

## **Regulations for the Implementation of Alternative Offers**

*Promulgated on May 6, 1999*

*Amended on June 19, 2002*

### Article 1

These regulations are prescribed pursuant to Article 35 of the Government Procurement Act (hereinafter referred to as the “Act”).

### Article 2

Where an entity provides in the tender documentation that a supplier is allowed to submit an alternative offer prior to the deadline for submission of tenders, the tender documentation shall specify the following:

- 1) the items for which a supplier may propose alternative technology, construction method, materials, or equipment in an alternative offer;
- 2) contents which shall be contained in an alternative offer;
- 3) the opening and evaluation of an alternative offer shall be undertaken only after the main offer has been evaluated to be in conformity with the tender documentation;
- 4) circumstances where an alternative offer will not be evaluated;
- 5) conditions under which a contract is awarded to an alternative offer;
- 6) matters by which the winning tenderer awarded by an alternative offer shall abide;
- 7) disposition for the winning tenderer’s failure to perform the contract according to the alternative offer;
- 8) other matters by which a supplier submitting an alternative offer shall abide.

An entity shall reasonably prescribe the time-limit for receiving an invitation to tender referred to in the preceding paragraph depending on the nature of the procurement and the time required for a supplier to prepare an alternative offer.

### Article 3

Where a supplier submits an alternative offer pursuant to the preceding Article, the alternative offer shall be sealed separately and marked as “alternative” on the tender. Each item is limited to one alternative offer and the supplier shall submit a main offer in accordance with the tender documentation.

### Article 4

The contents of an alternative offer prescribed pursuant to subparagraph 2 of

paragraph 1 of Article 2 shall include the following:

- 1) items enumerated in the alternative offer and detailed description thereof;
- 2) discrepancy between main offer and alternative offer;
- 3) reasons that the alternative offer will shorten construction period, save expenditure, or increase efficiency;
- 4) possible advantages and disadvantages of the alternative offer and benefit analysis; and
- 5) other matters provided for in the tender documentation

#### Article 5

The circumstances where an alternative offer will not be evaluated referred to in subparagraph 4 of paragraph 1 of Article 2 are as follows:

- 1) where the supplier does not submit a main offer in accordance with the tender documentation;
- 2) where the main offer does not meet the requirements set forth in the tender documentation;
- 3) where the alternative offer is irrelevant to the items enumerated in the tender documentation which allows the submission of alternative offer; or
- 4) where the alternative offer is not in conformity with the required procedure or format.

#### Article 6

In the event that a contract is awarded to an alternative offer pursuant to subparagraph 5 of paragraph 1 of Article 2, the alternative offer shall not impair the original function requirements set forth in the tender documentation, and the comparison result between the alternative offer and the main offer shall show that the alternative offer will shorten construction period, save expenditure, or increase efficiency.

Where any of the following circumstances occurs, an alternative offer shall not be adopted, except for the items that are negotiable and revisable as provided in the tender documentation, or the circumstances where there are advantages and disadvantages in the evaluation of an alternative offer but the overall result benefits the procuring entity.

- 1) where the alternative offer impairs the original function requirements set forth in the tender documentation;
- 2) where the alternative offer prolongs the construction period of the main offer;
- 3) where the alternative offer increases expenditure of the main offer;

- 4) where the alternative offer decreases efficiency of the main offer;
- 5) where the alternative offer is likely to cause other procurements conducted by the procuring entity a problem situation similar to any of the circumstances described in the preceding four subparagraphs;
- 6) where the advantages or other benefits generated from an alternative offer that can shorten construction period, save expenditure, or increase efficiency do not fulfill the requirements set forth in the tender documentation;
- 7) where the alternative offer is apparently infeasible.

The calculation of expenditure referred to in subparagraph 3 of the preceding paragraph shall take account of service or operation cost, maintenance cost, residual value, disposal fee, etc.

#### Article 7

In the event that a contract is awarded to an alternative offer pursuant to subparagraph 6 of paragraph 1 of Article 2, the data and the time-limit for submission to be submitted by the winning tenderer after contract award shall reserve the time period of evaluation prescribed by the entity. The expenses of survey, research, test, design, etc. which are required for contract performance for the alternative offer shall be borne by the supplier or be included in the bid price. The same shall also apply to the additional necessary expenses accruing from adopting the alternative offer.

#### Article 8

Where the winning tenderer is not able to fulfill the contract by an alternative offer, or when any of the circumstances referred to in paragraph 2 of Article 6 occurs during contract performance of the alternative offer, the entity shall revoke the award, terminate or rescind the contract, and may claim for damages against such tenderer, except where the tenderer is willing to fulfill the contract by the main offer which meets the requirements set forth in the tender documentation at the price of the alternative offer, and the principle of award is the lowest tender which is in conformity with the requirements set forth in the tender documentation.

Where the main offer is adopted for contract performance referred to in the preceding paragraph, the time-limit for contract performance shall be calculated from the starting date applicable to the alternative offer, and the time consumed by the alternative offer shall not be deducted.

#### Article 9

Where an entity permits a supplier to submit an alternative offer after contract award, the tender documentation shall specify the following:

- 1) contents which shall be contained in an alternative offer;
- 2) circumstances where an alternative offer will not be evaluated;
- 3) conditions under which an alternative offer is adopted;
- 4) matters by which a supplier shall abide after adopting an alternative offer;
- 5) disposition for the supplier's failure to perform the contract according to the alternative offer;
- 6) other matters by which a supplier submitting an alternative offer shall abide.

#### Article 10

When submitting an alternative offer pursuant to the preceding Article, a supplier shall submit the alternative offer prior to use and reserve the time period of evaluation prescribed by the entity. The time-limit for contract performance shall not be prolonged by the time consumed during the submission, evaluation, and adoption of the alternative offer.

The expenses required for evaluation of an alternative offer shall be borne by the supplier.

#### Article 11

The provisions of Articles 4 to 7 shall apply *mutatis mutandis* to matters provided for in subparagraphs 1 to 4 of Article 9.

#### Article 12

Where a winning tenderer submits an alternative offer after contract award but is not able to fulfill the contract by the alternative offer, or when any of the circumstances referred to in paragraph 2 of Article 6 occurs during contract performance of the alternative offer, the entity shall terminate or rescind the contract and may claim for damages against such tenderer, except where the tenderer is willing to fulfill the contract for the main offer which meets the requirements set forth in the tender documentation, or to perform the contract by means of other ways beneficial to the entity.

Where the main offer or other ways are adopted for contract performance referred to in the preceding paragraph, the increased expenses necessary for handling the change shall be borne by the supplier. The time-limit for contract performance shall be calculated from the starting date of the original contract, and the time consumed by the alternative offer shall not be deducted.

#### Article 13

Where an entity provides in the tender documentation that a supplier is allowed

to submit an alternative offer after contract award and there are incentive measures, the amount of incentives shall not exceed 50% of the amount saved on contract value. Such amount saved on contract value shall deduct the increased expenses necessary for handling the alternative offer.

#### Article 14

In evaluating an alternative offer, an entity may, based upon the actual needs, establish an evaluation committee and invite experts, scholars and planning and design service providers to attend the evaluation meeting. The entity may also entrust external personnel to conduct evaluation of a part or all of an alternative offer, if necessary.

#### Article 15

These 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.