on Open Tenders)

Article 98 The provisions of Article 70, Article 71, and Article 76 through Article 91 apply mutatis mutandis to selective tenders.

Section 4 Discretionary Contracts

(Cases When Discretionary Contracts May Be Used)

Article 99 A contract may take the form of a discretionary contract pursuant to Article 29-3, paragraph (5) of the Public Accounting Act in the following cases:

- (i) when it is necessary to keep the actions of the national government confidential;
- (ii) when having construction or manufacturing done at a target price that does not exceed 2.5 million yen;
- (iii) when purchasing assets at a target price that does not exceed 1.6 million yen;
- (iv) when borrowing an object at an annual or total target lease charge that does not exceed eight hundred thousand yen;
- (v) when selling off assets at a target price that does not exceed five hundred thousand yen;
- (vi) when lending out an object at an annual or total lease charge that does not exceed three hundred thousand yen;
- (vii) 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 million yen;
- (viii) when having something transported or stored;
- (ix) when contracting with the Okinawa Development Finance Corporation or another corporation designated by the Minister of Finance from among those established by special acts of establishment pursuant to the provisions of a special Act;
- (x) when selling off articles connected with production on a farm or in a factory,

- school, laboratory, prison, or other equivalent places;
- (xi) when selling off articles that need to be used in the manufacture, repair, processing, or delivery of articles in demand by the national government;
 - (xii) when selling off assets or lending them out at a charge to a person who may transfer or loan such assets at no charge pursuant to law;
 - (xiii) when selling off construction materials produced by the national government to persons affected by an unforeseen disaster;
 - (xiv) when selling off or lending out objects needed to assist disaster victims or persons providing rescue services;
 - (xv) when contracting in a foreign country;
 - (xvi) when purchasing or borrowing objects directly from a prefectural or municipal government or other public corporation or from a public interest corporation, agricultural cooperative;
 - (xvi)-2 when purchasing or borrowing objects directly from a relief facility established for a charitable purpose or receiving service from a relief facility established for a charitable purpose;
 - (xvii) when the contract takes the form of a joint contract for work with developers of civil works in a development region;
 - (xviii) when purchasing objects directly from a business cooperative, small business cooperative, federation of cooperatives, commercial and industrial partnership, or commercial federation for protection and training purposes;
 - (xix) when selling off or lending out objects needed for the protection and promotion of academic studies or craftsmanship;
 - (xx) when selling or lending out objects needed for the protection and promotion of industry or development projects or when purchasing articles directly from the producer;
 - (xxi) when selling off, lending, or entrusting the necessary object directly to a public organization or business enterprise in order to provide it for public use, government use, or use by a public interest company;
 - (xxii) when selling off or lending out land, a building, or a forest or product derived from it to a person with a special connection;
 - (xxiii) when purchasing an article or having it manufactured, having a forest planted, or borrowing land or buildings, based on a special necessity in business operations;
 - (xxiv) when entrusting sales to a wholesaler or having a wholesaler conduct sales pursuant to the provisions of laws or Cabinet Orders;
 - (xxv) when selling off patent rights or a portion of model utility rights resulting from test research that the national government has entrusted to a person other than the national government, to the person to which that test research was entrusted.

Article 99-2 If there are no bidders even though the Contract Officer, etc. has put a contract out to tender or if there is no successful bidder even though the Contract Officer, etc. 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.

Article 99-3 If the successful bidder does not enter into the contract, the Contract Officer, etc. 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.

(Divisible Contracts)

Article 99-4 In a case referred to in the preceding two (2) Articles, 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.

(Determination of the Target Price)

Article 99-5 When the Contract Officer, etc. seeks to have a contract take the form of a discretionary contract, the Contract Officer, etc. must determine the target price in advance in accordance with the provisions of Article 80.

(Collection of Quotations)

Article 99-6 When the Contract Officer, etc. seeks to have a contract take the form of a discretionary contract, the Contract Officer, etc. must collect quotations from preferably two (2) or more persons.

Section 5 Conclusion of Contracts

(Particulars Included in Written Contracts)

Article 100 (1) A Contract Officer, etc. must include the following particulars in a written contract that the Contract Officer, etc. must draw up, in addition to the contract purpose, contract price, performance period, and contract guarantee, pursuant to the provisions of the main clause of Article 29-8, paragraph (1) of the Public Accounting Act; provided, however, that this does not apply to particulars that are not applicable in view of the nature and purpose of the contract:

- (i) the place of contract performance;
- (ii) the time, date, and form for the payment or receipt of the contract price;

- (iii) supervision and inspections;
 - (iv) interest for delay, penalties, and other damages in cases of delay in performance or other default;
 - (v) risk of loss;
 - (vi) warranty against defects;
 - (vii) method of resolving disputes related to the contract;
 - (viii) other necessary particulars.
- (2) Beyond what is prescribed in the preceding paragraph, particulars included in a written contract and other details related to drawing up a written contract are governed by the determinations made by the Minister of Finance.

(Cases a Written Contract May Be Omitted)

Article 100-2 (1) The omission of a written contract pursuant to the provisions of the proviso of Article 29-8, paragraph (1) of the Public Accounting Act is permitted in the following cases:

- (i) when entering into a contract under open tender or a contract under selective tender or a discretionary contract with a person who is eligible pursuant to Article 72, paragraph (1), for an amount not exceeding 1.5 million yen (or 2 million yen if entered into in a foreign country);
 - (ii) when putting the contract up for auction;
 - (iii) when an article is sold off and the purchaser immediately pays the price and receives the article;
 - (iv) when the Heads of Ministries and Agencies determine that it is not necessary to draw up a written contract for a discretionary contract other than one prescribed in item (i).
- (2) If the Head of a Ministry or Agency seeks to reach a determination pursuant to item (iv) of the preceding paragraph, the Head of a Ministry or Agency must hold discussions with the Minister of Finance.
- (3) The Minister of Finance must notify the Board of Audit after holding the discussions prescribed in the preceding paragraph.

(Exemption from Payment of a Contract Guarantee)

Article 100-3 A Contract Officer, etc. need not collect a contract guarantee, either in whole or in part, pursuant to the provisions of the proviso of Article 29-9, paragraph (1) of the Public Accounting Act, in the following cases:

- (i) if the other party to the contract has entered into a contract for performance guarantee insurance with an insurance company, naming the national government as the insured party;
- (ii) if a work performance guarantee has been contracted with an insurance company, bank, or Norinchukin Bank entrusted by the other party of the contract or with another financial institution designated by the Minister of

Finance;

(iii) when the Contract Officer, etc. puts the contract out for Open Tender or selective tender or up for auction with eligible persons pursuant to Article 72, paragraph (1) or when the contract takes the form of a discretionary contract, and it is found to be unnecessary to collect a contract guarantee.

(Bonds in Lieu of Contract Guarantees)

Article 100-4 The provisions of Article 78 apply mutatis mutandis when a Contract Officer, etc. permits bonds to be provided in lieu of the payment of a contract guarantee.

Section 6 Contract Performance

(Timing for Completing Payment of the Sales Price)

Article 101 Except as otherwise provided for by law or Cabinet Order, the sales price of assets owned by the national government must be completely paid by the time of the delivery or the transfer of a registration or the time of registration.

(Timing for Payment of Rental Fees)

Article 101-2 Except as otherwise provided for by law or Cabinet Order, rental fees for assets must be paid in advance; provided, however, that if the loan period is six months or more, advance payments may be made in periodic installments.

(Means of Supervision)

Article 101-3 A Contract Officer, etc. must personally perform the necessary supervision in order to ensure the appropriate performance of a contract for work involving construction, manufacturing, or other work referred to in Article 29-11, paragraph (1) of the Public Accounting Act (hereinafter referred to as "Supervision" in this Subsection), by being present, issuing directions, or using other appropriate means, or must order an assistant to do so.

(Means of Inspection)

Article 101-4 A Contract Officer, etc. is to, either personally or by assigning an assistant, perform the necessary inspections in order to verify that delivery under any contract for work involving construction or manufacturing or otherwise, or any purchase or other contract involving an object, as prescribed in Article 29-11, paragraph (2) of the Public Accounting Act (hereinafter in this Subsection referred to as "Inspections"), is complete (including verifying completion of portions of construction or manufacturing or delivery of portions

of the objects, if payment of a portion of the price prior to completion of delivery is required), based on the contract, specifications, designs, or other related documents.

(Partial Omission of Inspections)

Article 101-5 Inspections of matters other than quantity may be omitted in connection with a contract for the purchase of objects that is designated by the Minister of Finance from among those for which the content of work to be delivered is found to have been secured by the special provisions prescribed in Article 29-11, paragraph (3) of the Public Accounting Act.

(Procedures, etc. for Having an Official Other Than a Contract Officer, etc., or an Assistant Perform Supervision and Inspections)

Article 101-6 (1) The provisions of Article 68, paragraph (1) apply mutatis mutandis when the Head of a Ministry or Agency has an official from that ministry or agency other than the Contract Officer, etc., or assistant for a contract perform Supervision or Inspections pursuant to the provisions of Article 29-11, paragraph (4) of the Public Accounting Act, and the provisions of Article 26, paragraph (3) apply mutatis mutandis when the Head of a Ministry or Agencies has an official from another ministry or agency perform Supervision or Inspections pursuant to the provisions of Article 29-11, paragraph (4) of the same Act.

(2) In a case referred to in the preceding paragraph, the Heads of Ministries and Agencies or officials delegated by them may have a person with certain official duties perform Supervision or Inspections by designating the official duties of a position in the relevant ministry or agency or other ministry or agency. When this is the case, it suffices for consent pursuant to the provisions of Article 26, paragraph (3) as applied mutatis mutandis pursuant to the preceding paragraph to be obtained for the official duties that the Heads of Ministries and Agencies or officials delegated by them seek to designate or for the administrative processes they seek to have performed.

(3) When the Head of a Ministry or Agency or an official delegated by the Head of a Ministry or Agency has an official from that ministry or agency or from another ministry or agency other than the Contract Officer, etc., or assistant for the contract perform Supervision or Inspections, the relevant Head of Ministry or Agency or official delegated by the relevant Head of a Ministry or Agency must notify the relevant Contract Officer, etc. of the fact that another official is being made to perform the Supervision or Inspections, and of the relevant official duties and the name of the official, and must notify the official who it has been decided will be made to perform the Supervision or Inspections of the official duties and name of the Contract Officer, etc.

(Prohibition of Concurrent Involvement in Supervisory Duties and Inspection Duties)

Article 101-7 The duties of an assistant who is ordered to perform Inspections by the Contract Officer, etc., and an official ordered to perform Inspections by the Head of a Ministry or Agency or an official delegated by the Head of a Ministry or Agency may not overlap with the duties of an assistant ordered to perform Supervision by the Contract Officer, etc., and the official ordered to perform Supervision by the Head of a Ministry or Agency or an official delegated by the Head of a Ministry or Agency, unless there is a special necessity.

(Delegation of Supervision and Inspections)

Article 101-8 When it is determined to be difficult or inappropriate for Supervision or Inspections to be performed by national government officials due to particular professional knowledge or skills being required or for other reasons, a Contract Officer, etc. may delegate a person other than a national government official to perform the Supervision or Inspections, pursuant to the provisions of Article 29-11, paragraph (5) of the Public Accounting Act.

(Preparation of Inspection Reports)

Article 101-9 (1) A Contract Officer, etc., an assistant ordered to perform Inspections by the Contract Officer, etc., and an official ordered to perform Inspections by the Head of a Ministry or Agency or an official delegated by the Head of a Ministry or Agency must prepare an inspection report upon the completion of an Inspection, except as otherwise determined by the Minister of Finance.

(2) When an inspection report is to be prepared pursuant to the provisions of the preceding paragraph, payment may not be made unless based on that inspection report.

(Limitations on Partial Payment Amounts)

Article 101-10 The payment amount when it is necessary to pay a portion of the price of partially performed construction, manufacturing, or other contract for work or partially performed contract for the purchase of objects prior to completion pursuant to such contract, may not exceed nine-tenths of the price of the partially performed portion of the construction, manufacturing, or other contract for work or nine-tenths of the price of the partially performed portion of the contract for the purchase of objects; provided, however, that payment may be made up to the total price for the completed portion of a severable construction, manufacturing, or other contract for work.

Section 7 Miscellaneous Provisions

(Reporting, etc. of Persons Who May Be Prevented from Participating in Tenders)

Article 102 (1) When a Contract Officer, etc. finds that a person falls within the provisions of Article 71 in relation to a contract handled by the Contract Officer, etc., the Contract Officer, etc. must report this to the relevant Heads of Ministries and Agencies by submitting a document that specifies or records the details of that fact, in accordance with what is set forth by the Minister of Finance.

(2) If the Heads of Ministries and Agencies receive a report prescribed in the preceding paragraph and find that the person specified in such report falls under the provisions of Article 71, the Heads of Ministries and Agencies must submit a document specifying or recording that fact to the Minister of Finance.

(3) If the Minister of Finance receives a document prescribed in the preceding paragraph, the Minister of Finance is to complete the document and submit it to the relevant Heads of Ministries and Agencies.

(Permitted Subject Matters for Long-Term Contracts)

Article 102-2 A Contract Officer, etc. may conclude a contract to be provided or supplied with the following electricity, gas, water, or electronic communications services over the following fiscal year and beyond, pursuant to the provisions prescribed in Article 29-12 of the Public Accounting Act:

- (i) electricity supplied by an electricity utility prescribed in Article 2, paragraph (1), item (xvii) of the Electricity Business Act;
- (ii) gas supplied by a gas supplier prescribed in Article 2, paragraph (12) of the Gas Business Act;
- (iii) water supplied by a water utility prescribed in Article 3, paragraph (5) of the Water Supply Act or by an industrial water utility prescribed in Article 2, paragraph (5) of the Industrial Water Supply Business Act;
- (iv) telecommunications services (except services determined by the Minister of Finance) provided by a telecommunications carrier prescribed in Article 2, item (v) of the Telecommunications Business Act (Act No. 86 of 1984).

(Discussions with the Minister of Finance in Seeking to Determine the Eligibility, etc. of Tender Participants)

Article 102-3 When the Heads of Ministries and Agencies seek to determine the eligibility required of persons participating in Open Tenders as referred to in Article 72, paragraph (1), the standards referred to in Article 85, or the eligibility required of persons participating in selective tenders as set forth in Article 95, paragraph (1), or to reach a determination pursuant to the

provisions prescribed in paragraph (4) of the same Article, the relevant Heads of Ministries or Agencies must hold discussions with the Minister of Finance in advance. When this is the case, if the matter to be determined is the eligibility required of persons participating in tenders, it suffices that discussions be held with regard to the particulars that are fundamental to that eligibility.

(Discussions with the Minister of Finance in Seeking to Put a Contract Out to Selective Tender or to Have It Take the Form of a Discretionary Contract)

Article 102-4 If a Contract Officer, etc. seeks to put a contract out to selective tender or to have it take the form of a discretionary contract, the Head of the Ministry or Agency must hold discussions with the Minister of Finance in advance of the Contract Officer, etc. doing so; provided, however, that this does not apply in the following cases:

- (i) when an Open Tender is not necessary due to the small number of people who would participate in the tender due to the nature or purpose of the contract, and the Contract Officer, etc. seeks to put the contract out to selective tender;
- (ii) if it has been determined to be disadvantageous to put a contract out to Open Tender and the Contract Officer, etc. seeks to put the contract out to selective tender, and the reason for determining Open Tender to be disadvantageous falls under one of the sub-items from (a) to (c), below:
 - (a) it is likely that parties involved will collude to prevent the fair execution of an Open Tender;
 - (b) the contract is for the construction or manufacture of a building, etc. with a particular structure or for the purchase of an object of a particular quality, and it is extremely difficult to inspect it; or
 - (c) it is likely that an undertaking by the national government will be greatly hindered in the event of a breach of contract;
- (iii) when the nature or purpose of the contract does not permit a tender or a contract cannot be put out to tender due to an urgent situation, and the Contract Officer, etc. seeks to have the contract take the form of a discretionary contract;
- (iv) if it has been determined that it is disadvantageous to put the contract out to tender and the Contract Officer, etc. seeks to have the contract take the form of a discretionary contract, and the reason for determining tender to be disadvantageous falls under one of the sub-items from (a) to (d), below:
 - (a) it is disadvantageous to have a person other than the party to a contract that is currently being performed perform a contract directly related to the construction, manufacture, or purchase of objects under the contract currently being performed;
 - (b) it is anticipated that having the contract take the form of a discretionary

- contract will make it possible to contract at a greatly advantageous price in comparison to the market price;
- (c) a large volume of objects is required and it is likely that the price will rise due to speculative stocking if the required objects are not purchased separately; or
 - (d) it is likely that the opportunity to form a contract will be lost or that it will become necessary to form a contract at a greatly disadvantageous price if it is not done quickly;
 - (v) when the Contract Officer, etc. seeks to put the contract out to selective tender pursuant to any of the items of Article 94, paragraph (1);
 - (vi) when the contract may take the form of a discretionary contract pursuant to the provisions of Article 94, paragraph (2), and the Contract Officer, etc. seeks to put the contract out to selective tender;
 - (vii) when the Contract Officer, etc. seeks to have the contract take the form of a discretionary contract pursuant to the provisions of Article 99, items (i) through (xviii), Article 99-2, or Article 99-3.

(Acts Equivalent to Contracts between Ministry and Agency Organizations)

Article 102-5 Acts equivalent to the formation of a contract between ministry and agency organizations are treated as contracts; provided, however, that the following actions need not be taken:

- (i) assessment of the eligibility required of persons participating in tenders pursuant to the provisions of Article 72, paragraph (2) (including when applied *mutatis mutandis* to Article 95, paragraph (2));
- (ii) payment of Bid Deposits or Contract Guarantees;
- (iii) the drawing up of contracts;
- (iv) putting the contract out to tender.