

## **Regulations for Priority Procurement of Eco-Products**

### Article 1

This Regulations is prescribed pursuant to paragraph 3 of Article 96 of the Government Procurement Act (hereinafter referred to as the "Act")

### Article 2

The terms used in Article 96 of the Act shall have the following definitions:

1. Products having the same or similar functions mean that the functions of the environmental protection product are accepted by the entity as being the same or similar to that prescribed in the tender documentation.
2. Recycled materials mean the final products or assembly parts that are re-manufactured by used materials.
3. Returnable means that a product or its parts can be transformed into raw material or products through collection and processing after being discarded.
4. Low pollution means the design, manufacture or use of a product or its materials possesses the function of reducing the production of harmful or toxic substances.
5. Energy saving means that the use of a product or its material possesses the function of reducing energy consumption.
6. Increase social benefits or reduce social costs means that the design, manufacture or use of a product or its material can reduce the reliance on limited resources, reduce consumption on resources, develop the usage of new resources or have similar effect.

### Article 3

A product to be permitted to use a label of environment protection (hereinafter referred to as a "Eco-label") approved by the government referred to in paragraph 1 of Article 96 of the Act means a product that is one of the EP products announced by the Environmental Protection Administration and meets one of the following circumstances (hereinafter referred to as the "category I products"):

1. Having obtained permission to use an Eco-label from the Environmental Protection Administration of Executive Yuan (hereinafter referred to as the "EPA").

2. Having obtained permission to use an Eco-label from a foreign country that has mutual recognition agreement with this nation.

#### Article 4

A product or its raw material to be manufactured, used, and disposed of in such condition that conforms to recycled material, returnable product, low pollution, or energy-saving requirement referred to in paragraph 1 of Article 96 of the Act means a product that is not one of the Eco-label products announced by the EPA but has been approved by the EPA as satisfying the condition and been issued with a certificate (hereinafter referred to as the “category II products”).

#### Article 5

A Supplier which has been granted permission to use the Eco-label in a foreign country but has not been able to obtain permission or certificate to use the Eco-label referred to in the preceding two Articles prior to the submission of tender, may submit a notarized or certified copy of the foreign Eco-label permission document along with the tender, and obtain permission or certificate to use the Eco-label referred to in the preceding two Articles within a time-limit prescribed in the tender documentation.

#### Article 6

Products which increase social benefit or reduce social cost referred to in paragraph 2 of Article 96 of the Act means products that have been approved by the competent entity responsible for such products as satisfying the condition and been issued with a certificate (hereinafter referred to as the “category III products”).

#### Article 7

To determine categories II and III products, the applicant shall provide to the EPA or the relevant competent entity, a statement demonstrating that the product in question has satisfied the conditions set for that category and the following documents for review:

1. Evidence to the effect that within the year before the date of the application, it has not been punished by any environmental protection entity of consecutive fine on a daily basis; suspension of production, suspension of business, close of business;

- withdrawal or revocation of approval, or referring to criminal sanction;
2. Where there is a national standard for the product in question, the standard has been met.
  3. The quality and safety of the product in question satisfies the relevant legal requirements.

The handling and reviewing of application process referred to in the preceding paragraph may be assigned to private institutions.

#### Article 8

Environmental protection products (hereinafter referred to as the "EP products") referred to in the Regulations mean products of categories I to III.

#### Article 9

This Regulations shall not apply to the following procurement:

1. Where the procurement is conducted in accordance with a treaty or agreement to which this nation is a party.
2. Only part of the subject of tendering is EP product.

#### Article 10

In conducting a procurement in accordance with this Regulations, an entity shall prescribe in the tender documentation that a supplier who intends to be applicable to preferential measures shall provide the following information in its tender for review.

1. A copy of certificate stating that the product offered is a category I, category II, or category III product.
2. A comparison accompanied by an explanatory statement or certificate showing that the products' function is the same or similar to that prescribed in the tender documentation.
3. For a procurement with price preference treatment, the supplier shall provide in its tender, the total value of energy thus saved, the social benefit thus increased, or the social costs thus reduced, and the method of calculation, provided that the supplier's product is energy saving, may increase social benefit or reduce social cost.

#### 4. Any other necessary information.

#### Article 11

When an entity conducts priority procurement of EP products and allows for price preference treatment, the rate of preference shall be prescribed by the entity in the tender documentation according to the characteristic and the budget of individual procurement.. However, the rate shall not be more than 10%.

If it can be quantified as to the estimated total value of energy saved, social benefit increased, or social cost reduced caused by EP products, and comparison of it to non-EP products during the term of use as set in the tender documentation, the aforesaid rate of preference may be calculated by dividing it to the lowest tender price of non-EP products that meet the requirements of tender documentation. The quotient percentage derived from the aforesaid formula shall be used as the actual rate of preference.

If the actual rate of preference referred to in the proceeding paragraph exceeds the rate of preference set out in the tender documentation, the rate of preference set out in the tender documentation shall apply. If the actual rate of preference does not exceed the rate of preference set out in the tender documentation, the actual rate of preference shall apply.

For circumstances provided in paragraph 2 which can be quantified, a supplier who intends to be applicable to preferential measures shall state in the tender the estimated total value of energy saved, social benefit increased, or social cost reduced, and the method of calculation.

#### Article 12

In conducting priority procurement of EP products in accordance with paragraph 1 of Article 96 of the Act, the entity may choose one of the following means and specify it in the tender documentation::

1. Where a non-EP product supplier's tender is the lowest tender according to the principle of contract award prescribed in paragraph 1 of Article 52 of the Act, an EP product supplier may be awarded at the price of such a tender by preference.
2. Where a non-EP product tender is the lowest tender according to the principle of

contract award prescribed in paragraph 1 of Article 52 of the Act, and if an EP product tender is higher than the non-EP product tender but is within the rate of price preference as set out in the tender documentation, the contract shall be awarded to the EP product tender. If the EP product tender is above the rate of price preference, price reduction is not allowed and the contract shall be awarded to the non-EP product tender.

If the price of the EP product tender resulting from the calculation provided in the preceding paragraph exceeds the government estimate or has to be nullified, the provisions set out in paragraph 2 of Article 53 and Article 54 of the Act shall apply.

#### Article 13

If there is only one EP product tender that meets the requirement of subparagraph 1 of paragraph 1 of the preceding Article, the entity may request such supplier to reduce the price to the lowest tender price for awarding the contract. If there are two or more EP product tenders, the entity may request in sequence from the EP product tenderer whose tender price is the lowest one among all EP product tenderers to reduce its tender price once, and award the contract to the one who first reduces its tender price to the lowest tender price.

While requesting EP product suppliers to reduce prices in sequence according to the preceding paragraph, the entity shall request category I product and category II product suppliers to reduce prices first. Only when an award can't be made to these suppliers the entity shall request category III product suppliers to reduce prices.

With respect to subparagraph 2 of paragraph 1 of the preceding Article, if there are two or more EP product suppliers whose tender prices are within the rate of price difference of preference setting out in the tender documentation, the entity shall award the contract to category I product and category II product suppliers by preference without considering whether or not the tender price of the category III product is lower than that of categories I and II products.

#### Article 14

Where an award is conducted in accordance with subparagraph 3 of paragraph 1 of Article 52 of the Act, the circumstances on which the EP product is offered may be included as an item for evaluating the most advantageous tender.

## Article 15

In conducting priority procurement of EP products in accordance with this Regulations, an entity shall prescribe in the tender documentation that a supplier awarded by its provision of EP products shall submit relevant certificates of such products for checking and verifying during the term of contract performance.

The tender documentation referred to in the proceeding paragraph shall also prescribe that the entity may adopt the following measures if a supplier awarded by its provision of EP products fails to meet the requirements of the contract to provide such products during the term of contract performance.

1. To terminate the contract.
2. To rescind the contract.
3. To claim damages against loss due to price preference treatment.
4. Not to return the performance bond.
5. To notify the supplier to make improvement, remove the rejected products, re-do the work, or recall or replace the rejected item within a time limit in accordance with paragraph 1 of article 72 of the Act.
6. To act in accordance with the provision set out in Article 101 of the Act.
7. To take other measures specified in the contract.

## Article 16

Any person or entity with excellent performance or innovative measure in procuring EP products may be awarded jointly by the responsible entity, the EPA, and other competent entities.

## Article 17

This Regulations shall take effect May 27, 1999.

The amendment to this Regulations shall take effect on the date of promulgation.

**Note: In case of discrepancies between the Chinese version and this English version, the Chinese version shall prevail.**