

# **Enforcement Rules of the Government Procurement Act**

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## **Chapter 1 General Principles**

### **Article 1**

This Enforcement Rules is prescribed pursuant to Article 113 of the Government Procurement Act (hereinafter referred to as the "Act").

### **Article 2**

A juridical person or organization taking from an entity a grant which meets the requirement set out in paragraph 1 of Article 4 of the Act shall be supervised by the entity when conducting tender opening, price competition under restricted tender, price negotiation under single tendering, contract awarding, and inspection and acceptance.

The procurement matters to be performed by a superior entity pursuant to the Act and this Enforcement Rules referred to in the preceding paragraph shall be conducted by the supervising entity prescribed in paragraph 1 of Article 4 of the Act.

### **Article 3**

In the event that a procurement conducted by a juridical person or organization is granted by two or more entities, the amount of the grant prescribed in paragraph 1 of Article 4 of the Act shall be the total amount of each grant. Where the total amount meets the requirement set out in paragraph 1 of Article 4 of the Act, the grantee shall notify each grantor, and shall be supervised jointly by each granting entity or by an entity appointed by the granting entities.

The term "which takes a grant from an entity shall conduct a procurement" referred to paragraph 1 of Article 4 of the Act includes the procurement conducted by a juridical person or organization by accepting rewards or donations from an entity, or by spending the budget of an entity through other similar means.

A complaint for the procurement conducted pursuant to paragraph 1 of Article 4 of the Act shall be filed with the same Complaint Review Board of Government Procurement (hereinafter referred to as CRBGP) as that accepts a complaint for the procurement conducted by the granting entity. Where the circumstance set forth in paragraph 1 occurs, the CRBGP shall be the one which applies to either the appointed entity or the entity that takes the highest percentage of the grant.

#### Article 4

Where an entity entrusts a juridical person or organization to conduct its procurement in accordance with paragraph 1 of Article 5 of the Act, the entrusting itself is a procurement of service. The juridical person or organization entrusted by an entity shall have personnel who are familiar with the laws and regulations of government procurement.

Where a juridical person or organization is entrusted to conduct a procurement for an entity, it and its employees and affiliated enterprises shall not participate in tendering or as a sub-contractor.

#### Article 5

Where the procuring entity is a public school or government-owned enterprise, the term "superior entity" referred to in paragraph 2 of Article 9 of the Act shall be the government agency to which the school or enterprise belongs.

The term "no superior entity above the procuring entity" referred to in paragraph 2 of Article 9 of the Act means the National Assembly, the Office of the President, the National Security Council, the five Yuans, and the first tier entities of each Yuan at the central government level, and the municipal and county (city) governments and councils at the local government level.

#### Article 5-1

The responsible entity may appoint other agencies to handle the matters according to the Government Procurement 10 paragraph 2 of interpreting government procurement laws and regulations, 10 paragraph 3~8 of the Act, if necessary.

#### Article 6

A procuring entity shall, before tendering, determine whether a procurement is of a value reaching the threshold for large procurement, supervision or publication, or is a small procurement by the procurement value which is calculated on the following means:

1. Where it is a divided procurement, the total budget of each divided procurement shall be deemed as if undivided.

2. Where a multiple award is adopted in accordance with subparagraph 4 of paragraph 1 of Article 52 of the Act, the total budget amount of each item or quantity shall govern, except that in the event of different subject of procurement among such items, the budget amount of an individual item shall govern.
3. Where there are optional items or follow-up extension of existing items in a tender documentation, the estimated value of such items shall be included.
4. Where a procurement is conducted before an appropriation bill is legalized, the estimated value of the procurement shall govern.
5. Where an award is made by unit price, the estimated total procurement value shall govern.
6. Where it is a lease or rental procurement with indefinite period, the monthly installment multiplied by 48 shall govern.
7. Where an investor is selected to construct or operate a project pursuant to Article 99 of the Act, the estimated value of construction or operation shall govern. The same shall also apply to the entrustment of business operation management provided for in paragraph 3 of Article 7 of the Act, where the value of construction or operation is included.
8. Where an entity establishes a permanent list of qualified suppliers pursuant to paragraph 1 of Article 21 of the Act, the estimated total procurement value within the duration of the list shall govern in the phase of conducting qualification evaluation in advance; the budget amount of each recurring procurement shall govern in the phase of inviting qualified suppliers to participate in tendering of the recurring one.
9. Where a tender documentation prescribes that the tender price include expenditures and revenues of the entity, the amount of expenditures shall govern.
10. Where the entity provides property or rights to the supplier for usage, in exchange of a return without expenditures from the entity, the value of use of the property or rights shall govern.

#### Article 7

For a procurement of a value reaching the threshold for supervision, an entity shall, at least 5 days prior to the time-limit for receiving tenders or documents, submit budget data, tender documentation, and relevant documents to its superior entity, and request the same to send representative(s) to monitor proceedings conducted by the entity.

Where a re-tendering is conducted since less than three tenders have been received, or where a procurement has been declared nullified or cancelled, the time period for requesting the superior entity to send representative(s) to monitor proceedings referred to in the preceding paragraph may be shortened and the documents referred to in the preceding paragraph may be waived for re-submission.

#### Article 8

In the event that the awarding of a procurement contract of a value reaching the threshold for supervision is not made concurrently with tender opening, price competition under restricted tendering, or price negotiation under single tendering, an entity shall, at least 3 days prior to the scheduled date of award, submit the outcome of tender evaluation to its superior entity, and request the same to send representative(s) to monitor proceedings conducted by the entity.

Where the contract awarding referred to in the preceding paragraph is made concurrently with tender opening, price competition under restricted tendering, or price negotiation under single tendering, the outcome of tender evaluation shall be verified and recorded on the spot before the contract is awarded .

#### Article 9

For a procurement of a value reaching the threshold for supervision, an entity shall, at least 5 days prior to the scheduled date of inspection and acceptance, submit a list of settlement and acceptance and relevant documents to its superior entity, and request the same to send representative(s) to monitor proceedings conducted by the entity, except that the submission of the list and documents may be waived provided that they are submitted with the certificate of settlement and acceptance.

For the inspection and acceptance of a product, an entity may, based upon the actual needs and reasons, request the superior entity in writing for an approval of proceeding without the superior entity's monitoring under the circumstances where the entity deems that it is difficult to request the superior entity to send representative(s) to monitor, such as partial delivery, immediate usage for urgent needs or unavailability of the actual quantity before completion of unpacking or installation. If the request is approved , the entity shall submit the list of settlement and acceptance and relevant documents to the superior entity for filing within one month after completion of inspection and acceptance.

#### Article 10

For a procurement of a value reaching the threshold for supervision, a superior entity may, taking into account the value, place or other special circumstances of the procurement, decide whether it should send representative(s) to monitor tender opening, price competition under restricted tendering, price negotiation under single tendering, contract awarding, and inspection and acceptance. Where the superior entity decides not to send representative(s) to monitor the proceedings, it shall, in advance, notify the entity to conduct the procurement by itself in accordance with the laws.

#### Article 11

The term "monitor" referred to in paragraph 1 of Articles 12 of the Act means that the proceedings of tender opening, price competition under restricted tendering, price negotiation

under single tendering, contract awarding, and inspection and acceptance conducted by an entity shall be watched over in person or reviewed in writing by the procurement supervision personnel to see whether there are any irregularities against the Act. The prior approval from the head of the procuring entity or the personnel authorized by the head is required when the procurement supervision personnel choose to review the proceedings in writing.

The monitoring referred to in the preceding paragraph does not include the review of substantive or technical matters involving the qualifications of tenderers, specifications, commercial terms, setting of government estimates, conditions of contract award, methods of inspection, etc. However, procurement supervision personnel may propose their opinions when finding any of the foregoing matters is in breach of laws and regulations.

Where the chairperson or chief inspector of the procurement rejects the opinions proposed by a procurement supervision personnel for a procurement inconsistent with the proceeding requirements of the Act, the opinions proposed by procurement supervision personnel shall be recorded and reported to the head of the procuring entity or the personnel authorized by the head for decision. In the event that the opinions proposed by the procurement supervision personnel from superior entity are rejected, the rejection of such opinions shall be reported to the superior entity for approval.

## Article 12

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## Article 13

The term "circumvent the application of this Act by dividing any procurement requirement" referred to in Article 14 of the Act does not apply to the circumstances of conducting procurements separately due to differences in the subjects of procurement, the places of construction or delivery, the conditions of needs, and the professional areas of the supplier's line of business.

In cases where an entity divides a procurement of a value reaching the threshold for publication and such division has been indicated in the legalized appropriation bill, the requirement of prior approval from its superior entity may be waived.

## Article 14

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## Article 15

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## Article 16

The term "entreating or lobbying" referred to in Article 16 of the Act means raising the following requests toward a procurement without following legal procedures:

1. a request raised prior to tender solicitation for matters related to a planned procurement;
2. a request raised after tender solicitation for the purpose of alternating the content of tender documentation, or the outcome of tender evaluation or award of contract; or
3. a request raised during contract performance period and inspection and acceptance period for the purpose of alternating the content of contract, or the outcome of inspection or acceptance.

## Article 17

The term "to be recorded" referred to in paragraph 1 of Article 16 of the Act means a record which may be provided in writing, audio recording or other means, and be kept filing with procurement documents. The same shall also apply to the entreating or lobbying in writing.

## Article 18

Unless otherwise provided for in the Act, a notification provided to a supplier by an entity pursuant to the Act may be in oral, by facsimile transmission, or by other means of electronic data transmission.

The oral notification referred to in the preceding paragraph may be recorded if necessary.

## **Chapter 2 Invitation to Tender**

## Article 19

For limited tendering procedures where there are only two tenders received from the two or more suppliers invited to compete, the procedures may be proceeded. Where there is only one tender received, the procedures may be altered to proceed as if only one supplier were invited.

## Article 20

For selective tendering procedures where a permanent list of qualified suppliers established by an entity after conducting qualification evaluation has a duration of more than one year, further notices of qualification evaluation shall be published yearly, and the existing permanent list shall also be reviewed and corrected.

Where the duration of such list is three years or less, and it has been made clear in the

notice of qualification evaluation that further notices will not be published, it shall be sufficient to publish the notice once. However, the existing permanent list shall still be reviewed and corrected yearly.

Where a supplier listed in a permanent list is found to be inconsistent with the original qualification requirements, the entity may set a time-limit for the supplier to provide an explanation. If the supplier fails to provide a reasonable explanation within the time-limit, the entity shall remove it from the list.

## Article 21

For selective tendering procedures conducted for a specific procurement, an entity shall invite all qualified suppliers to tender after conducting qualification evaluation.

Where a permanent list of qualified suppliers is established pursuant to paragraph 1 of Article 21 of the Act, an entity may conduct procurements in one of the following means, provided that they are made clear in the documents for qualification evaluation. Where there is a limitation on the number of suppliers to be invited for each recurring procurement, it shall also be made clear in the documents for qualification evaluation.

1. to invite individually all of the qualified suppliers to tender;
2. to invite all of the qualified suppliers to tender by a public notice;
3. to invite qualified suppliers to tender in a sequence specified in the documents for qualification evaluation; or
4. to invite qualified suppliers to tender by drawing lots.

## Article 22

In subparagraph 1 of paragraph 1 of Article 22 of the Act, the term "no tender" means no tender or qualification document is received after a public notice or an invitation to tender is given to qualified suppliers; and the term "tenders submitted have been not in conformity with the requirements in the tender" means no tender meets the evaluation criteria specified in the tender documentation, except that there is a protest or complaint in process.

The term "exclusive right" referred to in subparagraph 2 of paragraph 1 of Article 22 of the Act means intellectual property rights which have been protected by law, excluding trademark.

In subparagraph 5 of paragraph 1 of Article 22 of the Act, the term "subject of a procurement" includes construction work, property or services; the term "which is developed in the course of research, experiment or original development" means contracting with a supplier to conduct research, experiment or original development in order to acquire a prototype or a subject first produced or supplied, and it may include a limited production or supply in order to incorporate the results of field testing on quality or function, but it does not extend to quantity production or supply to establish commercial viability or to recover

research and development costs.

The term "50 per cent" referred to in subparagraph 6 of paragraph 1 of Article 22 of the Act means the ratio of the cumulative value of additional contracts to the amount of the main contract.

The terms "physically or mentally disabled", "physical or mental disabilities welfare institutions or organizations, and sheltered workshops" referred to in subparagraph 12 of paragraph 1 of Article 22 of the Act shall be subject to the requirements prescribed in the People with Disabilities Rights Protection Act. The term "aborigines" referred to in the same subparagraph shall be subject to the requirements prescribed in the Standards of Recognition for Aborigines Identification.

### Article 23

For a procurement where part of it involves an exclusive right or a sole source product or supply which no reasonable alternative or substitute exists, and the estimated value of that part is not less than 50 per cent of the value of the procurement, it may be conducted by limited tendering procedures pursuant to subparagraph 2 of paragraph 1 of Article 22 of the Act, provided that separating the procurement into several parts would cause significant inconvenience to the entity and it is necessary to procure all parts as a whole.

### Article 23-1

In conducting a procurement under limited tendering procedures pursuant to paragraph 1 of Article 22 of the Act, the requesting, using or procuring unit of an entity shall give a detailed account of each specific case in conformity with the requirements in each subparagraph of that paragraph, and report it to the head of the entity or the personnel authorized by the head for approval. Where it is applicable to conduct price competition under restricted tendering, such tendering shall be a preferred method to use.

In conducting a procurement under limited tendering procedures pursuant to paragraph 1 of Article 22 of the Act, an entity may publish solicitation notice on the Government Procurement Gazette or make it available on the information network of the responsible entity, unless otherwise provided for in the Act.

### Article 24

The term "international standards or national standards" referred to in paragraph 1 of Article 26 of the Act shall be subject to the requirements prescribed in Article 3 of the Standards Act.

### Article 25

The term "equivalent" referred to in paragraph 3 of Article 26 of the Act means a subject



whose function, performance, standard or characteristic is determined by an entity as not inferior to that required or specified in the tender documentation.

Where the tender documentation permits a tenderer to offer equivalents and specifies the tenderer shall do so in its tender, the tenderer shall provide in the tender for the entity's evaluation the brand and price of the equivalents, and the function, performance, standard, characteristics or other data related thereto.

Where the tender documentation permits a tenderer to offer equivalents but does not specify that the tenderer shall do so in its tender, the winning tenderer may, before putting into use of an equivalent , provide for the entity's evaluation the brand and price of the equivalent, and the function, performance, standard, characteristics or other data related thereto.

#### Article 25-1

An entity shall not seek or accept, in a manner which would have the effect of precluding competition, advice from a firm that may have a commercial interest in a specific procurement.

#### Article 26

The budget that an entity may disclose in the tender notice pursuant to paragraph 3 of Article 27 of the Act means the budget amount available for the payment of contract value. Where an appropriation bill has not been legalized, an estimated amount required for the procurement shall apply.

The estimated value that an entity may disclose in the tender notice pursuant to paragraph 3 of Article 27 of the Act means the estimated value of contract award.

#### Article 27

In paragraph 1 of Article 28 of the Act, the term "date of publishing a notice" means the date of publishing the notice on the Government Procurement Gazette; the term "date of inviting suppliers to tender" means the date of issuing a notice inviting the qualified suppliers to tender.

#### Article 28

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#### Article 28-1

The charge for tender documentation that an entity sells pursuant to paragraph 1 of Article 29 of the Act shall be limited to the costs of labor, materials, postage, etc. The same shall also apply to the deposit paid by suppliers for using the tender documentation,

explanatory materials or samples provided by an entity.

#### Article 29

The term "in writing and sealed" referred to in paragraph 1 of Article 33 of the Act means packing the tender in an opaque envelope or container and sealing it with paste, glue, tape, staple, rope, or other similar materials.

The name and address of the tenderer shall be indicated on the envelope or container, and the tenderer shall have its own choice on the place of mailing.

The term "designated place" referred to in paragraph 1 of Article 33 of the Act shall not be confined to the post office box number of an entity as the only place of receiving tenders.

#### Article 30

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#### Article 31

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#### Article 32

The term "does not involve essential parts of the contract" referred to in paragraph 3 of Article 33 of the Act includes the following:

1. alterable or supplementable items specified in the tender documentation;
2. optional items not for tender price comparison;
3. matters for reference; and
4. other matters not affecting the constitution of a contract

#### Article 33

There shall be only one tender submitted by each tenderer in each procurement. Where a tenderer is found to be in breach of the foregoing requirement, the following shall apply:

1. the tender submitted by such tenderer shall not be opened when such circumstance is found before tender opening; and
2. the tender submitted by such tenderer shall not be accepted when such circumstance is found after tender opening.

Where there are two or more tenders in a procurement submitted by branch companies of the same company or by a company and its branch company, it shall be deemed as a breach of the requirement prescribed in the preceding paragraph.

Where the procurement is to be awarded to the lowest tender and the tender documentation specifies that tenderers may submit two or more proposals with the same bid price for entity's choice, the requirement prescribed in paragraph 1 does not apply.

#### Article 34

Where an entity is conducting a public presentation or is soliciting reference data or information from suppliers pursuant to paragraph 1 of Article 34 of the Act, the entity shall publish a notice on the Government Procurement Gazette, or make it available on the information network of the responsible entity.

#### Article 35

A government estimate may not be disclosed after contract award if any of the following circumstances exists, provided that the winning tenderer shall be notified of the government estimate:

1. where the procurement is conducted pursuant to subparagraph 2 of paragraph 1 of Article 104 of the Act;
2. where it is a procurement conducted with a view to commercial resale or to using in the production of products for commercial sale, and the government estimate involves commercial secrets;
3. where it is a multiple award procurement, and there remains related pending items or quantities to be awarded, provided that the government estimate shall be disclosed after awarding of the related items or quantities; and
4. other circumstances as prescribed by the superior entity.

#### Article 36

For a part of the qualification requirements with which a tenderer shall meet, the tenderer may submit in lieu a subcontractor's qualification for the part to be subcontracted, provided that it has been specified in the tender documentation that the tenderer is permitted to do so.

The subcontractor and the subcontracted part prescribed in the preceding paragraph shall not be changed after contract award, unless it is necessary to do so under special circumstances and at the entity's approval. In such event, the qualification owned by the new subcontractor shall not be inferior to that of the original subcontractor.

#### Article 37

Where a notarized or certified Chinese translation of a qualification document is attached to a tender pursuant to paragraph 3 of Article 36 of the Act, the original document in foreign language shall prevail in case of errors found in the translation.

#### Article 38

A procuring entity shall prescribe in the tender documentation that a supplier is prohibited from participating in tendering, being awarded or sub-contracting, or assisting tenderers in case that any of the following circumstances occurs to the supplier:

1. where the supplier has provided planning or design services to the entity, and the procurement is resulted from such planning or design;
2. where the tender documentation has been prepared by the supplier for the entity;
3. where the supplier provides tender evaluation service to the entity for the procurement;
4. where the supplier knows, by fulfilling a contract with the entity, a certain information which is unknown to other suppliers or should be kept secret, and the supplier can benefit from winning the award by taking advantage of the information; and
5. where the supplier is a project management service provider entrusted by the entity and the procurement is related thereto.

Where there is no conflict of interest or concern of unfair competition, circumstances referred to in subparagraphs 1 and 2 of the preceding paragraph may not be applicable to the subsequent procurements after approval of the entity.

#### Article 39

The provisions of paragraph 1 of the preceding Article may not be applicable under any of the following circumstances:

1. where the planning or design service provider is a sole source manufacturer or supplier for the subject of a subsequent procurement, and no reasonable alternative or substitute exists;
2. where the supplier has developed a new product for an entity and prepares the tender documentation accordingly for the entity ;
3. where the tender documentation is prepared separately for different major parts by two or more suppliers for the entity; or
4. other circumstances as prescribed by the responsible entity.

#### Article 40

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#### Article 41

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## Article 42

Where an entity entrusts another entity of professional capacity to conduct its procurement pursuant to Article 40 of the Act, it shall be conducted in accordance with the following principles:

1. the superior entity of the procurement shall be the superior entity of the entrusting entity, except that the said superior entity may entrust its official duties to the superior entity of the entrusted entity;
2. the comptroller (accounting) and other relevant units shall be the units of the entrusting entity, except that the entrusting entity may entrust similar units in the entrusted entity to perform the duties;
3. the procuring entity shall be the entrusted entity, unless otherwise specified in the tender documentation;
4. where the entrusting entity and the entrusted entity are at different levels of government, the level of the entrusting entity is to determine whether it is a procurement of the central government or local government; and
5. the entrusting entity may entrust the entrusted entity to perform its official duties or conduct matters of responsibility.

The preceding paragraph shall apply *mutatis mutandis* to a procurement conducted by a juridical person or organization which is entrusted by an entity pursuant to Article 5 of the Act.

## Article 43

The period set forth in the tender documentation for suppliers to raise questions shall be at least one quarter of the period for tendering, and a segment of less than one day shall be counted as one day. For a qualification evaluation of selective tendering procedures, the same shall also apply to the period from the date of publication through the deadline for receipt of documents.

The deadline for an entity to reply to questions raised by suppliers shall be one day before the deadline for submission of tenders or the deadline for receipt of qualification documents.

## Article 44

Where an entity adopts multi-step opening of tenders pursuant to paragraph 1 of Article 42 of the Act, it may prescribe that tenders of the qualification, specification, and price be submitted and opened in steps, or be submitted in one step but opened in steps, except that qualification documents shall only be submitted in one step under the selective tendering procedures.

The sequence of tender opening under a step by step procedure referred to in the

preceding paragraph may be in the sequence of qualification, specification, and price, of which the qualification and specification can be combined into one step, so do the specification and price.

Where a tenderer fails to pass the tender evaluation in a prior step of multi-step tendering, it shall not be permitted to tender in the next step. Where a tenderer fails to pass tender evaluation in a prior step of multi-step opening of tenders under one step tendering, the rest of the tenders submitted by the tenderer shall be returned unopened.

Where there are three or more qualified suppliers submitting their tenders in the first phase of multi-step tendering pursuant to the requirements prescribed in paragraph 1 of Article 48 of the Act, the threshold of three tenders may be inapplicable for the subsequent steps of tender opening.

In the event of multi-step opening of tenders under one step tendering, suppliers shall have each tender sealed separately for each step of tender opening.

#### Article 45

Where specific weights for the commitments to be evaluated are specified pursuant to subparagraph 1 of Article 43 of the Act, they shall meet one of the following circumstances:

1. where the weights are calculated in value, the weight of the sub-total price of the commitments prescribed in the tender documentation to the total tender price shall not exceed one third; or
2. where the weights are calculated in score, the weight of the sub-total score of the commitments prescribed in the tender documentation to the total perfect score shall not exceed one third.

#### Article 46

Where an entity decides to award to a domestic tenderer by preference pursuant to subparagraph 2 of Article 43 of the Act, it shall, in the priority of tender price and one tenderer each time, request from the domestic tenderer whose tender price is the lowest one among all domestic tenderers to reduce its tender price once, and award the contract to the one who first reduces its tender price to the foreign supplier's tender price or less.

Where there are two or more domestic tenderers referred to in the preceding paragraph offering the same tender price, they shall simultaneously be requested to reduce their tender price once, and an award shall be made to the one whose tender price is the lower one and is not higher than the foreign supplier's tender price.

#### Article 47

The provisions in subparagraph 2 of Article 43 and Article 44 of the Act shall not be applied to a procurement simultaneously.

### Chapter 3 Award of Contracts

#### Article 48

The term "open tenders" referred to in Article 45 of the Act means opening of the tender envelopes or containers at the time and place specified in the tender documentation, and announcing the name or serial number of each tenderer, number of tenderers, and other matters set forth in the tender documentation. Where there is a tender price, it shall be announced.

The responsible persons, agents or authorized representatives of the tenderers shall be allowed to be present at the tender opening as prescribed in the preceding paragraph, except that the entity may set a maximum number of persons to be present.

The provisions of the two preceding paragraphs shall apply *mutatis mutandis* to a tender opening under limited tendering procedures.

#### Article 49

For a tender opening under open or selective tendering procedures, the tender documentation may leave the time and place of tender opening unspecified in any one of the following circumstances:

1. where it is a qualification evaluation for establishing a permanent list of qualified suppliers under selective tendering procedures pursuant to Article 21 of the Act;
2. where it is a multi-step opening of tenders pursuant to Article 42 of the Act, and the time and place of tender opening of the subsequent step are uncertain;
3. where the procedures and contents of tender opening shall be kept confidential pursuant to subparagraph 1 of Article 57 of the Act;
4. where a procurement is conducted pursuant to subparagraph 2 of paragraph 1 of Article 104 of the Act; and
5. other circumstances as prescribed by the responsible entity.

Under the circumstance of subparagraph 2 of the preceding paragraph, the entity shall notify eligible tenderers of a prior step of the time and place of tender opening in the subsequent step.

#### Article 49-1

The date of tender opening specified in the tender documentation for open tendering, selective tendering and price competition under limited tendering procedures shall be the expiry date of the time-limit or the business day following that date. This provision does not apply to the tender opening in the second or the subsequent steps provided that it is a

multi-step opening of tenders.

#### Article 50

The tender opening personnel shall be charged with the following responsibilities:

1. the chairperson shall chair the tender opening meeting, and be responsible for management control and decision-making of the meeting; and
2. the procurement personnel shall handle matters of tender opening, recording, etc.

The chairperson shall be the appropriate personnel appointed by the head of the entity or by the personnel authorized by the head.

The chairperson and the procurement personnel may be the same person.

The tender evaluation personnel may assist in the tender opening, if necessary.

Where there is a procurement supervision personnel, he/she shall watch over the proceedings of tender opening.

The provisions of the preceding five paragraphs shall apply *mutatis mutandis* to price competition under restricted tendering, price negotiation under single tendering, or contract awarding.

#### Article 51

In conducting the tender opening, an entity shall make a record thereof, in which it includes the following particulars and is signed jointly by the tender opening personnel. Where there is a procurement supervision personnel at the tender opening, he/she shall also sign on the record.

1. the job number, if applicable;
2. a summary of the nature and quantity of the subject of tendering;
3. names of the tenderers;
4. the tender prices of each tenderer, if applicable;
5. the date of tender opening; and
6. other necessary matters.

Where the opening of tender cannot be proceeded due to the lack of three or more tenders, a record including reasons related thereto shall be made. The particulars of the preceding paragraph shall apply *mutatis mutandis* to the record.

#### Article 52

An entity may set different government estimates based upon differences in technology, quality, function, place of contract performance, commercial terms, score of evaluation,



performance of service, etc.

#### Article 53

Where a government estimate is required, the planning, designing, requesting, or using unit shall submit the estimated one, along with the analysis, to the procurement unit for its reporting to the head of the entity or the personnel authorized by the head for approval. Where it is a recurring procurement or a procurement of a value not reaching the threshold for publication, the estimated one may be reported by the procurement unit directly.

#### Article 54

Where it is a multi-step opening of tenders under open tendering procedures, the government estimate shall be set prior to the opening of tenders for the first step.

Where it is a restricted tendering under limited tendering procedures, the government estimate shall be set prior to the opening of tenders.

Where it is a single tendering under limited tendering procedures, the tender price or estimate submitted by the tenderer shall be taken into account prior to setting the government estimate.

Where offers or proposals in writing from three or more tenderers are obtained openly pursuant to Article 49 of the Act, the government estimate shall be set prior to the conducting of price negotiation with one single tenderer or price competition among two or more tenderers.

#### Article 54-1

Where an entity does not set a government estimate pursuant to subparagraphs 1 and 2 of paragraph 1 of Article 47 of the Act, it may specify in advance in the tender documentation the contract value or relevant rate as the terms of awarding the contract.

#### Article 55

The term "three or more tenders" referred to in paragraph 1 of Article 48 of the Act means three or more tenderers submit their tenders under open tendering procedures which meet the following requirements:

1. the tenders have been submitted at the procurement entity or any designated place pursuant to the requirement of Article 33 of the Act;
2. no such circumstances exist where the opening of tenders is prohibited pursuant to paragraph 1 of Article 50 of the Act;
3. no such circumstances exist where the opening of tenders is prohibited pursuant to

paragraphs 1 and 2 of Article 33; and

4. the tenderers are not prohibited from participating in tendering pursuant to paragraph 1 of Article 38 of this Enforcement Rules.

#### Article 56

The requirement of the second tendering referred to in paragraph 2 of Article 48 of the Act shall apply *mutatis mutandis* to the circumstance of re-tendering by the original tender documentation after a tendering procedure is nullified.

#### Article 57

Where the opening of tenders under open tendering procedures cannot be proceeded due to the lack of three or more tenders, the tenders may be returned to the tenderers. When a tenderer requests that its tender be returned, the entity shall not reject it.

Where a tendering procedure is nullified after tender opening, and a tenderer requests that its tender be returned, the entity may retain one copy or one xerox copy of the tender and return the rest. Where multi-step opening of tenders is adopted, the unopened tenders shall be returned.

#### Article 58

Where an entity revokes the award or rescinds the contract pursuant to paragraph 2 of Article 50 of the Act, it may proceed in accordance with one of the following means:

1. the entity may conduct a re-tendering;
2. where an award has been made to the lowest tender, the entity may request other unsuccessful tenderers, who meet the requirements set forth in the tender documentation, one by one and in the sequence of tender price from the one with the lowest tender price, and award a contract to the one who first reduces its tender price to the original award price. In the event that no tenderer reduces its tender price to the original award price, the entity may award a contract pursuant to subparagraphs 1 and 2 of paragraph 1 of Article 52 of the Act and the principles of contract awarding specified in the tender documentation; or
3. where an award has been made to the most advantageous tender, the entity may convene a meeting of evaluation committee and conduct a re-evaluation pursuant to the requirements specified in the tender documentation.
4. where a procurement has been conducted pursuant to subparagraphs 9 to 11 of paragraph 1 of Article 22 of the Act, and there are two or more winning providers selected or suppliers matching the requirements after evaluation and selection, the entity may conduct price negotiation by sequence.

The requirement referred to in the preceding paragraph shall apply mutatis mutandis to the circumstances where an entity revokes an award or rescinds a contract due to a winning tenderer's waiving of an award, or refusing to execute or perform a contract, to deposit a guarantee bond, or to provide a guarantee.

#### Article 59

Where an entity finds that a tenderer whose subcontractor specified in its tender has been prohibited from participating in tendering, or being awarded or sub-contracted pursuant to paragraph 1 of Article 103 of the Act prior to the time-limits for submission of tenders or for receipt of documents, the entity shall not award a contract to the tenderer.

Where a tenderer finds that a subcontractor specified in its tender has been prohibited from participating in tendering, or being awarded or sub-contracted pursuant to paragraph 1 of Article 103 of the Act after submission of tender but prior to tender award, the tenderer may substitute the subcontractor by another one who meets the requirements of the tender documentation at the same tender price, and notify the entity of such substitute.

Where an entity finds before tender award that the circumstance of the preceding paragraph occurs to a tenderer, the entity shall notify the tenderer to correct it within a time-limit. If the correction is not made within the time-limit, the entity shall not award a contract to the tenderer.

#### Article 60

Where an entity finds after reviewing a tender that there is any ambiguity, inconsistency, or typing or clerical error in the tender, the entity may notify the tenderer to clarify in order to confirm the exact content.

Where it is explicit that the error referred to in the preceding paragraph is a typing or clerical one and is not related to tender price, a correction to it may be permitted by the entity.

#### Article 61

Where an entity notifies each tenderer of the outcome of tender review pursuant to paragraph 2 of Article 51 of the Act, the notification shall be made as soon as the tender review is completed, but no later than 10 days from the date of award or nullification of tendering procedure.

The notification referred to in the preceding paragraph may be made in writing on request of tenderers.

#### Article 62

Where an award is to be made to the lowest tender and there exist two or more tenders of

the same price that can be awarded, the award shall be made by drawing lots provided that price reduction and comparison has reached three times pursuant to the requirements of Articles 53 or 54 of the Act.

Where there are tenders of the same price as prescribed in the preceding paragraph, and the price reduction and comparison has not reached three times, there shall be an one-time price reduction and comparison among these tenderers to determine the lowest tender for award. In case that there are still tenders of the same price after price reduction and comparison, the award shall be made by drawing lots.

#### Article 63

Where a tender documentation prescribes that the award shall be made to the lowest tender, and that the tender price for comparison shall be adjusted by plus or minus certain figures based upon various factors, including the differences in performance, durability, guarantee period, efficiency of energy consumption, maintenance expense, etc., the lowest tender shall be determined by the adjusted one.

#### Article 64

Where the tender documentation permits of a tender price by two or more currencies, the entity shall select one of them or use New Taiwan Dollar as the base currency to convert the total price in equivalent, rank the tender price, and compare with the government estimate.

The total price in equivalent of the preceding paragraph shall be calculated by the closing rate of spot foreign exchange selling by the Bank of Taiwan on the first working day prior to the date of award.

#### Article 64-1

Where the lowest tender is adopted pursuant to subparagraph 1 or 2 of paragraph 1 of Article 52 of the Act, an entity shall specify the estimated quantity during the period of contract performance if the contract award is determined by the unit price of the subject of the procurement specified in the tender documentation due to indefinite quantity. Where there are two or more items under the procurement and the contract is not awarded by item, the contract award shall be determined by the sum of the total of unit price times the estimated quantity for each item.

#### Article 64-2

Where an entity conducts the procurement pursuant to subparagraph 1 or 2 of paragraph 1 of Article 52 of the Act, the entity may prescribe evaluation criteria in the tender documentation, such as evaluation items, the score of each evaluation item, and the threshold score. Moreover, the entity may establish an evaluation committee and a working group to

review tenders by the score of evaluation. For tenderers whose qualification and specification meet the requirements set forth in the tender documentation and the average score reaches the threshold score, the entity shall then open their price proposals, and award a contract to the lowest tender.

Where a procurement is conducted in accordance with the means referred to in the preceding paragraph, the following requirements shall apply:

1. adopts a multi-step tender-opening procedures, and the last step is price proposal;
2. price is not included in the evaluation items; and
3. organization, duties and operation of the evaluation committee and the working group shall apply mutatis mutandis to the regulations of the Regulations Governing the Organization of Procurement Evaluation Committee, the Regulations for Review by Procurement Evaluation Committee, and the Regulations for Evaluation of the Most Advantageous Tender.

#### Article 65

Where multiple award is adopted pursuant to subparagraph 4 of paragraph 1 of Article 52 of the Act, the following principles shall apply:

1. the tender documentation shall specify the items permitted for tendering by item, or the items permitted for tendering by different quantity and the minimum and maximum of such quantity range;
2. where government estimates are set, they shall be set by item or quantity separately;
3. bid bonds, guarantee bonds, and other guarantees may be provided by item or quantity separately;
4. where tenders may be submitted by different items, contracts shall be awarded by item; where tenders may be submitted by different quantities, contracts shall be awarded in the priority of which tender price is lower and what quantity is left for award, and different award prices may be adopted; and
5. where contracts are awarded by different items, execution of contract and inspection and acceptance thereof may be conducted by item; where contracts are awarded by different quantities, execution of contracts and inspection and acceptance thereof may be conducted by each quantity.

#### Article 66

(deleted)

#### Article 67

Where a tenderer meeting the principle of award needs no price reduction, or has

completed the price reduction or comprehensive evaluation procedure, the entity may proceed the award of contract without notifying the tenderer to be present.

#### Article 68

In conducting the award, an entity shall make a record thereof, in which it includes the following particulars and is signed jointly by the personnel conducting the award. Where there is a procurement supervision personnel or a representative of the winning tenderer attending the award, he/she shall also sign on the record.

1. the job number, if applicable;
2. a summary of the nature and quantity of the subject of award;
3. the outcome of tender evaluation;
4. the name of the winning tenderer;
5. the award price;
6. the date of award;
7. the procedures of price reduction, price reduction and comparison, negotiation or comprehensive evaluation, if applicable;
8. the value and per cent of the award price above the government estimate, and the needs to award the contract for emergency, provided that the value of award exceeds the government estimate;
9. the principle of award adopted; and
10. the tackling of pending matters of protest or complaint, if applicable.

Where a tendering procedure is nullified, a record including reasons related thereto shall be made. The particulars of the preceding paragraph shall apply *mutatis mutandis* to the record.

#### Article 69

Where the outcome of price reduction or price reduction and comparison does not exceed the government estimate, the entity shall make an award unless the total price or a part thereof is unreasonably low as specified in Article 58 of the Act.

#### Article 70

Before conducting the first price reduction and comparison, an entity shall announce the outcome of price reduction by the tenderer of the lowest tender; before conducting the subsequent price reduction and comparison, an entity shall announce the outcome of the lowest tender price of the previous price reduction and comparison.

Where the price reduction and comparison or comprehensive evaluation is limited to one time or two times, it shall either be specified in the tender documentation or be notified to the tenderers prior to their participating in the price reduction and comparison or negotiation.

Where any of the following circumstances occurs to a tenderer, the entity may conduct the next price reduction and comparison or negotiation without notifying the tenderer to participate:

1. where the tenderer does not reduce the tender price to the previously announced lowest tender price following the price reduction or price reduction and comparison; or
2. where the tenderer is deemed waiving its rights pursuant to Article 60 of the Act.

#### Article 71

For a procurement of a value reaching the threshold for supervision, where the lowest tender under award consideration exceeds the government estimate by more than four percent but not more than eight percent, an entity may make the award with reservation and report it to its superior entity for approval. The report shall include reasons thereof along with the government estimate, the course of price reduction, and a comparison sheet of tender prices or a record of tender opening, etc.

Where an award is monitored by a supervising personnel of the superior entity, the award approval referred to in the preceding paragraph may be made by the supervising personnel either at the time of monitoring within his/her authority or after his/her reporting it to his/her entity.

#### Article 72

Where a price reduction or a price reduction and comparison is conducted pursuant to paragraph 1 of Article 53 or Article 54 of the Act, the tenderers participate therein shall provide their revised tender prices in writing.

Where there is only one tenderer meeting the requirements of the tender documentation or it is a procurement of single tendering, and where price reduction is requested since the tender price exceeds the government estimate or an amount recommended by a committee, the entity shall accept the outcome as to the tenderer reduces in writing its tender price either to the government estimate or the amount recommended or to a certain amount less than the government estimate or the amount recommended. The same shall also apply to the entity where there remains only one tenderer reducing in writing its tender price at a price reduction and comparison procedure.

#### Article 73

Where there is only one tenderer meeting the requirements of the tender documentation or it is a procurement of single tendering, an entity shall notify the tenderer in advance if there

shall be a limited number of times for price reduction.

The provisions of awarding a contract pursuant to paragraph 2 of Article 53 of the Act for a tender price exceeding the government estimate but not over the budget, or of nullifying the tendering procedure pursuant to Article 54 of the Act for a tender price exceeding the amount recommended by a committee or the budget shall apply, as the case may be, to the outcome of price reduction of the preceding paragraph.

#### Article 74

Where an award is conducted pursuant to subparagraph 2 of paragraph 1 of Article 52 of the Act, a committee shall be established except for small procurements. Members of the committee shall be officials of the entity or impartial persons who have professional knowledge of the price of the subject of procurement and are appointed or hired by the head of the entity or the personnel authorized by the head.

The time of setting a government estimate pursuant to paragraph 2 of Article 46 of the Act shall apply mutatis mutandis to the time of establishing the committee referred to in the preceding paragraph.

The committee referred to in the first paragraph may be substituted by an evaluation committee established pursuant to Article 94 of the Act.

#### Article 75

Where an award is conducted pursuant to subparagraph 2 of paragraph 1 of Article 52 of the Act and a committee is established therefore, the committee shall evaluate the lowest tender meeting the tender documentation before proposing a recommended amount. Where the tender price is reasonable, the committee may have the option not to propose the recommended amount.

Where the outcome of price reduction or price reduction and comparison pursuant to Article 54 of the Act does not exceed the amount recommended by the committee, the entity shall make an award unless the total price or a part thereof is unreasonably low as specified in Article 58 of the Act.

The recommended amount of the first paragraph shall be kept confidential till award of contract, and shall be disclosed after award of contract except for circumstances specified in Article 35 of this Enforcement Rules.

#### Article 76

The term "tender evaluation" referred to in subparagraph 1 of Article 57 of the Act includes evaluation and individual negotiation with tenderers.

The contents to be kept confidential pursuant to subparagraph 1 of Article 57 of the Act shall be declassified after award, except there is a necessity for keeping them confidential. .



Subparagraph 1 of Article 57 of the Act does not apply to the procedure conducted prior to adopting negotiations pursuant to Article 55 of the Act.

#### Article 77

Where negotiations are adopted and tenders are re-submitted by participating tenderers pursuant to Article 57 of the Act, items included therein not relating to or affecting by the negotiations shall not be evaluated, and contents prior to re-submission thereof shall apply.

#### Article 78

Where negotiations are adopted, an entity shall take the following matters into account:

1. to list the items pending for negotiations with tenderers and matters related to the strengths, weaknesses, errors or omissions thereof;
2. to prepare negotiation process;
3. to limit the number of persons participating in negotiations;
4. to cautiously choose a place of negotiation;
5. to take secret-keeping measures;
6. to conduct negotiations with tenderers individually;
7. not to disclose the contents of tender, strengths, weaknesses and score of a participating tenderer to other participants; and
8. to record the negotiations.

#### Article 79

The term "the total price is so low" referred to in Article 58 of the Act means any of the following circumstances:

1. where a government estimate is set, the total price is 20 percent less than the government estimate;
2. where no government estimate is set, the total price is determined by a committee or evaluation committee to be unreasonably low; or
3. where neither a government estimate is set nor a committee or evaluation committee is established, the total price is 30 percent less than the budget or the estimated procurement value. Where an appropriation bill is pending for legalization, the estimated procurement value shall govern.

#### Article 80

The term "a part of the offered price is so low" referred to in Article 58 of the Act means

any of the following circumstances:

1. where there is a part of the government estimate corresponding to the part of the offered price in question, the latter is 30 percent less than the former;
2. where a part of the offered price is determined by a committee or evaluation committee to be unreasonably low;
3. where a part of the offered price is 30 percent less than the award price of the same kind of procurement conducted by other entities recently; or
4. where a part of the offered price is 30 percent less than the regular price available for reference.

#### Article 81

Where a tender price is specified in Chinese characters and numerical numbers, the former shall apply if any discrepancy occurs.

#### Article 82

Paragraph 1 of Article 59 of the Act shall not apply to a payment incurred by a proper commercial transaction.

#### Article 83

Where a supplier is deemed, pursuant to Article 60 of the Act, waiving its rights to explain, reduce price, engage in price competition, negotiate, modify the contents of the original tender, or re-submit a new price offer, the supplier may still be awarded provided that the foregoing waiver does not affect the supplier as one who meets the requirements set forth in the tender documentation.

Where a supplier is deemed, pursuant to Article 60 of the Act, waiving its rights and thus is not awarded, the bid bond shall be refunded or returned to the supplier.

#### Article 84

The term "extraordinary circumstances" referred to in Article 61 of the Act means any of the following circumstances:

1. where procurements are conducted with a view to commercial resale or with a view to use in the production of goods or supply of services for commercial sale, and the content of contract award is related to commercial secret and is approved by the head of the entity or the personnel authorized by the head;
2. where circumstances specified in subparagraph 2 of paragraph 1 of Article 104 of the Act exist;

3. confidential procurements in addition to the circumstances specified in the preceding two subparagraphs; or
4. other circumstances as prescribed by the responsible entity.

Where the content of contract award referred to in subparagraph 1 of the preceding paragraph is related to commercial secret, the entity may exclude the content of contract award from the dissemination of the outcome of an award to be published or to be notified to all tenderers in writing. If only partial content of contract award involves commercial secret, the rest shall still be published and be notified to all tenderers.

The term "within a specific period of time after award" referred to in Article 61 of the Act means 30 days from the date of award.

Where the outcome of an award is not published on the Government Procurement Gazette in whole or in part pursuant to Article 61 of the Act, the award data in complete shall still be provided by the entity to the computer database designated by the responsible entity or to the responsible entity periodically pursuant to Article 62 of the Act.

#### Article 85

Where the outcome of an award is notified to all tenderers in writing pursuant to Article 61 of the Act, the following shall be included in the notification:

1. the job number, if applicable;
2. a summary of the nature and quantity of the subject awarded;
3. the name of the winning tenderer;
4. the award price; and
5. the date of award.

Where a contract cannot be awarded, the entity shall notify all tenderers of the reasons thereof. .

#### Article 86

An entity shall transmit the award data required by Article 62 of the Act by means of information network to a computer database designated by the responsible entity.

Where the award price has been transmitted pursuant to Article 61 of the Act to the database designated by the responsible entity within a time-limit, the award data need not be transmitted again.

### **Chapter 4 Administration of Contract Performance**

#### Article 87

The term "major part" referred to in paragraph 2 of Article 65 of the Act means any of the following circumstances:

1. the major part specified in the tender documentation; and
2. a part which shall be fulfilled by the winning tenderer itself specified in the tender documentation or pursuant to other laws and regulations.

#### Article 88

(deleted)

#### Article 89

An entity may provide in the tender documentation that the winning tenderer shall report to the entity for filing concerning the subcontracting of a professional part or a part reaching a certain quantity or value.

### **Chapter 5 Inspection and Acceptance**

#### Article 90

For the following procurements of construction work or property pursuant to paragraph 1 of Article 71 of the Act, an inspection and acceptance may be conducted by examining the documents prepared by the procurement unit instead of inspecting the object directly:

1. where a property is supplied by a public enterprise at a certain fee;
2. where an object procured is put into use instantly or within a very short period of time, thus making a direct inspection difficult;
3. small procurements;
4. where it is a partial inspection and acceptance by shipment, segment or part, and the value of it does not exceed one tenth of the threshold for publication;
5. where certificates of quality or quantity have been issued by a government entity or an impartial third party after conducting inspection; or
6. other circumstances as prescribed by the responsible entity.

Where it is a circumstance of subparagraph 4 of the preceding paragraph, a consolidated certificate of settlement and acceptance shall be prepared for the outcomes of inspection and acceptance of each shipment, segment or part after all of them are completed.

#### Article 90-1

For the procurement of services, an inspection and acceptance may be conducted by examining the documents prepared by the procurement unit, or by convening an evaluation meeting; the documents or meeting records thereof may be regarded as the record of inspection and acceptance.

#### Article 91

The inspection and acceptance personnel shall be charged with the following responsibilities:

1. the chief inspector shall chair the inspection and acceptance procedure, inspect the outcome of contract performance by sampling to see if there is any non-conformity to the requirements of the contract, drawings or samples, and make a decision in the event that a non-conformity exists;
2. the co-inspector shall co-inspect by sampling to see if there is any non-conformity to the requirements of the contract, drawings or samples, and co-make a decision in the event that a non-conformity exists, except for simple procurements; and
3. the assistant inspector shall assist in the inspection and acceptance procedure, except for simple procurements.

The co-inspector shall be a personnel of the taking-over or end-using entity/unit.

The assistant inspector shall be a person of the units of design, supervision or procurement, or a professional or a person of an organization entrusted by the entity.

Where there are measuring, inspecting or testing procedures or standards for inspection and acceptance by laws, regulations or contract, they shall be adopted.

Where there is a procurement supervision personnel, he/she shall watch over the proceedings of inspection and acceptance.

#### Article 92

A construction contractor shall notify the construction supervision unit and the entity in writing of the date of completion prior to or on the date of completion. Unless otherwise specified in the contract, the entity shall, accompanied by the supervision unit and the contractor and within 7 days from the date of receipt of the written notification, check the completed items and quantities with the requirements specified in the contract, drawings or samples to ascertain that the construction work is completed. The entity may still ascertain completion of the construction work in case that the representative of the contractor is not present in the inspection event.

After completion of construction work, the supervision unit shall, within 7 days after completion of the construction work, provide the drawings, detailed list of settlement, and other data required by the contract to the entity for reviewing, except otherwise specified in the contract. Where there is a preliminary inspection procedure, the entity shall conduct the

preliminary inspection and make a record within 30 days from the date of receipt of all of the foregoing data.

The preceding two paragraphs shall apply mutatis mutandis to the procurement of properties and services where a preliminary inspection is adopted.

#### Article 93

Where a preliminary inspection is adopted and passed, the entity shall conduct the inspection and acceptance and make a record within 20 days, unless otherwise specified in the contract.

#### Article 94

Where no preliminary inspection is adopted, the entity shall, unless otherwise specified in the contract, conduct the inspection and acceptance and make a record within 30 days after either receiving a ready-for-inspection notification from the contractor or completing the prior procedures for inspection and acceptance.

#### Article 95

Where the time-limit set out in the preceding three articles needs to be extended due to extraordinary circumstances, it shall be subject to the approval of the head of the entity or the personnel authorized by the head.

#### Article 96

The record of inspection and acceptance made by an entity pursuant to paragraph 1 of Article 72 of the Act, shall include the following particulars, and be signed jointly by the personnel conducting the inspection and acceptance. Where there is a procurement supervision personnel or a representative of the contractor attending the inspection and acceptance, he/she shall also sign on the record.

1. the job number, if applicable;
2. a summary of the nature and quantity of the subject of inspection and acceptance;
3. the name of the contractor;
4. the time-limit of contract performance;
5. the date of completion of contract performance;
6. the date of inspection and acceptance;
7. the outcome of inspection and acceptance;
8. the non-conformity between the outcome of contract performance and the requirements of

the contract, drawings or samples, if applicable; and

9. other necessary matters.

The entity may still conduct inspection and acceptance in the absence of the representative of the contractor. The same shall also apply to the checkup, test, examination or preliminary inspection prior to inspection and acceptance.

#### Article 97

Where an entity, pursuant to paragraph 1 of Article 72 of the Act, notifies a contractor to make improvement, remove the rejected item or re-do the work, or replace the rejected item within a time-limit, the entity shall conduct the inspection and acceptance again when the contractor completes the work within the time-limit.

The time-limit referred to in the preceding paragraph shall be subject to the decision of the chief inspector if not specified in the contract.

#### Article 98

Where a partial acceptance is conducted pursuant to paragraph 1 of Article 72 of the Act, the partial payment shall be limited to the items accepted, and a part thereof may be deferred for payment depending on the circumstance of non-conformities.

Where an acceptance with price-reduction is conducted pursuant to paragraph 2 of Article 72 of the Act, the way to reduce the price shall be subject to the requirements of the contract. Where no requirement is specified in the contract, the entity may reduce the price of the non-conformities found by taking into account the contract price, market price, additional charge, damages, punitive penalties, etc.

#### Article 99

Where a part of the subject of contract has been completed, and an entity deems that it is necessary to use the completed part or that the already fulfilled part is subject to diminishment or perishment, the part shall be inspected and accepted in advance or be inspected by segment so that the outcome may be used as a basis for acceptance. In such event, payment may be made for such part and the guarantee period for such parts may commence.

#### Article 100

Where inspectors disassemble the covered parts of a construction work or property for inspection or analytical inspection, the expenses of disassembling, repairing, or conducting analytical inspection shall be borne by the relevant parties specified in the contract. Where it is not specified in the contract, the expenses shall either be borne by the contractor in the event that there are non-conformities between the outcome of disassembling or analytical

inspection and the requirements of the contract, or be borne by the entity in the event of conformity.

#### Article 101

For a procurement of construction work or property whose value reaches the threshold for publication, a certificate of settlement and acceptance or the similar shall be prepared by the entity, except for the procurements specified in subparagraph 1 of paragraph 1 of Article 90 or other circumstances as prescribed by the responsible entity. For a procurement of construction work or property whose value does not reach the threshold for publication, the entity may prepare a certificate of settlement and acceptance at its own decision.

The certificate of settlement and acceptance or the similar referred to in the preceding paragraph shall be prepared by the entity within 15 days after completion of inspection and acceptance, and shall be signed by the chief inspector and the procurement supervision personnel. Where the time-limit needs to be extended due to extraordinary circumstances, it shall be subject to the approval of the head of the entity or the personnel authorized by the head.

### **Chapter 6 Dispute Settlement**

#### Article 102

Where a supplier files a protest in writing with an entity pursuant to paragraph 1 of Article 75 of the Act, the supplier shall submit to the entity the protest in Chinese with the following particulars and affix its signature or seal to the protest. Where documents in foreign languages are attached, the Chinese translation of the part related to the protest shall be submitted while that of the other parts shall also be submitted upon the entity's notification, if necessary.

1. The name, address, telephone number and name of the responsible person of the supplier;
2. The name, gender, date of birth, occupation, telephone number, and domicile or residence of the agent, if there shall be one;
3. The facts and reasons of the protest;
4. The entity which the protest is referring to; and
5. Year, month and day of the protest.

Where the supplier referred to in the preceding paragraph does not have a domicile, office, or business office in this nation, the protest shall be filed by an agent having a domicile, office, or business office in this nation.

Where a protest does not meet the requirements of the preceding two paragraphs, the entity may reject it. However, if the aforementioned errors or omissions can be corrected, the



protesting supplier shall be allowed to make correction within a specified time-limit. Failure to make the correction within the time-limit shall render the protest rejected by the entity.

#### Article 103

An entity handling a protest may inform the protesting supplier to present its opinions orally at a place designated by the entity.

#### Article 104

Where the date of receipt of a notification from an entity and the date of public notice given by the entity are different, the later one shall be deemed as the commencement date of the time-limit prescribed in subparagraphs 2 and 3 of paragraph 1 of Article 75 of the Act.

#### Article 104-1

The dates of submission of a protest and a complaint depend on the date on which the protest is filed with the procuring entity and the date on which the complaint is filed with the Complaint Review Board for Government Procurement (CRBGP), respectively.

In the event that the supplier files its protest or complaint to a wrong entity, the date on which such protest or complaint is filed with the wrong entity shall be deemed as the date of receipt of the protest or complaint.

#### Article 105

A procuring entity shall reject a protest filed beyond the statutory period, and notify it to the protesting supplier in writing.

#### Article 105-1

A procuring entity may review a rejected protest and the facts and reasons thereof, and nullify or change the initial result or suspend the procurement procedures provided that the entity deems that the protest is justifiable.

#### Article 106

(deleted)

### **Chapter 7 Supplementary Provisions**

#### Article 107

The term "number of local employees" referred to in Article 98 of the Act, shall be subject to the requirements of paragraph 3 of Article 38 of the Enforcement Rules of the People with Disabilities Rights Protection Act, and be calculated based on insurance units; the term "term of contract performance" shall commence from the date of contract-signing to the date of contract-fulfillment, except any of the following circumstances:

1. where there is a commencement date or starting date of contract performance, the date shall apply. In the event that both dates are specified in the contract, the later one shall apply.
2. where an entity notifies the supplier to suspend all contract performance, the period of suspension shall not be included.
3. where it is an open contract subject to the entity's notification for contract performance, within a certain period of time, the actual number of days of actual contract performance .

A winning tenderer shall, pursuant to Article 98 of the Act, employ a minimum of one percent of the total number of local employees for the physically or mentally disabled and the aborigines respectively during the term of contract performance. The number of the disabled and the aborigines employed shall be calculated based on the integer values, excluding the fractional remainder.

#### Article 108

Where a winning tenderer employs the physically or mentally disabled or the aborigines at a number less than that required by paragraph 2 of the preceding Article, the tenderer shall, based on the deficient number, pay the substitute fee for previous month to the exclusive account of the employment fund established for the disabled and the exclusive account of the employment fund established for the aborigines respectively by the tenth day of every month.

The value of the substitute fee referred to in the preceding paragraph shall be calculated by the deficient number times the minimum monthly wage. For a period less than one month, the fee shall be counted at a daily fee of the minimum monthly wage divided by 30.

#### Article 109

Where an entity selects an investor to construct or operate a project pursuant to Article 99 of the Act, and where the contract is to be awarded in the principle of the value a supplier promises to offer to the entity, the entity may prescribe one of the following in the tender documentation and award a contract to a tenderer whose tender meets the requirements set forth therein:

1. where a government estimate is set for the procurement, a tenderer whose tender price is the highest one and not less than the government estimate;
2. where no government estimate is set for the procurement, a tenderer whose tender price is the highest one and reasonable;
3. where an award is made to the most advantageous tender, the most advantageous one

determined by the head of the procuring entity or the majority of the evaluation committee;  
or

4. where multiple award is adopted, tenders meeting the spirit of competition in regard to the highest price or the most advantageous tender.

The preceding paragraph shall apply mutatis mutandis to the circumstances where an entity prescribes in the tender documentation that the tender price include expenditures and revenues of the entity, or that the entity provide the property or rights to the supplier for usage, in exchange of a return without expenditures from the entity, provided that the contract is to be awarded in the principle of the value a supplier promises to offer to the entity.

#### Article 109-1

Pursuant to paragraph 3 of Article 101 of the Act, the entity shall notify the supplier in writing that the supplier may raise its written or verbal opinion within 10 days from the date following the date of receipt of the written notification.

Where the supplier would raise its verbal opinion pursuant to paragraph 3 of Article 101 of the Act, the supplier shall make it at a place designated by the entity, and the entity shall record the opinion in writing, or by audio or video recording, etc.

When notifying the supplier of the facts, reasons, and the period referred to in paragraph 1 of Article 103 of the Act, pursuant to paragraph 1 of Article 101 of the Act, an entity shall indicate in the notification that the supplier may file a written protest with the procuring entity within 20 days from the date following the date of receipt of the notification if the supplier deems that the notification is in breach of the Act or untrue, and that the supplier who does not file a protest within the prescribed time-limit will be published on the Government Procurement Gazette.

When notifying the protesting supplier of the decision against the protest in writing pursuant to Article 102 of the Act, an entity shall indicate in the notification that the supplier may file a written complaint with the Complaint Review Board for Government Procurement (CRBGP) within 15 days from the date following the date of receipt of the decision against the protest if the supplier objects to it.

#### Article 110

Where there is a final and irrevocable "not guilty" verdict under the circumstance of subparagraph 6 of paragraph 1 of Article 101 of the Act, the supplier shall be permitted to participate in tendering, or be awarded or sub-contracted from the date of the verdict.

#### Article 111

(deleted)

## Article 112

(deleted)

## Article 112-1

The term "date of notification" referred to in subparagraph 3 of paragraph 1 of Article 103 of the Act means the date of issuance of notification by the entity to the supplier that the supplier has any of the circumstances specified in paragraph 1 of Article 101.

The term "special need" referred to in paragraph 2 of Article 103 of the Act means that it is necessary for an entity to conduct a procurement based on the public interests under any of the following circumstances:

1. where any of the circumstances provided for in subparagraphs 1, 2, 4 or 6 of paragraph 1 of Article 22 of the Act exists;
2. where the tendering procedure is nullified for two times or more as the result of price reduction pursuant to Articles 53 or 54 of the Act, and where the government estimate or the amount recommended by a committee has not been raised;
3. where any of the circumstances provided for in subparagraphs 1 or 2 of paragraph 1 of Article 105 of the Act exists;
4. other circumstances as prescribed by the responsible entity.

## Article 112-2

The term "procurement documents" referred to in Article 107 of the Act means all kinds of written or non-written records and attachments thereof generated during the period from the entity's planning of procurement to the supplier's completion of contract responsibilities.

## Article 113

This Enforcement Rules shall take effect May 27, 1999.

The amendment to this Enforcement Rules 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.