

Regulations for Bid Bond, Guarantee Bond and Other Guarantees

Promulgated on May 17, 1999

Amended on August 24, 2001, March 26, 2002, and November 19, 2003

Chapter 1 General Principles

Article 1

These regulations are prescribed pursuant to paragraph 3 of Article 30 of the Government Procurement Act (hereinafter referred to as the “Act”).

Article 2

The terms referred to in paragraph 2 of Article 30 of the Act are defined as follows:

1. financial institution: a bank, credit cooperative association, credit department of farmers’ or fishermen’s associations or Chunghwa Post Co., Ltd. that has been approved by the central competent authorities in target enterprises to issue promissory note, check or certificate of deposit;
2. financial institution’s promissory note: an instrument issued by a financial institution assuring the payment of a stipulated sum of money to the payee or bearer of the check unconditionally on the due date at the same financial institution or any branches thereof;
3. financial institution’s check: an instrument issued by a financial institution entrusting another financial institution to pay a stipulated sum of money to the payee or bearer of the check unconditionally at sight;
4. financial institution’s certified check: a check that a financial institution has marked on it as “accepted”, “certified” or other synonyms and duly signed;
5. postal money order: a money order issued and to be cashed by Chunghwa Post Co., Ltd.;
6. bearer’s government bond: a bearer’s debt instrument issued by this nation’s government entities or government-owned enterprises;
7. financial institution’s certificate of deposit pledged to the procuring entity: a certificate of deposit or transferable bearer’s certificate of deposit that has been

pledged to the procuring entity;

8. bank: an institution established pursuant to Article 2 of the Banking Act;
9. irrevocable standby letter of credit confirmed by a bank: an irrevocable standby letter of credit issued by a foreign bank not approved by this nation's government and not registered for business within this nation, and confirmed by a bank;
10. bank's written joint and several guarantee: a letter of joint guarantee issued by a bank to assume joint and several liability; and
11. insurer: an institution established, approved and a business license issued pursuant to the Insurance Act.

The financial institution's certificate of deposit pledged to the procuring entity referred in the subparagraph 7 of the preceding paragraph may be substituted by the beneficial certificates of trust funds issued by the investment and trust company.

Article 3

An entity conducting procurement shall, except where the deposit of bid bond or guarantee bond may be waived, provide in the tender documentation the types, amount, and ways of deposit, refund and termination of bid bond, guarantee bond, and other guarantees to be deposited by a supplier.

Where foreign suppliers are permitted to participate in procurement and that a foreign currency in its equivalent value may be used for bid bond or guarantee bond, an entity shall prescribe in the tender documentation the types and ways of deposit with respect to such foreign currency.

The equivalent foreign currency referred to in the preceding paragraph shall, unless otherwise provided in the tender documentation, be calculated at the closing buying rate of the foreign exchange transaction at the Bank of Taiwan on the business day before the date of deposit.

Article 4

A bid bond or guarantee bond shall be deposited in the name of the tenderer or the winning tenderer.

Article 5

A supplier may deposit bid bond or guarantee bond in two or more forms as those

provided in paragraph 2 of Article 30 of the Act. For a deposited bid bond, the supplier may, upon the consent of the entity, change the form by which it was deposited.

Article 6

Where the tender documentation requires a supplier to deposit a bid bond, it shall also prescribe that the supplier shall deposit the bid bond, prior to the closing time for submission of tenders, to a designated place of receipt or a designated account held with a financial institution. Except for cash, a supplier may send the bid bond by enclosing it in the tender.

Where the tender documentation requires a supplier to deposit a guarantee bond or provide other guarantees, it shall also prescribe the deadline for deposit and place of receipt or account held with a financial institution.

Where a supplier deposits a bid bond or guarantee bond in the form of a financial institution's pledged certificate of deposit, a designated depositing financial institution shall not be required as a restriction; where a supplier requests for creation of pledge at a financial institution, the pledgee shall not be required to undertake such action jointly.

A bid bond or guarantee bond may be deposited via electronic means approved by the responsible entity.

Article 7

Where a bid bond or guarantee bond is deposited in the form of a financial institution's promissory note, check, certified check or postal money order, such instruments shall be made payable at sight and the entity shall be the payee. Where the payee is not designated, the bearer entity shall be the payee.

Where a bid bond or guarantee bond is deposited in the form of a financial institution's pledged certificate of deposit, bank issued or confirmed irrevocable standby letter of credit, bank's written joint and several guarantee, insurer's insurance policy of joint and several guarantee or other guarantees, the entity shall be named as the pledgee, beneficiary, guarantee beneficiary or insured, as the case may be.

Article 8

The types of guarantee bond are as follows:

1. performance bond: a bond used for guaranteeing the performance of contract by the supplier in accordance with the requirements of the contract;
2. refund bond for advance payment: a bond used for guaranteeing supplier's

return of the portion of the advance payment it received but has not been set off yet against actual payment;

3. warranty bond: a bond used for guaranteeing the warranty liability undertaken by the supplier;
4. price difference bond: a bond used for guaranteeing that the supplier's abnormally low tender price will not lead to compromised quality of performance, failure to perform contract in good faith, or any other extraordinary situations; and
5. others as determined by the responsible entity.

Chapter 2 Bid Bond

Article 9

The amount of bid bond, which may be either a fixed sum or a fixed proportion of the tender price, shall be determined by the entity in the tender documentation.

The fixed sum referred to in the preceding paragraph shall not, in principle, exceed 5% of the budget amount or the estimated total procurement value; the fixed proportion shall not, in principle, exceed 5% of the tender price. In any event, the amount of bid bond shall not exceed 50 million New Taiwan Dollars.

For procurement in which the award of contract is based on unit price, the bid bond shall be a fixed sum.

Article 9.1

An entity may prescribe in the tender documentation that, for suppliers who submit tenders electronically, their bid bonds may be reduced by a fixed sum or proportion. Such reduction shall be limited to a sum not exceeding 10% of the amount of bid bond.

Article 10

Where a supplier deposits a bid bond in the form of an irrevocable standby letter of credit issued or confirmed by a bank, bank's written joint and several guarantee or insurer's insurance policy of joint and several guarantee, unless otherwise prescribed by the tender documentation, the validity period of such instruments shall be 30 days longer than that of the price offer set out in the tender documentation. Where a supplier extends the validity period of the offered price, the validity period of the bid bond

deposited by the supplier shall be extended accordingly.

Article 11

A supplier may elect to send the instruments that attest to the deposit of bid bond by enclosing them with the following tender; however, a bid bond in cash shall be deposited to a designated place of receipt or a designated account held with a financial institution.

1. For open tendering, such instruments shall be enclosed with the tender; in the case of multi-step tender opening, such instruments shall be enclosed with the first step's tender.
2. For selective tendering, such instruments shall be enclosed with the tender submitted at the step following qualification evaluation.
3. For limited tendering, such instruments shall be enclosed with the documentation for price negotiation or price comparison; where price comparison adopts multi-step tender opening, such papers shall be enclosed with the first step's tender.

Article 12

Where one of the following circumstances occurs on tenderer or procurement, the bid bond deposited by relevant suppliers shall be released. However, where such bid bond shall not be released as required by the tender documentation, this provision shall not apply.

1. An unsuccessful supplier.
2. Where tender opening cannot proceed due to less than three participating tenderers.
3. Where an entity declares to nullify procurement, or to cancel tender opening and awarding of contract for a certain reason.
4. Where a supplier's tender has been determined as not meeting the tendering requirements or bearing no possibility of being awarded a contract, and the bid bond is released ahead of time upon the request of the supplier.
5. Where the validity period of the supplier's price offer has expired and that an extension has been refused.
6. Where a supplier fails to deposit the bid bond in time, or does not submit a

tender after depositing the bid bond, or fails to submit a tender in time.

7. For procurement in which contract has been awarded and the successful supplier has deposited a guarantee bond as required.

Article 13

Where procurement is carried out under multiple awards on an itemized basis pursuant to subparagraph 4 of paragraph 1 of Article 52 of the Act, a tenderer may deposit a bid bond for its tendering items either separately or jointly. Where the deposit of bid bonds is made jointly, the amount shall be the sum of the respective bid bonds for each tendering item.

The jointly deposited bid bonds referred to in the preceding paragraph may be released separately for each tendering item.

Article 14

Where the winning tenderer transfers the bid bond it deposited previously into a performance bond, and if the amount of bid bond exceeds that of performance bond, the excess portion shall be released to the winning tenderer.

In circumstances where the bid bond deposited by a tenderer shall not be released, the bond as a whole shall not be released. However, for procurement carried out under multiple awards, if a supplier deposits the bid bonds for its tendering items jointly, the amount not to be released shall be calculated for each individual item.

Chapter 3 Performance Bond

Article 15

The amount of performance bond, which may be either a fixed amount or a fixed proportion of the contract amount, shall be determined by the entity in the tender documentation.

The fixed sum referred to in the preceding paragraph shall not, in principle, exceed 10% of the budget amount or the estimated total procurement value; the fixed proportion shall not, in principle, exceed 10% of the contract amount.

For procurement in which the award of contract is based on unit price, the performance bond shall be a fixed sum.

Article 16

Where there is an increase or decrease in contract amount during the contract performance period, the amount of performance bond shall be adjusted according to the proportion of such increase or decrease.

Article 17

Where a tenderer deposits a performance bond in the form of an irrevocable standby letter of credit issued or confirmed by a bank, bank's written joint and several guarantee or insurer's insurance policy of joint and several guarantee, unless otherwise prescribed by the tender documentation, the validity period of such instruments shall be 90 days longer than the time-limit for final construction, supply or installation prescribed in the contract.

Where a supplier fails to perform the contract within the time-limit prescribed in the contract, or that inspection and acceptance may not be accomplished within the validity period referred to in the preceding paragraph due to causes attributable to the supplier, the validity period of performance bond shall be extended according to the duration of such delay.

Article 18

The time-limit for depositing a performance bond shall be reasonably prescribed by an entity in the tender documentation, upon considering the characteristics and actual needs of the procurement. For procurement above the threshold for supervision, a reasonable time-limit of 14 days or more shall be prescribed.

Where the performance bond deposited by a supplier is beyond the required time-limit, or at an insufficient amount or inconsistent with the required procedure or format, it shall be rejected. However, under such circumstances that it can be rectified, the entity shall demand the supplier to make rectification within a specified period; if the supplier fails to rectify within the specified period, its performance bond shall be rejected.

An entity may enter into a contract with a supplier before the supplier's depositing of performance bond in advance.

Article 19

The release of performance bond may be made in whole or in parts, conditional upon progress of contract performance, inspection and acceptance, maintenance or warranty period, etc., and this shall be prescribed by the entity in the tender documentation, upon considering the characteristics and actual needs of the

procurement.

Performance bond shall, unless otherwise prescribed in the contract or that there are circumstances in which it shall not be released, be released upon conditions for release have been met and when nothing is pending to be resolved. In the event that the contract is terminated, rescinded or suspended for causes not attributable to the supplier, the bond may be released ahead of time. However, where the contract is being suspended, a performance bond shall be deposited again when the cause for the suspension has been eliminated.

Where procurement is carried out under multiple award pursuant to subparagraph 4 of paragraph 1 of Article 52 of the Act, and that the supplier deposits the performance bond for the awarded items jointly, the bond shall be released separately in accordance with the preceding two paragraphs.

Article 20

The circumstances in which a performance bond and the accrued interest thereon shall not be released shall be prescribed by an entity in the tender documentation upon considering the characteristics and actual needs of the procurement.

An entity may prescribe in the tender documentation the circumstances in which a part or the whole amount of performance bond (including the accrued interest thereon, applicable hereinafter) deposited by a supplier shall not be released as follows:

1. where one of the circumstances provided in subparagraphs 3 to 5 of paragraph 1 of Article 50 of the Act occurs, and that claim for damages may be sought after pursuant to the first part of paragraph 2 of the same Article, an amount of the bond that equals the amount of the claim shall not be released;
2. where the supplier is in breach of Article 65 of the Act by assigning the contract to other parties, the whole amount of the bond shall not be released;
3. where the supplier has reduced the work or materials without prior approval, and that the amount of the work or materials thus reduced plus the losses thus incurred cannot be completely set off against the contract value payable, an amount of the bond equal to the insufficient amount shall not be released;
4. where part of the contract is terminated or rescinded due to causes attributable to the supplier, an amount of the bond calculated based on the proportion of the contract value accounted for by the value of such part shall not be released; where the whole contract is terminated or rescinded, the whole amount of the bond shall not be released;
5. where the subject matter does not pass inspection or acceptance and the supplier fails to take actions as required within the time-limit specified in the

notice, and that the amount of the non-conforming parts and the losses thus incurred, plus any additional expenses or punitive penalties cannot be completely set off against the contract value payable, an amount of the bond equal to the insufficient amount shall not be released;

6. where the supplier fails to perform the whole or part of the contract within the time-limit prescribed in the contract or an agreed extension thereof by the entity, and that the amount of delay penalty cannot be completely set off against the contract value payable, an amount of the bond equal to the insufficient amount shall not be released;
7. where the supplier is required to return an amount of the contract value paid but fails to do so, the like amount of the bond shall not be released;
8. where the supplier fails to extend the validity period of the bond as prescribed by the contract, the amount that requires extension shall not be released; and
9. any other circumstances attributable to the supplier, which results in a loss suffered by the entity, and that the supplier fails to pay the compensation which it is liable, the amount of the bond equal to the compensation payable shall not be released;

The performance bond referred to in the preceding paragraph that shall not be released may, for the circumstances in which release in parts is required by the contract, be the part that has not been released; the accrued interest that shall not be released shall be the interest on such bond accrued after the bond has been deposited.

Where two or more circumstances referred to in paragraph 2 occur in one contract, these shall be applied separately. However, the summed amount shall, where it exceeds the total amount of the performance bond, be limited to the total amount.

Chapter 4 Refund Bond for Advance Payment

Article 21

An entity may, upon considering the characteristics and actual needs of the procurement, prescribe in the tender documentation that the winning tenderer may receive an advance payment and amount thereof, and that the tenderer shall, prior to receiving the advance payment, provide a refund bond for advance payment in the like amount.

Where necessary, an entity may notify the supplier to furnish an explanation as to the use of advance payment after receiving such payment.

Article 22

An entity shall, upon considering the characteristics and actual needs of the subject procurement, prescribe in the tender documentation that the refund bond for advance payment may either be reduced progressively, pro rata to the progress or the contract value of the part that has been performed by the supplier, or released in whole upon satisfactory inspection and acceptance.

Where a supplier fails to perform as required by the contract, or that the contract is terminated or rescinded, an entity may, at any time, demand that the supplier repay the remaining portion of the refund bond for advance payment plus interest, or that such amount be set off against the amount payable to the supplier.

The calculation of the interest referred to in the preceding paragraph, and the circumstances under which the entity may demand for refund, shall be prescribed explicitly in the tender documentation, and the same shall also be stated in the refund bond for advance payment.

Article 23

Where a tenderer deposits a refund bond for advanced payment in the form of an irrevocable standby letter of credit issued or confirmed by a bank, bank's written joint and several guarantee or insurer's insurance policy of joint and several guarantee, unless otherwise prescribed by the tender documentation, the validity period of such instruments shall be 90 days longer than the time-limit for final construction, supply or installation prescribed in the contract.

Where a supplier fails to perform the contract within the time-limit prescribed in the contract, or that inspection and acceptance may not be accomplished within the validity period referred to in the preceding paragraph due to causes attributable to the supplier, the validity period of refund bond for advance payment shall be extended according to the duration of such delay.

Chapter 5 Warranty Bond

Article 24

An entity may, upon considering the characteristics and actual needs of the procurement, prescribe in the tender documentation that the winning tenderer shall deposit a warranty bond, before being paid for the subject matter of the contract being performed upon passing the inspection and acceptance. Where the warranty period is commenced in stages, the bond may also be deposited in stages.

The warranty bond referred in the preceding paragraph may be substituted by a

performance bond or contract value payable of the like amount.

Article 25

The amount of warranty bond, which may be either a fixed amount or a fixed proportion of the contract amount, shall be determined by the entity in the tender documentation.

The fixed sum referred to in the preceding paragraph shall not, in principle, exceed 5% of the budget amount or the estimated total procurement value; the fixed proportion shall not, in principle, exceed 5% of the contract amount.

Article 26

Where a tenderer deposits a warranty bond in the form of an irrevocable standby letter of credit issued or confirmed by a bank, bank's written joint and several guarantee or insurer's insurance policy of joint and several guarantee, unless otherwise prescribed by the tender documentation, the validity period of such instruments shall be 90 days longer than the warranty period prescribed in the contract.

Article 27

The release of warranty bond may be made in whole or in parts, conditional upon completion of the items or stages of warranty within the warranty period, and this shall be prescribed by an entity in the tender documentation upon considering the characteristics and actual needs of the procurement.

Article 28

The circumstances in which a warranty bond and the accrued interest thereon shall not be released shall be prescribed by an entity in the tender documentation upon considering the characteristics and actual needs of the procurement.

Subparagraphs 2 through 9 of paragraph 2 of Article 20 shall apply *mutatis mutandis* to the circumstances in which a warranty bond and the accrued interest thereon shall not be released.

Warranty bond shall, unless there is any circumstance in which it shall not be released, be released upon expiry of the warranty period and when nothing is pending to be resolved.

Chapter 6 Other Bonds and Guarantees

Article 29

Where a tenderer submits, pursuant to paragraph 2 of Article 37 of the Act, a bank's joint and several guarantee or an insurer's insurance policy of joint and several guarantee in respect of contract performance and compensation, the following requirements shall be followed:

1. the amount of the joint guarantee or joint guarantee insurance policy shall not be less than the total tender price;
2. the joint guarantee or joint guarantee insurance policy shall be submitted together with qualification documents; and
3. the requirements for a performance bond as regards its validity period, contents, release or non-release, etc. shall apply *mutatis mutandis* to the joint guarantee or joint guarantee insurance policy.

The total tender price referred to in subparagraph 1 of the preceding paragraph may be in one of the following circumstances:

1. where award of contract is based on total price, it refers to the total tender price offered by the tenderer;
2. where award of contract is based on unit price, it refers either to the estimated total procurement value specified in the tender documentation or to the product of the unit price quoted by the tenderer and the estimated procurement quantity specified in the tender documentation; or
3. where qualification evaluation in selective tendering procedures is undertaken, it is either as a tenderer's estimate based on the subject of tendering or the entity's estimated total procurement value, or the fixed amount specified in the tender documentation.

In the event that the amount of the joint guarantee or joint guarantee insurance policy exceeds the award price, such amount shall be adjusted according to the award price.

Article 30

Where a supplier furnishes a price difference bond as the guarantee referred to in Article 58 of the Act, the following requirements shall be followed:

1. where the total tender price is abnormally low, the amount of guarantee shall equal the difference between the total tender price and 80% of the government estimate, or the difference between the total tender price and 80% of the

amount recommended by a committee referred to in Article 54 of the Act;

2. where part of the tender price is abnormally low, the amount of guarantee shall equal the difference between the tender price for the part in question and 70% of the government estimate of such part. If there is no government estimate for the part in question, the budget amount or the amount recommended by the committee shall be used instead; and
3. where a supplier fails to deposit a price difference bond as required, an entity may decline to award the contract to such supplier.

A reasonable time-limit of not less than 5 days shall be prescribed for depositing a price difference bond. The requirements for performance bond as regards validity period, contents, release or non-release, etc. shall apply *mutatis mutandis* to the price difference bond.

Article 31

Where an entity notifies a supplier to make improvement or replacement within a time-limit pursuant to paragraph 1 of Article 72 of the Act, if the property for which the price has been paid has to be removed from the entity's premises, the entity may require the supplier to deposit a guarantee bond of the same value as that of the property. Where a property has to be removed from an entity's premises during the warranty period to make improvement or replacement, the same shall apply.

The requirements as regards performance bond shall apply *mutatis mutandis* to the guarantee bond referred to in the preceding paragraph.

Article 32

Where an entity provides its property to a supplier for processing or maintenance, if the property has to be removed from the entity's premises, the entity may, upon considering actual needs, require the supplier to deposit a guarantee bond either of the same value as that of the property or of a fixed amount.

The requirements as regards performance bond shall apply *mutatis mutandis* to the guarantee bond referred to in the preceding paragraph.

Article 33

For procurement under the threshold for publication, an entity may prescribe in the tender documentation that the performance bond or the warranty bond to be deposited by the winning tenderer may be substituted by a joint and several guarantee for performance and compensation provided by an other supplier who satisfies the

qualification requirements for tenderers prescribed in the tender documentation.

Article 33-1

For procurement above the threshold for publication, an entity may prescribe in the tender documentation that, where the winning tenderer submits a joint and several guarantee for performance and compensation provided by an other supplier who satisfies the qualification requirements for tenderers prescribed in the tender documentation, the amount of performance bond or warranty bond payable may be reduced.

The amount to be reduced referred to in the preceding paragraph, which may be either a fixed amount or proportion, shall be determined by the entity in the tender documentation. This amount shall be limited to a sum not exceeding 50% of the performance bond or warranty bond.

Article 33-2

Where an entity permits a guarantee bond to be substituted by a joint and several guarantee or reduced in amount, in accordance with the provisions of the two preceding Articles, the provisions regarding performance bond and warranty bond shall apply *mutatis mutandis* to the time-limit to submit documents required for the joint-and-several guarantee supplier; the entity shall also prescribe in the tender documentation that the joint liability of the supplier shall not be released progressively with the release of the guarantee bond in parts.

Where circumstances exist for not releasing guarantee bond, the winning tenderer and the joint-and-several guarantee supplier shall make a supplemental payment to the entity the amount of the guarantee bond not being released that equals the amount that had previously been substituted by joint guarantee or reduced. However, if the circumstances allow for the contract to be carried out by the joint-and-several guarantee supplier and renders no need for the supplemental payment, the entity shall first notify such supplier as regards performing the contract.

Article 33-3

The supplier providing joint and several guarantee referred to in Articles 33 and 33-1 shall be limited to one that is by law eligible for providing guarantee, that does not participate in tendering, and that does not fall under the circumstances set out in paragraph 1 of Article 103 of the Act, by which it is prohibited from participating in tendering, or being awarded or sub-contracted.

Article 33-4

An entity shall prescribe in the tender documentation that, in case any supplier provides joint and several guarantee to more than one government procurement contracts at the same time, the maximum number of contracts for which it guarantees shall be limited to two.

An entity conducting procurement shall, if there exists the circumstance referred to in the preceding paragraph as regards the supplier providing joint and several guarantee, transmit relevant information of the joint-and-several guarantee supplier to the database designated by the responsible entity for public notice.

Article 33-5

An entity conducting procurement of construction works may prescribe in the tender documentation that, for outstanding suppliers who have met specific requirements, the amount of bid bond, performance bond or warranty bond to be deposited by such suppliers may be reduced. This provision shall apply to any supplier that attains the aforesaid status after depositing the bonds. The maximum amount of reduction shall be limited to 50% of the total amount that has to be deposited originally.

The outstanding supplier referred in the preceding paragraph denotes any supplier who has been evaluated as outstanding, based on contract performance results, by the responsible entity or the relevant central competent authorities in target enterprises, provided that such evaluation has been recognized and announced to the public via the designated database by the responsible entity, and that the time of contract award is still within the incentive period. Where there is no incentive period, the status shall last for one year commencing from the publishing date of the notice on which the supplier is listed as an outstanding supplier.

As regards the circumstances in which an amount may be reduced as referred to in paragraph 1, an entity shall prescribe in the tender documentation that, where there are circumstances in which a bid bond or guarantee bond shall not be released, the supplier shall make a supplemental deposit that equals the reduced portion of the unreleased amount. The same shall apply to a supplier whose outstanding supplier status has been revoked by the responsible entity or the relevant central competent authorities in target enterprises, or to a supplier who has been published by any entity on the Government Gazette pursuant to paragraph 3 of Article 102 of the Act, and is still under the effect of the period prescribed in paragraph 1 of Article 103 of the Act.

For a supplier who has been evaluated as an outstanding supplier by a municipal or county (city) government, the provisions of paragraph 1 and the preceding paragraph may apply *mutatis mutandis* when such supplier participates in the procurement of construction works conducted by that particular government.

Chapter 7 Supplemental Provisions

Article 34

The formats for bid bond, guarantee bond and other guarantees shall be prescribed by the responsible entity.

Article 35

These regulations shall take effect from May 27, 1999.

The amendments to these regulations shall take effect from the date of promulgation.

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