

Act on Promoting Quality Assurance in Public Works

(Act No. 18 of March 31, 2005)

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Chapter I General Provisions

(Purpose)

Article 1 The purpose of this Act is to promote quality assurance in public works at present and in the future, and to contribute to the enhancement of the welfare of the nation and the sound development of the national economy by providing for the basic matters concerning the promotion of quality assurance in public works, including the promotion of securing basic principles concerning quality assurance in public works, the responsibilities of the State, etc., and securing and fostering personnel over the medium and long term responsible for formulating basic policies, in view of the fact that quality assurance in public works contributes to achieving prosperous life of the people and securing of their safety, environmental conservation (including the creation of a favorable environment), and the establishment of autonomous and unique local communities, etc. through high-quality social infrastructure, and is in the benefit of the people of present and future generations.

(Definition)

Article 2 "Public works" as used in this Act mean the public works as provided in Article 2, paragraph 2 of the Act for Promoting Proper Tendering and Contracting for Public Works (Act No. 127 of 2000).

(Basic Principles)

Article 3 (1) In view of the fact that public works are socially and economically important, because public works improve social infrastructure as a basis for the lives of the people and economic activities at present and in the future, the quality of public works must be secured for the present and future people by the State and local governments, and commissioning entities and contractors of public works in playing their respective roles.

- (2) The quality of public works must be secured by concluding a contract that is excellent in terms of price and quality, taking into account various elements other than price, while giving consideration to economic efficiency, in view of the fact that construction work has peculiarities such as the difficulty to confirm the quality until its object is put into use, its quality large dependence on the technical capabilities of the contractors, and the existence of different conditions between individual works.
- (3) The quality of public works must be kept up into the future by maintaining and enhancing construction technology and by fostering and securing personnel who have such construction technology as responsible for quality assurance in public works over the medium and long term.
- (4) The quality of public works must be secured by selecting appropriate methods among various tendering and contracting methods in accordance with the nature of the works and the actual conditions of the area, etc., while giving consideration to the capabilities and formation of the commissioning entity (hereinafter referred to as the "Commissioning Entity," except for Article 24) of the public works.
- (5) The quality of public works must be secured by more appropriate technology or ingenuity in view of the fact that work efficiency, safety, and environmental impact are important in securing the quality of public works.
- (6) The quality of public works must be kept up into the future through appropriate maintenance and management, such as inspections, diagnosis, maintenance, and repair after the completion.
- (7) The quality of public works must be kept up into the future by giving consideration to the fostering and securing of personnel responsible for quality assurance in public works in the area based on the actual conditions of the area, so that the maintenance and management, including response at the time of disaster, of social infrastructure are appropriately executed.
- (8) In assuring the quality in public works, consideration is to be given to proper tendering and contracting, such as the exclusion of a construction business operator that is not qualified as a contractor, by securing the transparency of the tendering and contracting process and of the contract information, and the fairness in tender, by thoroughly abolishing involvement in bid-rigging or tendering bid-rigging, and other improper actions; by preventing the conclusion of a contract for public works of which the proper implementation cannot be

expected depending on the contract fee; and by securing the proper implementation of contracted public works.

- (9) In assuring the quality in public works, consideration must be given to the utilization of capabilities of private business operators by appropriately evaluating capabilities of the private business operators and appropriately reflecting them in tendering and contracting, and by utilizing positive technical proposals (meaning proposals on technology or ingenuity concerning public works; the same applies hereinafter) and originality and ingenuity of the private business operators.
- (10) In assuring the quality in public works, in view of the fact that subcontractors, as well as contractors and engineers and skilled workers, etc. employed by them, play important roles in quality assurance in public works, consideration must be given to the conclusion of a fair contract for a proper amount of a contract fee by the parties to a contract (including a subcontract) for public works fairly based on an agreement made on terms of equality and the honest and good faith performance thereof, such as paying the contract fee as soon as possible, and the improvement of labor conditions, such as wages, and working environment, such as safety and health of those engaging in public works.
- (11) In assuring the quality in public works, in view of the fact that the quality of surveys (including inspections and diagnosis; the same applies hereinafter) and designs for public works play an important role in quality assurance of public works, based on the purposes of the preceding paragraphs, in an equivalent manner as public works, the quality of surveys and designs for public works must be secured by appropriately evaluating the capabilities of persons who have necessary knowledge and technology by means of their qualifications, etc. according to the content of the work, and by fully utilizing such persons, etc.

(Responsibilities of the State)

Article 4 In accordance with the basic principles provided for in the preceding article (hereinafter referred to as the "Basic Principles"), the State is responsible for comprehensively formulating and implementing measures on the promotion of quality assurance in public works.

(Responsibilities of Local Governments)

Article 5 In accordance with the Basic Principles, local governments are responsible for formulating and implementing measures on the promotion of quality assurance in public works based on the actual conditions of the area.

(Mutual Coordination and Cooperation Between the State and Local Governments)

Article 6 The State and local governments must closely coordinate and cooperate with each other in formulating and implementing measures on the promotion of quality assurance in public works in order to ensure the Basic Principles.

(Responsibilities of Commissioning Entity)

Article 7 (1) In accordance with the Basic Principles, in order to secure the quality of public works at present and in the future, while taking into consideration the fostering and securing of personnel responsible for quality assurance in public works over the medium and long term, the Commissioning Entity must appropriately implement the preparation of specifications and design documents, preparation of a target price, selection of the methods for tendering and contracting, determination of a counterparty to a contract, supervision and inspection of construction, and confirmation and evaluation of implementation status during works and at the time of completion and other processes(hereinafter referred to as "order-related processes") pursuant to the following provisions, etc.:

- (i) properly set a target price by making an estimate precisely reflecting the transaction price of labor and materials, etc. in the market, the actual conditions of implementation, etc., taking into consideration changes in the socioeconomic conditions and in accordance with specifications and design documents appropriately prepared, in order to allow persons who implement public works to secure proper profits for fostering and securing personnel for quality assurance in public works over the medium and long term;
- (ii) when finding that, even after putting out for tender, there is no bidder or successful bidder due to a prescribed target price, and putting out for tender again or when finding it necessary, endeavor to set a proper target price and conclude a contract as soon as possible by collecting an estimate of the whole or a part of works pertaining to said tender from participants of said tender or by other methods;
- (iii) in order to prevent conclusion of the contract for a contract fee under which the proper implementation of public works cannot usually be expected due to the amount of the contract fee, set the standards for determining whether it is likely that the contract has a tendering price under which the proper implementation of said public works cannot usually be expected, a minimum limitation price, or take other necessary measures;
- (iv) endeavor to commission on a planned basis and set a proper construction period;
- (v) appropriately specify the condition of implementation in design drawings and documents (meaning specifications, design documents, and drawings; hereinafter the same applies in this item), and if the condition of implementation specified in the design drawings and documents is different

from the actual situation in the work site, if an unforeseeable exceptional situation with regard to the condition of implementation not specified in the design drawings and documents occurs or if found necessary in other cases, appropriately change the design drawings and documents and change the contract fee or the construction period as required in connection with such changes;

- (vi) endeavor to confirm and evaluate the implementation status after a certain period of time has elapsed from the completion, if necessary.
- (2) In order to effectively utilize materials concerning the evaluation of the implementation status of public works and other materials in its future commission and in a commission between Commissioning Entities with each other, the Commissioning Entity must take measures for standardization of the evaluation, and must develop and renew a database and take other necessary measures for storing such materials.
- (3) In order to appropriately implement order-related processes, the Commissioning Entity must endeavor to create the necessary infrastructure, assigning staff, etc., and endeavor to ensure coordination with other Commissioning Entities through information exchange, etc.

(Responsibilities of Contractor)

- Article 8 (1) In accordance with the Basic Principles, a contractor of public works must properly implement contracted public works, and when entering into a subcontract, endeavor to conclude the subcontract for a contract fee in the proper amount.
- (2) A contractor (including a person who intends to be a contractor) must endeavor to enhance technical capabilities, foster and secure engineers, skilled workers, etc., and improve the wages and other labor conditions, and safety and health and other working environment pertaining to them necessary for the proper implementation of public works that have been contracted or are to be implemented.

Chapter II Basic Policy

- Article 9 (1) The government must establish a basic policy (hereinafter referred to as the "Basic Policy") for comprehensively promoting measures on the promotion of quality assurance in public works.
- (2) The Basic Policy provides for the following matters in public works:
 - (i) Matters regarding the meaning of the promotion of quality assurance in public works;
 - (ii) Basic policy concerning measures for the promotion of quality assurance in public works.

- (3) In formulating the Basic Policy, the autonomy of quasi-governmental agencies, etc. (meaning the quasi-governmental agencies as provided for in Article 2, paragraph (1) of the Act for Promoting Proper Tendering and Contracting for Public Works; the same applies hereinafter) and local governments must be considered.
- (4) When establishing the Basic Policy, the Government must announce the same without delay.
- (5) The provisions of preceding two paragraphs apply mutatis mutandis to changes in the Basic Policy.

(Responsibilities under Basic Policy)

Article 10 In accordance with the provisions of the Basic Policy, the Head of each Ministry and Agency of the National Government (meaning the Head of each Ministry and Agency of the National Government as provided for in the Public Finance Act (Act No.34 of 1947)), the representative of quasi-governmental agencies (when said quasi-governmental agency, etc. is the incorporated administrative agency provided for in Article 2, paragraph (1) of the Act on General Rules for Incorporated Administrative Agencies (Act No. 103 of 1999, its Head)) and the Head of local governments must endeavor to take necessary measures for the promotion of quality assurance in public works.

(Cooperation Systems among Relevant Administrative Organs)

Article 11 The government is to develop cooperation systems among relevant administrative organs and take other necessary measures on the formulation of the Basic Policy and the implementation of the measures pursuant thereto.

Chapter III Various Methods for Tendering and Contracting

Section 1 Examination of Technical Capabilities of Tender Participants

(Examination of Technical Capabilities of Tender Participants)

Article 12 When putting out to tender a contract for public works pertaining to its commission, the Commissioning Entity must examine the experience in works, the evaluation of implementation status, the experience of the engineers to be assigned to such public works and other matters concerning the technical capabilities of persons who intend to participate in the tender.

(Examination Concerning Securing of Technical Capabilities of Tender Participants over the Medium and Long Term)

Article 13 When putting out to tender a contract for public works pertaining to its commission, the Commissioning Entity must appropriately examine or evaluate matters regarding the status of fostering and securing young

engineers, and skilled workers, etc., the status of possession of construction machinery, and the status of securing a infrastructure for works implementation at the time of disaster, etc. with regard to tender participants (including persons who intend to participate in the tender; the same applies hereinafter) in accordance with the nature of said public works and the actual conditions of the area, etc.

Section 2 Various Methods for Tendering and Contracting

(Selecting Appropriate Methods from among Various Tendering and Contracting Methods)

Article 14 In determining the methods for tendering and contracting, the Commissioning Entity may select appropriate methods from among the methods provided for in this Section and other various methods, or a combination thereof, in accordance with the nature of public works pertaining to its commission and the actual conditions of the area, etc.

(Method Requesting Technical Proposals from Tender Participants)

- Article 15 (1) The Commissioning Entity must endeavor to request technical proposals from tender participants, provided, however, that this does not apply when the Commissioning Entity finds it unnecessary in light of the content of said public works.
- (2) When requesting technical proposals pursuant to the provisions of the preceding paragraph, the Commissioning Entity must give consideration to the burdens pertaining to the technical proposals from tender participants.
 - (3) When receiving technical proposals on public works put out to tender, the Commissioning Entity must appropriately examine and evaluate such technical proposals. In this case, the Commissioning Entity is to properly deal with complaints from the parties concerned and take other necessary measures to secure neutral and fair examination and evaluation.
 - (4) When finding that public works put out to tender cannot be implemented securely in accordance with the content of technical proposals, the Commissioning Entity may choose not to adopt such technical proposals.
 - (5) When requesting technical proposals from tender participants to determine a successful bidder, the Commissioning Entity must announce the same and the evaluation method therefor, and announce the results of evaluation thereafter; provided, however, that this does not apply to the results of the evaluation of technical proposals on public works that are not subject to the announcement of the information on tendering and contracting for public works as provided for in Articles 4 to 8 of the Act for Promoting Proper Tendering and Contracting for Public Works.

(Step-by-step Selection Method)

Article 16 In the case of the method requesting technical proposals from tender participants when there are expected to be a large number of tender participants or when finding it necessary, the Commissioning Entity may select persons who have a certain technical capability in evaluating matters regarding the technical capabilities pertaining to said public works and determine a successful bidder from among such persons, while considering that persons with necessary construction technology are not unduly prevented from newly participating in the tender.

(Improvement of Technical Proposals)

Article 17 (1) The Commissioning Entity may request a person who made a technical proposal to improve said technical proposal or provide the person an opportunity to propose an improvement in the examination. In this case, the Commissioning Entity must announce an outline of the process pertaining to the improvement of the technical proposal.

(2) The provisions of the proviso to Article 15, paragraph (5) apply mutatis mutandis to the announcement of the outline of the process pertaining to the improvement of technical proposals.

(Method by Means of Examination of Technical Proposals and Negotiation of Price)

Article 18 (1) When the specifications of said works are difficult to define and finding it necessary in consideration of the actual amount of its commissions, etc., the Commissioning Entity may, after publicly soliciting technical proposals, define the specifications by negotiating with a person selected in consideration of the result of the examination regarding construction methods and price, etc. and then enter into a contract. In this case, the Commissioning Entity is to set a target price based on the results of the examination of the technical proposal and the negotiation.

(2) In examining the technical proposals provided for in the preceding paragraph, the Commissioning Entity is to hear the opinion of persons with relevant knowledge and experience who can make fair judgments in a neutral position, and properly deal with complaints from the parties concerned and take other necessary measures to secure neutral and fair examination and evaluation.

(3) The Commissioning Entity must announce the results of the examination of the technical proposal and the outline of the process of the examination and the negotiation referred to in paragraph (1). In this case, the provisions of the proviso to Article 15, paragraph (5) apply mutatis mutandis.

(Target Price When Requesting Technical Proposals Including Advanced Technologies)

Article 19 Beyond the cases referred to in Article 18, paragraph (1), when requesting technical proposals including advanced technologies or excellent ingenuity, the Commissioning Entity may set a target price based on the results of the examination of said technical proposals. In this case, in examining said technical proposal, the Commissioning Entity is to hear the opinion of persons with relevant knowledge and experience capable of making fair judgments in a neutral position.

(Method useful for Maintenance and Management of Social Infrastructure in the Area)

Article 20 In commissioning public works, when finding it necessary for the effective and sustainable implementation of the maintenance and management of the social infrastructure in the area, the Commissioning Entity is to utilize the following methods, etc. in accordance with the actual conditions of the area:

- (i) a method in which public works of multi-year construction period are commissioned under a single contract;
- (ii) a method in which a plurality of public works are commissioned under a single contract;
- (iii) a method in which cooperatives or other business entities consisting of a plurality of construction business operators are allowed to participate in the tender.

Section 3 Utilization of Persons Capable of Appropriately Implementing Order-Related Processes and Support for Commissioning Entity

(Utilization of Persons Capable of Appropriately Implementing Order-Related Processes)

Article 21 (1) When finding it difficult to appropriately implement order-related processes by itself because of the necessity of expert knowledge or technologies in public works pertaining to its commission, the Commissioning Entity must endeavor to utilize abilities of the State, local governments, or other persons capable of implementing the whole or a part of order-related affairs by laws and regulations or under contracts. In this case, the Commissioning Entity is to select persons with staff having knowledge and technologies for properly implementing order-related processes, having developed a system for securing compliance with laws and regulations and confidentiality, and with other conditions to fairly implement order-related processes.

(2) In the case provided for in the preceding paragraph, when selecting persons capable of performing the whole or a part of order-related processes under

contracts, the Commissioning Entity is to take the necessary measures for ensuring fairness of the order-related processes conducted by said persons.

(3) A person who performs the whole or a part of order-related processes under contracts pursuant to paragraph (1) must appropriately implement the order-related processes in compliance with the Basic Principles.

(4) In order to support the Commissioning Entity, the State and prefectures must endeavor to take necessary measures, including the promotion of fostering and utilizing persons capable of appropriately implementing order-related processes requiring expert knowledge or technologies, the cooperation in appropriate evaluation and selection of persons with conditions for fairly implementing order-related processes, and the development of arrangements for collaboration between the Commissioning Entities.

(Guiding Principles Concerning Operation of Order-related Processes)

Article 22 In accordance with the Basic Principles, in order to support the Commissioning Entity, the State is to hear the opinion of local governments, persons with relevant knowledge and experience, private business operators, and other relevant persons and establish the guiding principles concerning the operation of the system pertaining to appropriate implementation of selection of methods for tendering and contracting and other order-related processes in accordance with the nature of public works, the actual conditions of the area, etc.

(Assistance of the State)

Article 23 Beyond what is provided for in Article 21, paragraph (4) and the preceding Article, the State must endeavor to provide necessary advice and other assistance with respect to measures on the promotion of quality assurance in public works, including the promotion of fostering and securing personnel in public works over the medium and long term taken by local governments.

(Quality Assurance in Surveys and Designs for Public Works)

Article 24 (1) In commissioning surveys or designs for public works, the Commissioning Entity of the survey or design must, in an equivalent manner as public works, endeavor to assure its quality by selecting methods for tendering and contracting, etc. in accordance with the nature of said works and the actual conditions of the area, etc., including by examining work experience in survey or design of persons who intend to participate in the tender, and experience or qualifications and other matters regarding the technical capabilities of the engineers to be assigned to said work, and by requesting proposals of technologies or ingenuity concerning surveys or designs from

persons who intend to participate in the tender.

- (2) The Commissioning Entity of surveys or designs for public works must, in an equivalent manner as public works, endeavor to take necessary measures with regard to the standardization of the evaluation of work status, and the storage of materials, including those regarding the results and evaluation of surveys or designs.
- (3) With respect to surveys or designs for public works, in order to appropriately evaluate capabilities of persons who have necessary knowledge and technology by means of their qualifications, etc. corresponding to the content of the work and to fully utilize such persons, the State is to review how to evaluate the qualifications, etc. pertaining to these and to take necessary measures on the basis of the results.

Supplementary Provisions

(Effective Date)

- (1) This Act comes into effect as of April 1, 2005.

(Review)

- (2) The government is to review the status of the enforcement of this Act when three years have passed after the enforcement thereof, and is to take required measures based on the results when it finds it necessary.

Supplementary Provisions [Act No.56 of June 4, 2014] [Extract]

(Effective Date)

- (1) This Act comes into effect as of the date of promulgation.

(Review)

- (2) Approximately five years after the enforcement of this Act, the Government is to review the status of the enforcement of the Act on Promoting Quality Assurance in Public Works revised by this Act, etc. and to take required measures based on the results when it finds it necessary.