

## **Regulations for the Implementation of Price Preference by Local Suppliers**

*Promulgated on May 24, 1999*

### Article 1

This Regulations is prescribed pursuant to paragraph 2 of Article 44 of the Government Procurement Act (hereinafter referred to as the "Act").

### Article 2

The term "particular procurement" referred to in paragraph 1 of Article 44 of the Act means a procurement of a value not less than the threshold for publication conducted by an entity, where the tender documentation specifies that the subject of the procurement falls within the coverage of paragraph 2 of Article 44 of the Act and that the entity may preferentially award the contract to a local supplier at a higher tender price pursuant to paragraph 1 of the same Article.

### Article 3

The term "foreign supplier" referred to in paragraph 1 of Article 44 of the Act means any natural person who has not acquired the nationality of this nation or any juridical person, organization or group established and registered pursuant to pertinent laws of foreign countries.

Where a particular procurement permits joint tendering by suppliers in submitting a tender, local suppliers who meet the requirements set out in paragraph 3 of Article 5 and participate jointly with foreign suppliers in tendering may be deemed as a joint tendering by local suppliers.

### Article 4

The term "scope" referred to in paragraph 2 of Article 44 of the Act means any construction work, property or service items selected by the responsible entity together with the relevant competent entities and published on the Government Procurement Gazette.

The publication referred to in the preceding paragraph shall state the preferential rate and the starting date and the expiry date of the preference period.

The published construction work, property or service items referred to in paragraph 1 shall be reviewed periodically by the selecting entities. Where, prior to the expiry date of the preference period, said items are found to be inconsistent with any treaty or agreement to which this nation is a party, the local value-added is less

than 50%, or said items are found to be inconsistent with the employment or industry development policy of this nation, the responsible entity shall revoke such items and publish the revocation on the Government Procurement Gazette.

Where an entity includes a published item referred to in paragraph 1 in the tender documentation, the entity shall not open the tender provided that the circumstance of revocation referred to in the preceding paragraph occurs prior to the opening of tenders. After modifying the tender documentation, the entity may re-invite the tender.

#### Article 5

In conducting a particular procurement, an entity shall specify in the tender documentation the specific item of the subject of the procurement to which the preferential bid price is applicable, and prescribe that all suppliers specify the bid price of such item in their tenders.

Where a foreign supplier's bid is the lowest tender and its bid price satisfies the principle of contract award for the lowest tender prescribed in paragraph 1 of Article 52 of the Act, the preferential bid price which is applicable to local suppliers shall be calculated by the bid price of said foreign supplier for the applicable item referred to in the preceding paragraph times the preferential rate. This provision does not apply where the bid price of the local supplier for the said item does not exceed that of the foreign supplier for the same item.

In the circumstance set out in the preceding paragraph, where it is a property of the local supplier which falls within the scope of application specified in tender documentation, the local value-added thereof must reach 50% of the price. In case that it is a construction work or service, it shall be supplied locally.

Where the bid price of the foreign supplier referred to in paragraph 2 is denominated in a foreign currency, it shall be converted to New Taiwan Dollars based on the closing spot selling rate quoted by the Bank of Taiwan on the business day prior to the date of award, and the applicable preferential price shall be calculated in New Taiwan Dollars.

#### Article 6

In conducting a particular procurement, an entity shall provide in the tender documentation that a local supplier who intends to enjoy the preference set out in paragraph 1 of Article 44 of the Act shall state in its tender for evaluation concerning the preferential item to be applicable according to the item(s) specified in the tender documentation, the fact that the local value-added for the item is at least 50% of the price or the item is supplied locally, and the volume or price of the item.

For the fact that the local value-added for the item is at least 50% of the price or

the item is supplied locally as set out in the preceding paragraph, the supplier shall prove that the local value-added of the item is at least 50% of the price in case that it is a property, or that the item must be supplied locally in case that it is a construction work or service.

#### Article 7

In conducting a particular procurement, an entity shall award the contract to a local supplier where a foreign supplier's tender is the lowest bid and its bid price satisfies the principle of contract award prescribed in paragraph 1 of Article 52 of the Act, and the lowest bid price of the local supplier which meets the requirement in paragraph 3 of Article 5 exceeds that of the foreign supplier but is within the preferential amount as provided in paragraph 2 of Article 5. Where the local supplier's bid price exceeds the preferential amount, the contract shall be awarded to the foreign supplier without further negotiation with the local supplier on the reduction of price.

The bid price of the local supplier which may be awarded by preference according to the calculation set out in the preceding paragraph shall not exceed, where a government estimate is set for the procurement, the upper limit for over government estimate as provided in paragraph 2 of Article 53 of the Act; where no government estimate is set for the procurement, the amount recommended by a committee as provided in Article 54 of the Act.

In any case, the award price in the preceding paragraph must not exceed the budget amount.

#### Article 8

In conducting a particular procurement, an entity shall prescribe in the tender documentation that a local supplier who has been awarded a contract based on preferential price shall submit to the entity for verification the evidence documents relating to the locally made or supplied item as provided in Article 6 during the term of contract performance.

The contract which is awarded to a local supplier in accordance with the provision set out in the preceding paragraph must explicitly state that, in case that the supplier fails to provide locally made or supplied item, the entity may take the following measures:

1. terminate the contract.
2. rescind the contract.
3. claim for damages of awarding a price which is higher than the bid price of the foreign supplier.

4. forfeit the performance bond.
5. notify the supplier to improve, remove or re-do the work, or replace or recall the product within a time-limit in accordance with paragraph 1 of Article 72 of the Act.
6. handle in accordance with Article 101 of the Act.
7. take any other measures as provided in the contract.

#### Article 9

This Regulations shall take effect May 27, 1999.

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