

Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that Harm Fairness of Bidding, etc.

(Act No. 101 of July 31, 2002)

(Purport)

Article 1 This Act provides for measures to be taken to eliminate and prevent involvement in bid rigging etc., including demands by the Fair Trade Commission to the Heads of Ministries and Agencies etc. regarding improvement measures necessary to eliminate involvement in bid rigging etc., claims directed at employees involved in the bid rigging for damage compensation, investigation of the reasons for disciplinary actions against the employees, and coordination and cooperation among the relevant administrative organs, and other matters, and provide for penal provisions to be imposed on employees for acts that harm the fairness of bidding, etc.

(Definition)

- Article 2 (1) The term "heads of Ministries and Agencies" as used in this Act means the heads of Ministries and Agencies as stipulated in Article 20, paragraph 2, of the Public Finance Act (Act No. 34 of 1947).
- (2) The term "specified corporation" as used in this Act means an entity that falls under any of the following items:
- (i) a corporation in which contribution made by the government or local governments is more than 50 percent of its stated capital
 - (ii) out of corporations established under a special Act, a stock company of which shares representing at least one third of the total issued shares or one third of the total voting rights owned by all shareholders are required by law to be owned by the government or a local government at all times (excluding corporations stipulated in item 1 above and entities stipulated under Cabinet Orders)
- (3) The term "heads of Ministries and Agencies etc." as used in this Act means the heads of Ministries and Agencies, heads of local governments as well as the representatives of specified corporations.
- (4) The term "bid rigging etc." as used in this Act means, in respect of conclusion of agreements by the government, local governments or specified corporations (hereinafter referred to as "government, etc.") for the sale and purchase, lease, contract, etc., with a counterparty to be chosen by auction or other competitive means (hereinafter referred to as "bidding, etc."), the acts in violation of the provisions of Article 3 or Article 8, paragraph 1, item 1 of the Act on

Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947), through the practices that an entrepreneur wishing to participate in the bidding decides in conjunction with other entrepreneurs the successful bidder or the successful bid price, or the trade association makes an entrepreneur wishing to participate in the bidding do those acts.

- (5) The term "involvement in bid rigging etc." as used in this Act means the involvement in bid rigging etc. by the employees of government or local governments, or directors or employees of specified corporations (hereinafter called "the employees"), and falling under any one of the following items.
- (i) having an entrepreneur or trade association engage in bid rigging etc.
 - (ii) nomination of the counterparty of a contract in advance, or indication or suggestion in advance of wishes to the effect that a specified person be the counterparty of the contract.
 - (iii) out of various data concerning bidding or contract, indication or suggestion of information held in confidential files to a specified entrepreneur or trade association, access to which facilitates bid rigging etc. by the specified entrepreneur or trade association.
 - (iv) in connection with a specific bid rigging, etc., nominating a specific person as participant to a bid, or by any other method, at the express or implicit request of an entrepreneur, trade association, or any other entity or by voluntarily approaching these persons, and for the purpose of facilitating the bid rigging, etc., aiding bid rigging, etc., in breach of the employee's duties.

(Demand for Improvement Measures to the Heads of Ministries and Agencies)

Article 3 (1) The Fair Trade Commission may, when it recognizes involvement in bid rigging etc. as a result of its investigation of bid rigging cases, demand that the heads of Ministries and Agencies etc. implement improvement measures on the administration of bidding and contracts that are necessary for eliminating the involvement in bid rigging etc. (hereinafter simply referred to as "improvement measures").

- (2) The Fair Trade Commission may, in cases where it finds involvement in bid rigging etc. as a result of its investigation of bid rigging etc. cases (even when the involvement in bid rigging etc. has already been eliminated), demand that the heads of Ministries and Agencies etc. implement improvement measures to ensure that the involvement in bid rigging etc. is eliminated, when it finds that it is particularly necessary.
- (3) The Fair Trade Commission must, in making demands under the provisions of the preceding two paragraphs, deliver written statements describing the content of the demand and the reasons thereof to the heads of Ministries and Agencies etc.
- (4) The heads of Ministries and Agencies etc. must, when they receive a demand

under the provisions of paragraph 1 or paragraph 2, perform the necessary investigation, and must, when it becomes evident that there is or was the involvement in bid rigging etc., implement the improvement measures, based on the results of the investigation, necessary to eliminate the involvement in bid rigging etc. or to ensure that the involvement in bid rigging etc. has been eliminated.

- (5) The heads of Ministries and Agencies etc. may, when they find it necessary in the investigation of the preceding paragraph, ask the Fair Trade Commission to provide data and other necessary cooperation.
- (6) The heads of Ministries and Agencies etc. must publicize the results of the investigation of paragraph 4 and the content of the improvement measures implemented under the provisions of the same paragraph, and notify the Fair Trade Commission thereof.
- (7) The Fair Trade Commission may, when it finds it particularly necessary in cases where it has received notification under the preceding paragraph, states its opinions thereon to the heads of Ministries and Agencies etc.

(Claim against Employees for Compensation for Damages)

- Article 4 (1) The heads of Ministries and Agencies etc. must, when there was a demand under the provisions of paragraph 1 or paragraph 2 of the immediately preceding Article, perform the necessary investigation whether there is any damage to the government, etc., due to the involvement in bid rigging etc.
- (2) The heads of Ministries and Agencies etc. must, when it has been recognized, as a result of the investigation of the preceding paragraph, that there was damage to the government, etc., make the necessary investigation whether the employees involved in the bid rigging etc. are liable to the government for damage as well as the amount of damage.
 - (3) The heads of Ministries and Agencies etc. may, when it finds it necessary in conducting the investigation of the preceding two paragraphs, ask the Fair Trade Commission to provide data and other necessary cooperation.
 - (4) The heads of Ministries and Agencies etc. must publicize the results of the investigation made in accordance with paragraph 1 and paragraph 2 of this Article.
 - (5) The heads of Ministries and Agencies etc. must, when as a result of the investigation it has been found that the employees involved in the bid rigging etc. caused damage due to willful or gross negligence, demand compensation for the damage promptly.
 - (6) In respect of cases where the employees involved in the bid rigging etc. are liable for damage under the provisions of Article 3, paragraph 2, of the Act on the Responsibility of Government Employees who Execute the Budget (Act No. 172 of 1950) (including as applied mutatis mutandis pursuant to Article 9,

paragraph 2), the heads of Ministries and Agencies or the heads of government financial corporations (meaning the heads of government financial corporations stipulated in paragraph 1 of the same Article) must, irrespective of the provisions of paragraph 2, paragraph 3 (limited to the part concerning the investigation of paragraph 2), paragraph 4 (limited to the part concerning the publication of the results of the investigation of paragraph 2) and the preceding paragraph, as provided for by the same Act, take necessary measures promptly. In this case, "without delay" in Article 4, paragraph 4, of the same Act (including as applied mutatis mutandis pursuant to Article 9, paragraph 2, of the same Act) is to be read as "promptly accompanied by the result of the investigation of Article 4, paragraph 1, of the Act concerning involvement in bid rigging etc. by the government employees who execute the budget (meaning the involvement in bid rigging etc. stipulated in Article 2, paragraph 5, 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. (Act No. 101 of 2002))."

(7) In cases where employees involved in the bid rigging etc. are liable for damage under Article 243-2, paragraph 1, of the Local Autonomy Act (Act No. 67 of 1947) (including as applied mutatis mutandis pursuant to Article 34 of the Local Public Enterprise Act (Act No. 292 of 1952)), the provisions of paragraph 2, paragraph 3 (limited to the part concerning the publication of the results of the investigation of paragraph 2), paragraph 4 (limited to the part concerning the investigation of paragraph 2) and paragraph 5 does not apply, and the term "request decision" in Article 243-2, paragraph 3, of the Local Autonomy Act is to be read "request a prompt decision," and the provisions of the same Article apply (including as applied mutatis mutandis pursuant to Article 34 of the Local Public Enterprise Act).

(Investigation of the Grounds for Disciplinary Actions against Employees)
Article 5 (1) The heads of Ministries and Agencies etc. must, when there is a demand under the provisions of Article 3, paragraph 1 and paragraph 2, perform the necessary investigation if it is possible to impose disciplinary actions based on the National Public Service Act and the Local Public Service Act, upon the employees involved in the bid rigging etc. Such actions mean dismissal, suspension of duties, a cut in salary, or admonition and other sanctions in the case of specified corporations (excluding specified incorporated administrative agencies, meaning incorporated administrative agencies (stipulated under Article 2, paragraph 2 of the Act on General Rules for Incorporated Administrative Agencies (Act No. 103 of 1999); hereinafter the same applies in this paragraph) and excluding specified local incorporated administrative agencies, meaning specified local incorporated administrative

agencies (stipulated under Article 2, paragraph 2 of the Local Independent Administrative Agency (Act No. 118 of 2003); hereinafter the same applies in this paragraph). Provided, however, that the heads of Ministries and Agencies, heads of local governments, heads of specified incorporated administrative agencies or heads of specified local incorporated administrative agencies, in cases where they do not have the appointive power of those employees (including cases where the appointive power of the employees was entrusted), it is sufficient if the notification was made to the person with appointive power (including the person who was entrusted with the appointive power of the employees; hereinafter referred to as "appointer") to the effect that the demand under the provisions of Article 3, paragraph 1 or paragraph 2, was received.

- (2) The appointers, who received notification under the proviso of the preceding paragraph, must perform the necessary investigation whether it is possible to impose disciplinary actions upon the employees involved in the involvement in bid rigging etc.
- (3) The heads of Ministries and Agencies or the appointers may, when they find it necessary to perform an investigation based on the main clause of paragraph 1 or the preceding paragraph, ask the Fair Trade Commission to provide data and other necessary cooperation.
- (4) The heads of Ministries and Agencies or appointers must publicize the results of the investigation made in accordance with the main clause of paragraph 1 or paragraph 2 of this Article.

(Investigation by Designated Employees)

Article 6 (1) The heads of Ministries and Agencies etc. or appointers must have the employees designated by them (hereinafter in this Article referred to as "designated employees") perform the investigation as provided for in Article 3, paragraph 4; Article 4, paragraph 1 or paragraph 2; or the main clause of paragraph 1 or paragraph 2 of the preceding Article, (hereinafter in this Article referred to as "investigation"). In this case, heads of Ministries and Agencies etc. or appointers must implement the necessary measures to secure an effective investigation by designating employees equipped with abilities and experience to properly perform the investigation.

- (2) The designated employees must, in performing the investigation, conduct it from a fair and neutral standpoint.
- (3) In cases where the designated employees conduct the investigation, the employees of the Ministries and Agencies (meaning the Ministries and Agencies stipulated in Article 21 of the Public Finance Act; hereinafter the same applies), local governments or specified corporations must cooperate with the investigation.

(Coordination and Cooperation among the Relevant Administrative Organs)

Article 7 With regard to the prevention of involvement in bid rigging etc., relevant governmental administrative organs must cooperate by maintaining mutual coordination.

(Disturbance of Bidding, etc. by Employees)

Article 8 If an employee, in respect of concluding an agreement for the sale and purchase, lease, contract, etc., by bidding etc. by the government, etc. for which the employee works, has conducted any acts that harm the fairness of the bidding, etc. by inciting any entrepreneur or person to conduct bid rigging, informing any entrepreneur or person the target price or any other secret concerning the bidding, etc. or by any other method, in breach of their duties, the employee is sentenced to imprisonment with labor not exceeding five years or punished with a fine not exceeding 2,500,000 yen.

(Consideration in Application)

Article 9 In the application of this Act, due consideration must be paid to the independent efforts of local governments in properly administrating bidding and contracts.

(Entrustment of Administrative Work)

Article 10 The heads of Ministries and Agencies may entrust administrative work stipulated in this Act to the heads of affiliated agencies of the Ministries and Agencies (limited to those whose heads are equivalent to Ministers of State under the Act).

Supplementary Provisions [Act No. 101 of July 31, 2002]

This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation.

Supplementary Provisions [Act No. 110 of December 15, 2006]

This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding three months from the date of promulgation.