

Regulation for Selection and Fee Calculation in Relation to Design Contest Held by Entities

Promulgated on May 6, 1999

Article 1

These regulations are prescribed pursuant to paragraph 2 of Article 22 of the Government Procurement Act (hereinafter referred to as the “Act”).

Article 2

Where an entity conducting a design contest by way of public announcement and the value of the service fees reaches the threshold for publication, the provisions of these regulations shall apply to the method for the selection of providers and the calculation of service fees.

Article 3

The term “design contest” referred to in subparagraph 10 of paragraph 1 of Article 22 of the Act means the process to determine the winning design and provider on which an entity, for the purpose of procurement, solicits for providers, creativity in the design, audio, visual, textual, drawing or object, and evaluating it according to its characteristics of completeness, feasibility, concept, artistic nature or practicality, etc.

The subject of the design contest as stated in the preceding paragraph includes art works, graphics, symbols, badges, emblem, information websites, names, slogans, advertisement, posters, promotional materials, promotional activities, clothing, sub-titles, music, images, arch, space and location decoration, styling, formation, landscaping, refurbishment, decoration, and such other items where creativity may be displayed.

Article 4

An entity conducting a design contest by way of public announcement may take one of the following means:

1. Solicit publicly for providers to submit their designed work for selection.
2. Solicit publicly for providers to submit designed work and written description of such design for selection.
3. Solicit publicly for providers to submit their design proposal. Once selected, the provider(s) concerned will be invited to submit its(their) designed work for selection.

Article 5

Unless otherwise provided for by laws and regulations, an entity conducting a design contest by way of public announcement may prescribe in the invitation documents the following items, according to the nature and the practical need of each case:

- 1.The purpose for which the designed work will be used and the concept that shall be expressed.
- 2.The guidelines on design.
- 3.The means on which the design will be displayed such as sample, model, transparency diagram, color, etc.
4. The scale, size, number of illustrative diagrams, method of framing, etc., of the design.
- 5.Where the design involves material, equipment, location or providers of finished product , specifications related thereto shall be stated.
- 6.Written description or proposal that must be submitted by the providers of the design and the designed work, the concept of the design, illustrative diagram, production method, work schedule, quantity, price, description or content of the plan, the sequence of the chapters, restriction on the number of pages, etc.
- 7.The limit of the number of written description or proposal of the design and the designed work that may be submitted by each provider.
- 8.The place and deadline for receiving the written description or proposal of the design and the designed work.
- 9.The items to be evaluated, evaluation criteria and the method of selection.
- 10.Principles of price negotiation and award of contract with the winning provider.
- 11.The method on which award will be made to the winning provider.
- 12.The number and the method on which award will be made to the contestant not selected.
- 13.The ownership of the intellectual property right of the winning design, the condition on using the design, the scope of such right, the right to amend, etc. If it is necessary to regulate those awarded designs, this provision shall also apply.
- 14.The way to handle the designed work not selected.
- 15.Where a public explanatory conference is held, the time and location of such conference.
- 16.Where a briefing is to be made by the provider in the selection process, the method on which it shall be conducted.
- 17.Any other necessary matters.

Article 6

Where a product is to be produced by the winner, an entity may prescribe in the tendering documents the following items according to the nature and practical need of each tendering subject :

1. Where a location for the production or installation exists, the description of existing situation and the condition upon completion.
2. The deadline for completing the product.
3. The limit of budget or production fees.
4. Any other necessary matters.

Article 7

Unless otherwise provided by laws and regulations, issues regarding the evaluation items referred to in subparagraph 9 of Article 5 may, according to the nature and practical need of each case, include the following:

1. The completeness and feasibility of the written description or proposal of the design.
2. The level of understanding on the use of the designed work and the objective or result such designed work is to achieve.
3. The extent to which the designed work fits the concept of the entity.
4. The artistic nature of the designed work.
5. Work plan and estimated schedule.
6. The experience and capability of the project manager and major staff involved in the project.
7. The capability to perform the contract on time.
8. Where extra production fees are required for completing the designed work, the amount of such fees.
9. Any other necessary matters.

Article 8

For the selection of a provider by design contest, and where the invitation documents have prescribed the qualification requirements of the provider, the entity shall first assess the qualification of the provider. Unless the qualification of the provider fulfills the requirements prescribed in the invitation documents, the evaluation process for the provider shall cease to proceed further.

The entity shall notify the provider of the result of its evaluation and shall state reasons of rejection to providers that have not been selected.

Article 9

The number of winning providers selected by the procurement evaluation committee may be more than one.

The relevant regulations for selection of the most advantageous tender of the Act shall apply *mutatis mutandis* to the selection procedures referred to in the preceding paragraph.

Article 10

The price negotiation and contract award between the entity and the winning provider shall be conducted by one of the following methods, and the method adopted shall be stated in the invitation documents:

1. Where only one winning provider is selected, price negotiation shall be followed.
2. Where two or more winning providers are selected, price negotiation shall be conducted in a sequence according to the ranking of the winning providers, commencing from the provider which attains the first ranking. In the event where two or more providers are of the same ranking, the provider with the lowest bid price shall have priority in the price negotiation.

Article 11

The award of contract referred to in the preceding Article shall be handled in accordance with one of the following methods:

1. Where the invitation documents have stated a fixed price or rate for the service fees, the contract shall be awarded according to the fixed price or rate.
2. Where the invitation documents have not stated a fixed price or rate for services fees, paragraph 2 of Article 53 and Article 54 of the Act shall apply to award of contract in excess of the government estimate or nullification of tenders.

Article 12

The production fees for the designed work shall, in principle, apply the total price method. Where the awarded provider is receiving or paying any money on others' behalf, the entity shall pay the actual amount upon verification.

Article 13

Where the winning provider is required to provide finished product or service after award, the entity may state in the invitation documents the conditions that the provider may be awarded incentive fee for delivering service at lower costs or better efficiency.

Methods of payment of incentive fee referred to in the preceding paragraph, which shall be clearly stated by the entity in the invitation documents, if applicable, shall be as follows:

1. Where the service fee payable has been lowered, a given percentage of the amount of the contract price thus reduced and saved.
2. Where the actual performance evaluated is better than that agreed in the contract, the calculation method defined in the contract applies.

The given percentage referred to in subparagraph 1 of the preceding paragraph shall not exceed 50%. The amount payable referred to in subparagraph 2 of the preceding paragraph shall not exceed 10% of the total contract value or 10% of the limit of the contract price.

Article 14

The contract may prescribe that the provider shall be entitled to receive a partial payment of service fees in advance after signing the contract. The remaining fees are payable monthly or by installments. The amount and conditions of each payment shall be clearly stated in the contract.

In principle, the advance fees referred to in the preceding paragraph shall not exceed 30% of the total contract value or 30% of the upper limit of the total price payable.

Article 15

Where the design of the provider requires, in accordance with relevant laws and regulations, certification by professionals, such as architects, professional engineers or fire equipment specialists, such works shall be implemented by the professionals, and certification must be obtained in accordance with the relevant laws and regulations.

Article 16

An entity conducting a design contest shall state in the invitation documents the ownership of any intellectual property rights derived from the work, and the legal obligation of the provider to handle and become responsible for matters that involve the infringement of rights of a third party.

The entity may acquire the right referred to in the preceding paragraph, in part or in whole, or be authorized to exercise such right, according to the needs of the entity.

Article 17

These regulations may apply *mutatis mutandis* to a tender where an entity

conducts a design contest not in accordance with subparagraph 10 of paragraph 1 of Article 22 of the Act.

Article 18

These regulations shall take effect on May 27, 1999.

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