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Competition and Corruption in Public Procurement – Note by Japan

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1. Introduction

1. Bid rigging is an illegal act that prevents the procurement of goods and services at the prices and quality that should originally be realized through competitive bidding. Such conduct compromises the interests of the procuring entity and ultimately undermines the public interest of the citizens as taxpayers. Furthermore, any involvement in bid rigging by officials who are supposed to pursue the interests of the procuring entity is equivalent to a conflict of interest, as it actively damages those interests.

2. The Act on Elimination and Prevention of Involvement in Bid Rigging, etc. (the “Act”) was enacted through lawmaker-initiated legislation in July 2002 and entered into force in January 2003. Its purpose is to prevent cases where officials of the government or local governments, etc. are involved in bid-rigging.

3. Even after the Act came into force, a significant number of cases of bid-rigging involving officials persisted at both the government and local governments, etc. Against this backdrop, it was amended in December 2006 to introduce criminal penalties for officials of procuring entities, expand the scope of “Involvement in Bid Rigging etc.,” and increase the types of procuring entities subject to the Act. These amendments took effect in March 2007.

4. In addition to the strict application of the Antimonopoly Act (AMA) against bid rigging, the Japan Fair Trade Commission (JFTC) issues demands for improvement measures to procuring entities involved in bid rigging, thereby encouraging self-cleansing efforts within those entities based on the Act.

5. Along with taking strict measures when bid-rigging cases are discovered, initiatives to prevent violations before they occur are of great importance. To this end, the JFTC hosts training sessions on the AMA and the Act for procurement officers of local governments and other entities. The JFTC also dispatches instructors to similar training sessions organized by the government and local government, etc. striving to raise awareness and promote understanding of these laws.

6. This paper includes an overview of the Act, as well as the introduction of cases where the Act was applied and an outline of the awareness-raising initiatives as follows.

2. Overview of the Act on Elimination and Prevention of Involvement in Bid Rigging, etc.

2.1. Background of enactment

7. The trigger for considering the enactment of the Act was a bid-rigging case involving agricultural civil engineering works ordered by the Kamikawa Sub-prefectural Office of the Hokkaido Government. In May 2000, the JFTC issued a recommendation¹ to the enterprises involved in the bid rigging, based on the provisions of the AMA at the time. Furthermore, as it was recognized that the procuring entity had indicated its preferences

¹ It requires the cessation of the violation and other necessary measures, similar to the cease and desist order under the current AMA.

regarding the successful bidders, the JFTC also issued a request for improvement to the Hokkaido Government.

8. Following this, public criticism intensified regarding bid rigging where officials of the government or local governments were involved. The AMA allowed for sanctions against the enterprises that engaged in bid rigging; however, it did not provide a legal basis for taking administrative measures against the procuring entities whose officials were involved in the bid rigging. This led to a sense of unfairness among the enterprises. Against this backdrop, a bill was drafted through lawmaker-initiated legislation to demand an organized response from procuring entities and to prevent recurrence of such conduct. The bill was passed on July 24, 2002, and entered into force on January 6, 2003.

9. Nevertheless, even after the Act took effect, a significant number of cases of bid-rigging involving officials persisted. Consequently, an amendment bill was drafted—again through lawmaker-initiated legislation—which included the introduction of criminal penalties for the disturbance of bidding, etc. by officials. This amendment was passed on December 8, 2006, and entered into force on March 14, 2007.

2.2. Measures

2.2.1. Administrative measures

(a) Administrative measures to eliminate Involvement in Bid Rigging etc. (Article 3)

10. This article stipulates that, in cases where “Involvement in Bid Rigging etc.” (see 2.4. below) have been recognized, the JFTC may demand necessary measures from the Heads of Ministries and Agencies, etc. It also provides for the Heads of Ministries and Agencies, etc.² to conduct investigations and consider necessary measures upon receiving the demand, as well as to publicly announce the investigation results and other relevant information.

(b) Claims for compensation for damages against involved officials (Article 4) and investigation of grounds for disciplinary action (Article 5)

11. These articles stipulate claims for compensation for damages and investigations into grounds of disciplinary action by the Heads of Ministries and Agencies, etc., against involved officials.

(c) Cooperation among relevant administrative organs and other provisions (Articles 7, 9 and 10)

12. These articles stipulate mutual coordination and cooperation among relevant administrative organs aimed at preventing Involvement in Bid Rigging etc., as well as considerations for voluntary efforts of local governments and other organs in the implementation of the Act.

² The term "Heads of Ministries and Agencies, etc." refers to the Speaker of the House of Representatives, the President of the House of Councillors, the Chief Justice of the Supreme Court, the President of the Board of Audit, the Prime Minister, the Ministers of each Ministry, the heads of local governments, and the representatives of the Specified Corporations.

2.2.2. Penalties for officials who harmed the fairness of bidding, etc. (Article 8)

13. This article stipulates criminal penalties for officials who have engaged in acts that harm the fairness of bidding and other related processes.

14. It should be noted that this provision is applied as a result of criminal investigations conducted by investigative authorities such as the Police. The JFTC does not take any measures based on this article.³

2.3. Procuring entities subject to the Act (Article 2, Paragraphs 1 to 3)

15. The procuring entities subject to the Act are as follows. The corporations listed in (c) and (d) below are referred to as "Specified Corporations."

- a) the government
- b) local governments
- c) corporations in which the government or local governments have equity of 50% or over
- d) out of corporations established under a special law, a business corporation of which shares representing at least one third of the total outstanding 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 times⁴

2.4. Involvement in Bid Rigging etc. (Article 2, Paragraph 5)

16. The Act defines four categories of acts in which officials are involved in bid rigging, etc.⁵:

- explicit instruction on bid rigging;
- indication of wishes about an order receiving party;
- leakage of confidential information about the order; and
- assistance in specific bid-rigging.

³ While "Involvement in Bid Rigging etc." must involve participation in conduct that violates Article 3 or Article 8, Item 1 of the AMA, Article 8 of the Act only requires an act that harms the fairness of bidding. It is not conditioned on the existence of a violation of the AMA. Therefore, its application is not limited to cases triggered by the JFTC's investigations into bid rigging; rather, investigations are generally initiated through independent detection by investigative authorities (the Public Prosecutors Office and the Police).

⁴ Nippon Telegraph and Telephone Corporation (NTT, Inc.) and Japan Post Holdings Co., Ltd. are excluded by a Cabinet Order.

⁵ This refers to acts in violation of the AMA, such as cases where, in respect of the conclusion of agreements with a counter party to be chosen by competitive means, participating enterprises decide in conjunction with other enterprises the successful bidder (Article 2, Paragraph 4).

3. Cases of the Application of the Act on Elimination and Prevention of Involvement in Bid Rigging, etc.

3.1. Past cases of Involvement in Bid Rigging, etc.

17. Based on the 15 cases in which the JFTC has identified Involvement in Bid Rigging etc. as of April 22, 2026, the following points can be highlighted:

- Involvement in Bid Rigging etc. have occurred across a wide range of procuring entities, including national government organs, local governments, and government-invested corporations, as well as their field offices.
- These cases occur not only in construction works but also in the procurement of goods and services.
- In almost all cases, officials from the departments in charge of procurement were involved.
- In almost all cases, officials at the managerial level or higher were involved.
- There are many cases involving not only current officials but also former officials.

3.1.1. Most recent case where Involvement in Bid Rigging etc. was identified

18. On April 22, 2026, the JFTC issued a cease and desist order and surcharges payment orders against enterprises participating in biddings for road cleaning services ordered by Metropolitan Expressway Co., Ltd. The JFTC found that these enterprises had engaged in conduct violating the provisions of Article 3 (prohibition of unreasonable restraint of trade) of the AMA.

19. Furthermore, as the following facts were recognized, the JFTC issued a demand for improvement measures to the representative director of Metropolitan Expressway Co., Ltd., based on the Act.

20. Officials of Metropolitan Expressway Co., Ltd., in connection with the bidding for road cleaning services, had provided employees of specific participating enterprises with information regarding non-disclosed estimated prices prior to the dates of the biddings.

3.2. Background and factors of Involvement in Bid Rigging etc.

21. According to the findings identified by the JFTC when it issued demands for improvement measures, as well as the results of investigations conducted by the procuring entities that received the demands, the following points have been cited as the background and factors leading to officials' Involvement in Bid Rigging etc.:

- protecting and developing specific industries and local enterprises by ensuring a stable flow of orders and cultivating specialized contractors capable of handling complex projects.
- ensuring quality by entrusting projects to reliable and creditworthy enterprises.
- maintaining contracts with specific enterprises such as previous contractors who have been highly responsive to requests from the procuring entity.
- responding to requests from enterprises, such as seeking information related to bidding or favorable consideration in the selection of designated bidders.

- ensuring smooth bidding procedures by maintaining past transaction records. This includes avoiding disruption caused by the transition from discretionary contracts to competitive bidding.
- securing re-employment opportunities for officials

3.3. Case of bid rigging concerning transport services for patients with COVID-19

22. In addition to cases where the Act was applied, this section introduces a case of bid rigging in public procurement during the COVID-19 pandemic, which is mentioned in the call for contribution.

23. On May 30, 2024, the JFTC issued a cease and desist order against bidders for transport services for patients with COVID-19 ordered by Aomori City through designated competitive bidding. The JFTC found that they had engaged in conduct violating the provisions of Article 3 (prohibition of unreasonable restraint of trade) of the AMA.

24. Previously, Aomori City had outsourced transport services for patients with COVID-19 to a regional branch of a general incorporated association in which employees of the five travel agencies served as chairperson and in other roles, through discretionary contracts. The services accepted by the association were jointly executed by the five travel agencies, which then distributed the profit among themselves. Subsequently, when Aomori City changed the procurement method for the services to designated competitive bidding, the five travel agencies engaged in bid rigging to continue distributing profits among them.

25. Furthermore, in this case, prior to the bidding for the services, an official in charge at Aomori City had been informed by a specific enterprise among the five travel agencies of their desire to continue jointly executing the services among the same group. Despite these circumstances, when conducting the bidding for the services, Aomori City designated three of these five travel agencies and allowed them to participate in the same bid.

26. The response by Aomori City was considered inappropriate in terms of ensuring fair and free competition in bidding. Consequently, the JFTC requested Aomori City to take measures such as ensuring that, when it receives information suggesting that qualified participants intend to jointly execute the services subject to the bid, the participants are not designated for the same bidding process.

4. Dissemination and Awareness-Raising Activities

4.1. Dispatch of instructors to training sessions

27. In addition to strictly addressing bid rigging, the JFTC dispatches its officials as instructors to training sessions on the Act and the AMA organized by procuring entities to prevent bid rigging. Besides national government organs, instructors are dispatched to local governments, including prefectures, municipalities, special wards, and partial cooperatives, as well as councils composed of local governments. Furthermore, instructors are also dispatched to training sessions for officials of government-invested corporations, public research institutes, and relevant corporations under their jurisdiction.

28. The number of dispatches was 256 in FY2025, 256 in FY2024, and 264 in FY2023.

4.2. Fact-finding survey

29. As part of its efforts to support compliance initiatives within procuring entities, the JFTC conducted its first survey in eight years on the prevention of bid-rigging involving officials targeting the government and local governments, etc. On April 27, 2026, the JFTC published a report summarizing the identified challenges and key points for the direction of future initiatives to prevent them.

30. To provide practical guidance for procuring entities in their efforts to prevent bid-rigging involving officials, the JFTC has published support tools such as the "Checklist for Preventing Bid Rigging involving Officials Manuals" and the "List of Measures to Prevent Bid Rigging involving Officials." Furthermore, the JFTC provides consultations on prevention measures and dispatches instructors to training sessions designed to educate procuring entities on legal frameworks and preventative knowledge. The JFTC remains committed to actively supporting the compliance initiatives of all procuring entities.