

Regulations for Selection and Fee Calculation of Technical Services Providers Entrusted by Entities

Promulgated on May 17, 1999

Amended on May 3, 2002

Amended on Dec. 11, 2002

Amended on Jan. 15, 2010

Amended on Dec. 27, 2012

Chapter 1 General principles

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

An entity shall conduct the selection of technical service providers publicly and objectively referred to in subparagraph 9 of paragraph 1 of Article 22 of the Act. Where 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 "technical services" referred to in these regulations means the technical services related to feasibility research, planning, designing, supervision or professional construction management ,or other services provided by engineering consulting firms, professional engineering offices, architect offices, professional engineering consulting firms and any other natural persons or legal persons that may provide such services according to the other laws.

The technical services that shall be provided by licensed professionals and technologists or legal organizations according to the laws referred to in the preceding paragraph, shall not be provided by other persons or organizations.

Article 4

Following is a list of feasibility research that an entity may, depending on the characteristic of individual procurement and actual needs, entrust a provider for the provision thereof.

1. Research and formulation of the outline of the plan
2. Preliminary examination and investigation of jobsite.

3. Data search of relief map of nearby the jobsite, surveying, geology exploration, soil investigation and testing, hydrological and meteorological survey and investigation, material etc., and other investigations, tests and measurements.
4. Investigation and research in respect of urban plan or regional plan.
5. Research and analysis on the demand of the plan.
6. Analysis, organization and evaluation of the data related to the plan.
7. Drafting and comparison evaluation of the proposals.
8. Preliminary cost estimation and economic efficiency evaluation of the plan.
9. Financial analysis and advice of the plan.
10. Analysis of risk and uncertainty of the plan.
11. Research of the operation and management methods.
12. Preliminary transportation and traffic impact assessment of the plan.
13. Feasibility study report and advice of the plan.
14. Other technical services related to feasibility study prescribed in the tender documentation or contract.

Article 5

Following is a list of planning that an entity may, depending on the characteristic of individual procurement and actual needs, entrust a provider for the provision thereof.

1. Reconnaissance of construction site.
2. Drawings of construction site location.
3. Reviews and suggestions of feasibility study results.
4. Surveying, geology exploration, soil investigation and testing, drilling exploration and testing, hydrological and meteorological observation and survey, material investigation and testing, model testing and other investigations, tests and measurements.
5. Supplementation, analysis and evaluation of the data related to the project.
6. Transportation planning.
7. Drawings of planning such as the sketch of allocation plans, elevations, plans and symbolic sections.
8. Drafting the work projects such as the preliminary suggestions of design guides, specifications for grading explanation, structure types and construction methods(including the programs and comparisons of special structures), material classifications, points of structures and equipment systems, earthquake resistant and corrosion prevention of structures, construction earthworks, durations of construction projects, preliminary estimate of construction expense.
9. Planning in respect of urban plan and regional plan, etc.
10. The preliminary planning of implementation plans, traffic maintenance plans,

monitoring and emergency response, etc.

11. Planning of time-limit for operation and strategies of maintenance management.

12. Planning reports.

13. Other technical services related to planning prescribed in the tender documentation or contract.

Article 6

Following is a list of design that an entity may, depending on the characteristic of individual procurement and actual needs, entrust a provider for the provision thereof.

1. Basic design:

a) Planning report and examination and suggestion on the data related to the subject of design.

b) Detailed surveying, detailed geology exploration, drilling exploration and testing that are not conducted and other detailed investigation, testing and inspection prescribed in the contract.

c) Basic design including basic design drawings and written materials:

(1) Design drawings for structure and its environment allocation.

(2) Basic design drawings, such as plans, elevations, sections and other basic design drawings prescribed in the tender documentation.

(3) Design for structure and equipment system.

(4) Evaluation and comparison for construction materials.

(5) Evaluation and comparison for structure types and construction methods.

(6) Evaluation and comparison for special structure.

(7) Evaluation report of earthquake resistant strategies.

(8) Evaluation report of corrosion prevention of structures.

(9) Specification guidelines.

d) Calculation analysis of quantity and review of laws.

e) Formulation of guidelines of detailed design.

f) Construction earthworks plan.

g) Construction planning and preliminary construction procedures scheduling.

h) Cost estimate.

i) Formulation of procurement strategies and principles for separate tendering.

j) Report on basic design.

2. Detailed design:

a) Supplemental surveying, supplemental geology exploration, supplemental drilling exploration and testing that are not conducted and other necessary supplemental investigation and testing.

b) Written materials and drawings of the detailed design:

(1) Drawings and written materials of construction, such as allocation plans, plans,

elevations, sections, drainage allocation plans, geography bar charts, and so forth.

(2) Drawings and written materials of structure, such as structure detailed drawings, structure calculating reports, and so forth.

(3) Drawings and written materials of equipment, such as detailed drawings, calculation reports and specifications, etc. of water and electricity facilities, air condition, fire fighting, telecommunication, machinery, control instrumentation, and so forth.

c) Prescribing the specification of construction works or materials.

d) Estimating and prescribing the quantity of the construction or material.

e) Cost analysis and estimation.

f) Formulating the implementation plan and traffic maintenance plan.

g) Prescribing the separate tendering plans and progress of construction.

h) Prescribing the budget and the tender documentation.

3. Substituting to apply for the submission of information for evaluation purpose relating to building license, and drawings for water and electricity facilities, air condition, fire fighting or telecommunication construction.

4. Assistance related matters in handling invitation to tender and award of contract include the following:

a) Assisting in various process of an invitation to tender including attendance in pre-tender meetings, design, public explanation meeting for construction.

b) Assisting in explaining, amending or supplementing the invitation documents.

c) Assisting in the qualification evaluation and enquiry of the tenderers, their sub-contractors and equipment suppliers.

d) Assisting in bid opening, bid evaluating and providing suggestions on award of contract .

e) Assisting in contract signing.

f) Assisting in handling dispute arising from or in the process of invitation to bid, bid evaluation or award of contract.

5. Other technical services related to design prescribed in the tender documentation or contract.

The design referred to in preceding paragraph shall be in conformity to the purposes of saving energy, reduction emission of greenhouse gases, environment protection, saving resources, economic durability, and consider landscape, natural biology, gender friendly environment, and life aesthetics.

Article 7

Following is a list of Construction supervision that an entity may, depending on the characteristic of individual procurement and actual needs, entrust a provider for the provision thereof.

1. Plan for construction supervision.
2. Assigning staff to station of the construction site to supervise and investigate on the performance of the contract by the contractor continuously.
3. Evaluation of implementation plan of the construction, estimated scheduling, construction drawings, equipment and material samples, plan of quality Control, plan to catch up progress of the project, extension of the schedules of the contract, and other items submitted for examination and control by the contractor.
4. Evaluation on the qualification of major sub-contractors and equipment manufacturers.
5. Examination and checking of the constructor's positioning, construction level surveying and other surveying.
6. Supervision and examination on the management of materials and equipments, and quality control by the provider.
7. Supervision on the contractor's implementation at the construction site works as regards matters of safety, sanitation, maintenance of traffic flow and environmental protection.
8. Evaluation and management on the progress of the contract and estimate of payment based on progress.
9. Coordination and consolidation of interface relevant to the performance of the contract.
10. Suggestions and handling of contract amendment.
11. Supervision on electrical and mechanical equipment testing and trial operation.
12. Evaluation of the construction completion documentation, settlement of detailed list and other settlement prescribed in the contract, etc.
13. Assisting in the acceptance procedures.
14. Assisting in the handling of dispute arising out of the performance of the contract.
15. Other technical services related to Construction supervision prescribed in the tender documentation or contract.

The assigning staff to station of the construction site, staff qualifications, numbers, full-time (or not), duration to station, and the division of responsibilities referred to in the subparagraph 2 of the preceding paragraph, shall be prescribed in the contract.

Architect, engineer or other professional and technical conducting the supervision or supervision certification business matters, shall conduct in person on-site inspection, survey test, preliminary acceptance, acceptance, attending the meeting, etc. in accordance with the laws or contract terms, shall conduct, explain and partially conduct in person .

Article 8

Following is a list of technical services referred to in Articles 4 to 7 that an entity may, depending on the characteristic of individual procurement and actual needs, entrust a provider by the individual or joint tender for the provision thereof.

1. Research, evaluation and supplement of related professional technical data and report.
2. Evaluation and suggestion on alternative proposal, the feasibility of the design and implementation.
3. Drafting reports and submitting for examinations of each stage of environmental impact assessment and related reports.
4. Drafting reports and submitting for examinations of water and soil conservation plans.
5. Applications for candidate of green building or certification of green building.
6. Evaluation on the drawings, supervision and inspection for special equipment, or supervision on its installation.
7. Training of operational and maintenance staff.
8. Assisting in the procurement of machinery, equipment and parts.
9. Improvement on the technology relevant to manufacture and operation.
10. Evaluation on facility safety.
11. Assisting in equipment operation and operation management.
12. Formulating or examining operational and maintenance manuals.
13. Value engineering analysis.
14. Assisting in the handling of civilian demonstration, salvage from disasters or removing of lines and pipes, etc.
15. Other professional technical services prescribed in the tender documentation or contract.

Article 9

Following is a list of the professional construction management that an entity may, depending on the characteristic of individual procurement and actual needs, entrust a provider for the provision thereof.

1. Enquiry and examination on the study of feasibility:
 - a) Evaluation on the demand for such plan.
 - b) Examination on the feasibility study report, environmental impact report and environmental impact assessment report.
 - c) Evaluation or comparison research on the proposals.
 - d) Financial analysis and recommendation on the sources of finance.
 - e) Formulation of the preliminary budget.
 - f) Formulation of the schedule on the summary progress of the plan.
 - g) Evaluation and recommendation on the design requirements.

h) Recommendation on the selection of providers for professional services and technical services and the formulation of related documents.

i) Analysis on the acquisition of land and compensation for removal thereon.

j) Evaluation on the sources of required resources.

k) Other professional construction managements relevant to the study of feasibility prescribed in the tender documentation or contract.

2. Enquiry and examination on the planning:

a) Enquiry and examination on drawings of planning, drafting the work projects, etc.

b) Enquiry and examination on Planning in respect of urban plan and regional plan, etc.

c) Enquiry and examination on the guidelines of the design.

d) Enquiry and examination on planning results.

e) Other professional construction managements relevant to planning prescribed in the tender documentation or contract.

3. Consultancy and examination on the design:

a) Examination on the design results, coordination and supervision on the works of various professional services and technical services providers.

b) Recommendation on the selection of materials, equipment system and the schedule of the procurement.

c) Formulation of the overall progress chart of the plan.

d) Management and coordination of the progress of the design.

e) Examination and coordination of the design, specifications (including the specification guidelines) and drawings.

f) Quality control and acceptance check for the design.

g) Recommendation and examination on the feasibility of construction implementation.

h) Audit on the procedure as regards the calculation of service fees for professional and technical service provider.

i) Examination and formulation of budget as regards the tender of construction project and equipment.

j) Recommendation and formulation of tendering strategy and the principles of separate tender, or examinations of separate tender plans.

k) Establishment of document files and information system on construction management.

l) Other professional construction managements relevant to the design prescribed in the tender documentation or contract.

4. Examination and consultancy on invitation to tender and awarding of tender:

a) Preparation and examination of invitation to tender documents.

b) Assistance in the handling of tendering procedure as regards the explaining,

clarifying, supplementing or amending the invitation documents.

c) Assistance in the handling of tendering procedure as regards the formulation and examination process on the qualification of providers.

d) Assistance in the examination of invitation documents and the evaluation of tenders.

e) Assistance in the signing of contract.

f) Assistance in the procurement of relevant materials, equipment and parts.

g) Other professional construction managements relevant to invitation to tender and awarding of tender prescribed in the tender documentation or contract prescribed in the tender documentation or contract.

5. Examination and consultancy relating to the supervision of work and the management of contract performance:

a) Coordination and consolidation of the interface of various work items.

b) Examination or audit of implementation plan, quality control plan, estimated schedule, work drawings, sample of materials and equipment and other materials submitted for examination.

c) Examination and audit on the qualification of major sub-contractors and equipment manufacturers.

d) Supervision or audit on the management of quality control of work.

e) Supervision or audit on the health and safety, maintenance of traffic and environmental protection at the construction site.

f) Examination, analysis, supervision and improving suggestions on the work schedule.

g) Recommendation and handling of changes in the contract.

h) Examination and evaluation on claims and disputes over the contract, excluding to be the legal representative.

i) Examination or audit of information on settlement.

j) Examination or audit on the drawing of the completed work and the information on settlement.

k) Supervision and recommendation on the testing of drainage, electrical, piping and all kinds of equipment and trial operation.

l) Assistance in the handling of acceptance and transfer of the project.

m) Training of operation and maintenance staff of equipment.

n) Examination or formulation of maintenance or operational manuals.

o) Evaluation on the drawings, supervision and inspection for special equipment, or supervision on its installation.

p) Compilation, evaluation and supplementation of relevant materials of the plan.

q) Other professional construction managements relevant to the construction supervision and management of the performance of the contract prescribed in the tender documentation or contract.

An entity entrusting a provider to conduct the construction management may, in addition to the matters provided in the preceding paragraph, and depending on the nature of the construction and its practical needs, integrally entrust to such provider, the construction supervision referred to in paragraph 1 of the Article 7, and matters referred to in subparagraph 5 of the preceding paragraph excluding duplicate entrusting and conflict of interest situation.

Article 10

Where an entity, due to insufficient professional staff or ability, requires providers to contract for the professional construction management services referred to in the preceding Article, shall first prepare a plan, stating the following items, and implement it after the budget approval procedure:

1. The special characteristics of the plan and the degree of difficulty in its implementation.
2. The reason why professional construction management has to be entrusted.
3. The matters to be entrusted and a general estimate on the required expenses.
4. The qualification of the provider and the evaluation items.
5. The expected benefits by entrusting the professional construction management.

Chapter 2 Selection and Price Negotiation

Article 11

Unless otherwise provided by laws and regulations, an entity that entrusts a provider for technical services may prescribe the following items, according to the nature and the practical need of each case, in the invitation documents:

1. Services required, content and demand of the work involved.
2. Technical staffs that shall be appointed by the provider, and the qualification and certification documents of such staffs or any other qualifications relevant to the provision of services.
3. The objectives and result that shall be achieved upon completing the services.
4. Where services involve the provision of materials, equipment or space, the specifications that must be defined by provider.
5. Proposal on the services that shall be provided by the provider and the contents thereof.
6. The provider or its major staff involved in the project shall possess experience for providing services equivalent or similar to that required by the tender.
7. The designated place and deadline for the submission of the proposal.
8. Items for evaluation, evaluation criteria and selection methods.
9. The ownership of the intellectual property right.

10. Methods of price negotiation and contract award with regard to the winning provider.
11. Methods for the calculation and payment of fees.
12. Points to note in tendering and contract terms.
13. Where the provider is required to present briefing during selection, the procedures that shall be followed.
14. Award of a fixed sum to the unsuccessful tenders and the handling procedures of their tenders design drawings or proposal.
15. Budget of entrusting service fees, estimated amount, fixed amount or percentage of service fees.
16. Any other necessary matters.

Where the provider is entrusted with a service that is referred to as a professional construction management under Article 9, at least half of the project personnel must be the full time staffs of such provider.

Article 12

The demand of the work referred to in subparagraph 1 of paragraph 1 of the preceding Article may include origin, demand description, current situation of construction site, geography data, upper limits of construction expense, predicted contract duration for technical services, etc.

Article 13

Issues regarding proposal and its content referred to in subparagraph 5 of paragraph 1 of Article 11 may include the following:

1. Plan summary and operation procedure.
2. Current situation of construction site and analysis of related laws.
3. Total work schedule and major working items schedule.
4. Service fees(where fixed price is adopted, describe the analysis of service fees)
5. Description of ideas and conceptions of planning and design, such as saving energy, reduction emission of greenhouse gases, environment protection, saving resources, economic durability, and consider landscape, natural biology, gender friendly environment, and life aesthetics.
6. Presence of design drawings include scale, size, page numbers, framing specifications of the drawing, and so forth.
7. Materials in design and written materials for structures.
8. Required items for plans, reports and drawings in accordance with laws.
9. Preliminary estimate of construction expense and expense analysis of major work items.
10. Analysis for implementation plans.

11. Quality control plans includes technical services and major work items.
12. Content of service plans, drawings and written materials, and chapter order of the proposal, and so forth.
13. Personnel organization and academic, work experience, specialization of major participating personnel.
14. Reputation and performance records of the provider.

Where an entity entrusts a provider for technical services of construction supervision or professional construction management, the content referred to in subparagraphs 5 to 10 of the preceding paragraph may be excluded in the proposal.

Article 14

12 of paragraph 1 of Article 11 may, consisting to the fair and rationale principles, include the following:

1. The official language used in the contract should be Chinese, and a translation in a foreign language may be attached. Where a conflict arises between the Chinese and the translated version of the contract, the Chinese shall prevail.
2. Contract terms shall be construed and applied in accordance with the applied law of Taiwan; where special circumstances exist, the agreed terms shall prevail.
3. Procedures on dispute settlement, including details such as the designated arbitration institution, the court of jurisdiction, and the governing law, if necessary.
4. Agreement in advance on tax liability, the taxpayer shall be the one prescribed by the laws of Taiwan as having to bear the tax liability.
5. The responsibility undertaken and the guarantee of service quality of the provider.
6. The premium required for the “professional liabilities insurance” to be effected by the provider shall be included in the services fees. The entity shall prescribe the scope, amount and period of the insurance, deductible limits of insurance policy, according to the characteristics of the services required.
7. Service items, contract period and calculating methods of service fees.
8. Progress of each period, calculating methods of progress, payment methods and amount.
9. Where the scope of services includes the training of operational and maintenance staffs on behalf of the entity, the service fees, shall not include fees relating to the travel and living expenses of the staffs undergoing training. The entity shall pay such expenses by itself.
10. The ownership of intellectual property right of the written documents and drawings designed by the entrusted provider.
11. The responsibilities applicable to losses incurred by the entity due to erroneous planning and design, irresponsible supervision or poor management.
12. The items of the entrusted project that shall be held in confidence by the provider

and the penalties for the breach of confidentiality.

13. The plan on work supervision that must be submitted by the provider entrusted with work supervision.

14. The periodic report such as daily report, weekly report or monthly report, that must be submitted to the entity for evaluation according to the characteristics of work or agreed professional service items shall include the work schedule, number of staff employed for the job, number of working hours, the occurrence of any extraordinary situation and its analysis and reactionary means, and so forth.

15. Rules and upper limits of delay penalty on the determination and the handling procedure of project delays and other events of default.

16. Rules governing the termination, rescission and settlement of the contract.

The entity may, depending on the characteristic of individual procurement and actual needs, prescribe the items, scope and upper limits of compensation for losses referred to in subparagraph 11 of the preceding paragraph in the contract according to losses referred to in the preceding paragraph, and may prescribe the exclusion applicable to the contract.

Article 15

An entity that entrusts a provider for technical services shall state, in its invitation documents, the ownership of any intellectual property rights derived from the work or result of the technical services provided by the provider, 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 be authorized to exercise such right or acquire the right referred to in the preceding paragraph, in part or in whole, according to the needs of the entity.

Article 16

An entity entrusts a provider for technical services, where all tendering providers are required to submit their design drawings or proposal on the services to be supplied, shall prescribe in its invitation documents the conditions to use other winning drawings and the scope and limit of authority of the entity, the invitation documents may also prescribe that an award of a fixed sum may be given to the unsuccessful tenders that has attained a certain score or rank.

The design drawings or proposal of unsuccessful tenders that has attained a certain score or rank referred to in the preceding paragraph, may be authorized to exercise such right or acquired the right, in part or in whole to the entity, according to the actual needs and reasonable payment.

Article 17

An entity that entrusts providers for feasibility study, planning, design or construction supervision, unless otherwise provided by laws and regulations, issues regarding the evaluation items may include the following:

1. The experience and reputation of the provider on areas related to technical service. It may include good or poor record, or achievement.
2. The completeness and feasibility of the proposal, and the level of understanding of the service items.
3. Work plan, the estimated schedule of the project and the capability to perform the contract with quality on time. It may include the major participating personnel, numbers, amount and delays (or not) for performing contract, and so forth.
4. The experience, ability, specialization and service record in recent 3 years of the project manager and major staff involved in the project, and the professional knowledge related to the Act of the major staff. It may include good or poor record, or achievement.
5. The resources and supporting capabilities of the provider.
6. Control methods for reasonable construction expense.
7. Statement of usage, maintenance, operation management when the construction accomplished.
8. Service fees and analysis of construction expense.
9. Statement of resident participation, landscape design, natural biology, saving energy, reduction emission of greenhouse gases, environment protection, saving resources, economic durability, gender friendly environment and life aesthetics, and so forth.
10. Analysis of environmental influence and construction risks.
11. Adoption of outstanding techniques, construction methods and productions.
12. Award of equal or similar to the technical services in the past 5 years, and past performance records.
13. Any other necessary matters related to the technical services.

Where the evaluation referred to in the preceding paragraph includes drawings competition, issues regarding the evaluation items may include the following:

1. Design concepts.
2. Creative idea and consistence of local culture and life aesthetics in design.
3. Level of understanding of design to the demand of the entity.

The good or poor record, or achievement of the provider or project manager and major staff involved in the project referred to in subparagraphs 1 and 4 of paragraph 1, in addition to be offered by the provider, may be collect or searched on the website of responsible entity by the entity.

Article 18

An entity that entrusts providers for professional construction management,

unless otherwise provided by laws and regulations, issues regarding the evaluation items may include the following:

1. The experience and reputation of the provider on areas related to professional construction management of technical service. It may include good or poor record, or achievement.
2. The completeness and feasibility of the proposal, and the level of understanding of the service items.
3. Work plan, the estimated schedule of the project and the capability to perform the contract with quality on time. It may include the major staff involved in the project, numbers, amount and delays (or not) for performing contract, and so forth.
4. The experience, ability, specialization and service record in recent 3 years of the project manager and major staff involved in the project, and the professional knowledge related to the Act of the major staff. It may include good or poor record, or achievement.
5. The resources and supporting capabilities of the provider.
6. Service fees.
7. Award of equal or similar to the technical services in the past 5 years, and past performance records.
8. Any other necessary matters related to the technical services.

The good or poor record, or achievement of the provider or project manager and major staff involved in the project referred to in subparagraphs 1 and 4 of the preceding paragraph, in addition to be offered by the provider, may be collect or searched on the website of responsible entity by the entity.

Article 19

An entity that entrusts providers for technical services relating to building shall, where the service fees exceed NT\$ 5,000,000, and where the services include the planning and designing of the construction, require the service providers to submit written service proposal and the plan, concepts of design drawings such as allocation plans, plans, elevations, sections and perspectives, etc.; and shall hold a competition for such drawings.

Where the technical service involves the competition of design drawings, the invitation to tender documents shall, in addition to the requirement of Article 11, include the following items:

1. Objectives and principles of the plan.
2. Name and location of the project.
3. Information on the construction site, including the map copy for land ownership, city plan, topography or current state measuring picture, geography surveying data, potential flood or fault data and any other relevant information.

4. Content of the plan and the design, including the indoors or outdoors space usage, quantity, maximum capacity of users or size of the space, ways of usage, equipment required, special requirement and any other requirements.
5. Percentage allowed for increasing or decreasing the actual size of the project location.
6. Estimate on the construction expenses.
7. Construction deadline.
8. Illustration, scale, size, page numbers, framing specifications of the drawing, and so forth.
9. Methods used for expression, including models, transparency and colors requirement and so forth.
10. Any other necessary matters.

Where the service fees is less than NT\$ 5,000,000, and where evaluation adopts drawings competition, shall apply mutatis mutandis to the preceding paragraph, but may not require construction models and colored perspectives.

Article 20

The entity may adopt one or two stage(s) evaluation for the competition of design drawings referred to in the preceding Article, and adopt in accordance with the following principles:

1. The first stage evaluation is limited to the planning and concepts content, and the second stage evaluation includes the actual design content.
2. Brief may be excluded in the first stage evaluation.
3. The tenderer that shall be evaluated qualified in first stage evaluation may attend the second stage evaluation.
4. The second stage evaluation may, in addition to drawings and written materials, include architectural models and colored perspectives.

Article 21

For the selection of providers by entity to entrust a provider for technical services, 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 selection and shall state reasons of rejection to providers that have not been selected.

Article 22

The number of winning providers selected by the Procurement Evaluation Committee may be more than one.

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

Article 23

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, the case shall be handled by way of price negotiation.
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.

The price negotiation referred to in the preceding paragraph shall not lower or derogate the request of tender documentation and the tender commitment of the provider.

Article 24

The award of contract under price negotiation by an entity 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.

Chapter 3 Fee calculation formulas

Article 25

Where an entity entrusts a provider for its technical services, the calculation of service fees shall, according to the type, nature, scale, scope of work, area of work, environment of work, or duration of the work, and so forth, be selected among the following one or more than one method(s) and shall prescribe explicitly in the contract the chosen method:

1. Cost plus fee.
2. A percentage to construction expense.
3. Monthly, daily or hourly payment.

4. Consolidated pricing or unit pricing methods.

The service fees calculated according to the methods referred to in the preceding paragraph shall be evaluated and approved according the fees generally charged. Where additional fees are to be paid after approval, the coverage of the items and amount of such fees shall be stated clearly in the contract.

Article 26

An entity that entrusts a provider for technical services and that the cost plus fees for work method for service fees shall be adopted, may calculate service fees include the following:

1. Direct fees:

a) Direct salary or wage:

This includes the actual salary or wage payable to the staffs directly involved in providing the services, including architects, professional engineers, engineers, and any other experts or staffs of the fields of planning, economics, finance, law, management or operations, plus an additional 30% of the above amount for fees incurred that are related to the staff for official day-off, special day-off, insurance, pension allowance, and so forth.

b) Management fees:

This includes the salary or wages of management and accounting staffs, who are not within the category for payment under direct salary or wages, as well as the insurance, pension allowance, office expenditure, bills for water, electricity, heater and air-conditioner, depreciation or rental on furniture, machinery, equipment, etc., administrative cost, transportation cost of machinery and equipment, cost of mail and telephone, cost on contracting business, advertising cost, cost incurred in the preparation for commencing and ending of work , cost incurred for attending vocational and technical conference domestically or internationally held, cost on the development of market and human resources, research cost or professional communication cost for special business purpose, related tax issues, and so forth. The total amount of management fees however shall not exceed 100% of the direct salary or wages.

c) Other direct fees:

This includes the direct costs incurred during the process of implementing the entrusted project that are not included in the direct salary or wages. This includes such as the cost or fees of: business trip(s), subsidy for construction site, after hour work, professional liabilities insurance, setting up project or site offices and laboratories at the construction site, vehicles used for construction site, data collection, patent, external training of operation and maintenance staffs, production or uses of software for computers, land survey, exploration, tests, chart and report copying and printing,

external consultants and various related taxes and certification by the accountant, and so forth.

2. Fees for work:

Means compensations paid to the provider for providing professional services, including risks, profit, and related taxes.

3. Business tax.

The fees for work referred to in subparagraph 2 of the preceding paragraph shall be set as a fixed amount and shall not be a variable amount that increases proportionately to the amount of the direct salary or wages and management fees. The total amount of the fees for work shall not exceed 30% of the combined value of both the direct salary or wages and the management fees.

Article 27

An entity that entrusts a provider for technical services and that the cost plus fees for work method shall be adopted, may state in the invitation documents the conditions that the provider may be awarded incentive payment for delivering services at lower costs or better efficiency.

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

1. Where the service fee payable has been lowered, a set 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 set 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 upper limit of the contract price.

Article 28

An entity that entrusts a provider for technical services and that the cost plus fees for work method for service fees shall be adopted, shall prescribe and state the following items in the contract:

1. The provider shall record every entry of fees or costs incurred, and shall prepare and save documentary proof. The entity may, depending on the actual needs, visit or entrust a professional third party to visit the office of the provider for the purpose of examination and audit.
2. The upper limit on costs and the handling procedures when such costs exceed the

limit.

The documentary proof referred to in subparagraph 1 of the preceding paragraph shall include invoices, receipts, record or statements of all of the items; except otherwise provided in the contract, photocopies may be used as proof.

Article 29

An entity that entrusts a provider for technical services and that the method of a percentage to construction expense for service fees shall be adopted, shall determined the percentage not more than the percentage figures prescribed in Tables 1 through 4 as attached, according to the subject matter of the construction work, the service items and the degree of difficulty, and separately determined the percentage according to the range of construction expense, or determined the common discount rate. Where the percentage shall be determined more than the percentage figures prescribed in each Table due to the technical services related to complex construction or hi-tech, the entity shall report with reasons to the superior entity and obtain its prior approval.

The term “construction expense” referred to in the preceding paragraph means the actual construction expense incurred in completing the project. This does not include the fees and costs on governmental permits, planning, designing, supervising, professional construction management fees, adjusting construction expense due to price index, business tax, land and right expenses, legal expenses, project management fees of the procuring entity, insurance, interest on items related to the contracting of the construction work by the contractor and other excluding items prescribed in the contact.

Where the construction awarding price is below 80% of the government estimate, the construction expense defined in the preceding paragraph may be set at 80% of the government estimate, but the excluding fees or tax referred to in the preceding paragraph shall be deducted.

Where there is no government estimate and the construction awarding price is below 80% of the amount recommended by an evaluation committee, or in case where there is no recommended amount of the evaluation committee and the construction awarding price is below 80% of the construction budget, the construction expense referred to in paragraph 1 may be set at 80% of the budget, but the excluding fees or tax referred to in the paragraph 2 shall be deducted.

In the event where the contract of construction referred to in paragraph 1 is amended, terminated or rescinded, during the performance of the construction contract, the service fees shall be adjusted by negotiation according to the circumstances.

Article 30

An entity that entrusts a provider for technical services and the method of monthly, daily or hourly payment for service fees shall be adopted, may calculate the salary or wages payable for the service fees according to one of the following methods. Fees apart from salary or wages may be calculated and paid additionally.

1. The amount of monthly payment is calculated according to the monthly salary rates of the staffs specified in the contract.
2. The amount of daily payment is calculated according to the daily wage rates of the staffs specified in the contract.
3. The amount of hourly payment is calculated according to the hourly wage rates of the staffs specified in the contract.

Article 31

Under the circumstances, any of the following costs additional to the service fees shall be added.

1. Where an amendment of the design must be undertaken after the design has been evaluated and approved.
2. Extra fees on supervision, professional construction management and other related costs when the construction exceeds the time-limit prescribed in the contract of technical services constructions.
3. Service fees on tender documentation amendment for re-invitation.
4. Design fees on reports, drawings, submitting for examinations and drawing examinations that are beyond the required design reports, drawings, submitting for examinations and drawing examinations as provided in the contract.

The extra fees referred to in the preceding paragraph may be calculated by using the method of cost plus fees, or by negotiating with the provider.

The additional fees referred to in paragraph 1 where the provider is not responsible for, shall be reviewed and agreed by the entity.

Article 32

Where the technical services entrusted to a provider by the entity are partially completed services, in addition to the service fees calculation method for the uncompleted part of the services according to the methods referred to in Article 25, the fees that are required for reviewing the completed part of the services shall be added to, but the fees shall be reviewed and agreed by the entity.

Article 33

Where the completion deadline of the service required has been shortened, the service fees may be increased according to the level of the time reduced. Such

increment may be negotiated on a case-by-case base.

Where repeated construction services are required by using the same design drawing, the design fees payable shall be reduced accordingly.

Article 34

Under the circumstances where the provider is not responsible for, the entity requests the provider to conduct planning or designing under different conditions for the same service item on different occasions, the repeated planning and designing shall be paid with additional service fees by the entity, but the fees shall be reviewed and agreed by the entity.

Article 35

Where it is necessary for an entity to alter part of the content of the entrusted services, the entity may adjust the service fees and the deadline according to the changes on the service items and the quantity required. With regard to the completed part of the work, service fees that are reviewed and agreed by the entity shall be paid for it.

Article 36

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 installment payment shall be clearly stated in the contract.

In principle, the advanced fees payable 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 37

Where the time frame for fulfilling the contract is longer than a year, the entity that entrusts a provider for technical services may prescribe in the contract the monthly calculating and adjusting contract value starting from the second year according to the index of Average Monthly Earnings of Employees by Professional, Scientific & Technical Services in Taiwan, the applicable adjusting items, methods and the maximum amount of adjustment.

Chapter 4 Supplemental Provisions

Article 38

Where a provider is providing technical services, its service providing staffs shall sign on the completed drawings and documents. A provider shall render technical services through licensed professionals and technologists according to the laws, and such drawings and documents shall be certified according to the laws.

The terms “drawings” and “documents” referred to in the preceding paragraph shall include the budget, design drawing, specifications, written description on construction implementation, and any other documents required to be submitted according to the laws or the contract.

Article 39

Where an entity entrusts a provider for technical services, these regulations may apply *mutatis mutandis* to tenders not handled in accordance with subparagraph 9 of paragraph 1 of Article 22 of the Act..

Article 40

These regulations shall take effect three months after promulgation.

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

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

Table 1. **Recommended maximum percentage of the technical service fees to construction expense of building construction**

Construction expense (in New Taiwan Dollar)	<u>Recommended</u> maximum percentages (%)				
	Type 1	Type 2	Type 3	Type 4	Type 5
For the portion that is less than \$ 5,000,000	7.7	8.3	8.8	9.4	Individual application in accordance with type 4 or using the method of cost plus fees.
For the portion that is more than \$ 5,000,000 and less than \$ 25,000,000	6.6	7.2	7.7	8.3	
For the portion that is more than \$ 25,000,000 and less than \$ 100,000,000	5.5	6.1	6.6	7.2	
For the portion that is more than \$100,000,000 and less than \$ 500,000,000	4.4	5.0	5.5	6.1	
For the portion that is over \$ 500,000,000	3.1	3.6	4.2	4.7	
Type 1	Offices, classrooms, dormitories, residential housings, kindergartens, children caring centers, warehouses, farming and fishing sheds and so forth, and other similar buildings, which are less than 5 stories.				
Type 2	<ol style="list-style-type: none"> 1. General laboratories, training factories, green houses, display rooms, markets, recreational complexes, auditoriums, clubs, restaurants, clinics, audio video lecture rooms, funeral facilities, freezers, gas stations, or parking buildings and so forth, and other similar buildings, which are less than 4 stories. 2. Swimming pools, sports centers or shooting centers. 3. Buildings referred to in Type 1 that are between 6 and 12 stories. 				
Type 3	<ol style="list-style-type: none"> 1. Libraries, research laboratories, stadium, tournament building, industrial plant, theater, cinema, astronomical observatory, art museums, art galleries, museums, scientific museums, aquarium, exhibition halls, radio and television stations, prison or detention houses and so forth, and other similar buildings. 2. Buildings referred to in Type 1 that are above 13 stories. 				

	3. Buildings that serve the purposes referred to in paragraph 1 of Type 2 which exceeds 4 stories.
Type 4	Airports, hotels, concert halls, opera houses, hospitals, memorial shrines, Confucian temples, temples, or memorial buildings and other similar buildings.
Type 5	1. Projects which involves historical buildings. 2. Environmental design and planning for other building constructions such as community areas, school campus or hills development permit, and so forth.
Note	<p>1. The standard of service fees specified in this table includes three service items, namely planning, designing and construction supervision, of which 10% shall cover planning, 45% cover designing and 45% cover construction supervision, but an entity may, depending on the characteristic of individual procurement and actual needs, adjust the percentage allocation.</p> <p>2. Where an architect sub-contracts to structural, electrical or air-conditioning professional engineers or fire-protection facilities engineers according to the law, the service fees are included under the fees for the design and supervision of construction provided in this table. No additional payment shall therefore be made.</p> <p>3. The maximum percentages of service fees specified in this table shall be calculated in different portions of amount range, and shall be applied as the recommended standard rates for budgeting purposes.</p> <p>4. Where a building serves more than two types of the functions as referred to in this table, the rate of the service fees shall be calculated basing on the percentage of the space used for each function and shall be calculated separately.</p> <p>5. Where more than two buildings share the same construction design drawings of the construction site, the service fees shall be calculated in the following formula: $F = A * R \{ 0.75(1 + 1/2 + 1/3 \cdots + 1/N) + 0.25N \}$ Definitions of the above letters: F: design fees. A: construction expense of a building. R: rate of the service fees N: number of buildings sharing the same design drawings</p>

6. The building stories specified in this table means the stories above ground.
7. The service fees shall be calculated by all constructions expense in the same service contract, except for the constructions are divided by the different construction durations or areas and the contract, or the individual constructions in service open contract (excluding the divided procurements in the same construction), prescribe that the service fees are payable by installment or areas.
8. The maximum percentages of service fees for interior decoration or repairing for buildings may be referred to in the same buildings types. Where the retrofit of the existing building that shall be performed structural analysis, and the service fees are estimated by the entity depending on the characteristic of individual procurement and actual needs, this table shall not be applied.
9. Projects which involves extraordinary structure or purpose, small size such as construction expense is less than NT\$ 1 million, a remote location inside national parks or isolated areas, a procuring entity may, depending on the characteristic of individual procurement and actual needs, calculate the service fees for budgeting purposes without limitation of maximum percentages in this table.
10. The maximum percentages specified in this table exclude the service fees of technical services specified in Article 4, subparagraph 4 of paragraph 1 of Article 5, item 2 of subparagraph 1 and item 1 of subparagraph 2 of paragraph 1 of Article 6, and paragraphs 3 to 5 of Article 8 of these regulations. A procuring entity may, depending on the characteristic of individual procurement and actual needs, calculate extra service fees for above-mentioned technical services. When the extra service fees are necessary, the service fees may be calculated without limitation of maximum percentages in this table.
11. The service fees applying for candidate certification or label of intelligent building shall be separately estimated by the entity depending on the characteristic of individual procurement and actual needs without limitation of maximum percentages in this table.

Table 2. **Recommended maximum percentage of the technical services fees to construction expense for non-building construction works**

Construction expense (in New Taiwan Dollar)	Recommended maximum percentages (%)	
	Design and assistance on invitation to tender award	Construction supervision
For the portion that is less than \$ 5,000,000	5.9	4.6
For the portion that is more than \$ 5,000,000 and less than \$ 10,000,000	5.6	4.4
For the portion that is more than \$ 10,000,000 and less than \$ 50,000,000	5.0	3.9
For the portion that is more than \$ 50,000,000 and less than \$ 100,000,000	4.3	3.3
For the portion that is more than \$ 100,000,000 and less than \$ 500,000,000	3.6	2.8
For the portion that is over \$ 500,000,000	3.2	2.4
Note	<p>1. In the event the provider for the design and assistance on invitation to tender and award is also employed for the construction supervision, the percentage used for service items may be reasonably readjusted by an entity, depending on the characteristic of individual procurement and actual needs, referred to in the range of the combination of above percentages.</p> <p>2. The service fees shall be calculated by all constructions expense in the same service contract, except for the constructions are divided by the different construction durations or areas and the contract <u>or the individual constructions in service open contract (excluding the divided procurements in the same construction)</u>, prescribe that the service fees are payable by installment or areas.</p> <p>3. Projects which involves extraordinary structure or purpose, small size such as construction expense is</p>	

less than NT\$ 1 million, a remote location inside national parks or isolated areas, a procuring entity may, depending on the characteristic of individual procurement and actual needs, calculate the service fees for budgeting purposes without limitation of maximum percentages in this table.

4. The maximum percentages specified in this table exclude the service fees of technical services specified in Articles 4 to 5, item 2 of subparagraph 1 and item 1 of subparagraph 2 of paragraph 1 of Article 6, and paragraphs 3 to 5 of Article 8 of these regulations. A procuring entity may, depending on the characteristic of individual procurement and actual needs, calculate extra service fees for above-mentioned technical services. When the extra service fees are necessary, the service fees may be calculated without limitation of maximum percentages in this table.
5. Where the retrofit of the existing construction works that shall be performed structural analysis, and the service fees are estimated by the entity depending on the characteristic of individual procurement and actual needs, this table shall not be applied.

Table 3. Recommended maximum percentage of the technical services fees to construction expense for professional construction management (excluding supervision of work)

Construction expense (in New Taiwan Dollar)	<u>Recommended</u> maximum percentages (%)	Note
For the portion that is less than \$ 300,000,000	3.5	<p>1. The percentages specified in this table means the professional construction management fees to the construction expense.</p> <p>2. The percentages specified in this table means the highest percentage that may be applied to the circumstance of overall entrusting of professional construction management for all construction works, including the consultation and examination of planning and evaluation on feasibility, designing, invitation and award of tender, supervision of work and the management of contract performance, of which 5% shall cover the consultation and examination of research on feasibility, 5% cover the consultation and examination of planning, 35% cover the consultation and examination of designing, 10% cover the consultation and examination of invitation and award of tender and 45% cover the consultation and examination of supervision of work and the management of contract performance. An entity may, depending on the characteristic of individual procurement and actual needs, adjust the percentage allocation.</p> <p>3. The service fees shall be calculated by all constructions expense in the same service contract, except for the constructions are divided by the different construction durations or areas and the contract <u>or the individual constructions in service open contract (excluding the divided procurements in the same construction)</u>, prescribe that the service fees are payable by installment or areas.</p>
For the portion that is more than \$ 300,000,000 and less than \$ 500,000,000	3.0	
For the portion that is more than \$500,000,000 and less than \$ 1,000,000,000	2.5	
For the portion that is over \$ 1,000,000,000	2.2	

Table 4. Percentage of the technical services fees to construction expense for professional construction management (including supervision of work)

<u>1 Consultation and examination of planning and evaluation on feasibility, designing, invitation and award of tender</u>					
<u>Construction expense (in New Taiwan Dollar)</u>		<u>Maximum percentages (%)</u>			
<u>For the portion that is less than \$300,000,000</u>		<u>1.9</u>			
<u>For the portion that is more than \$ 300,000,000 and less than \$ 500,000,000</u>		<u>1.7</u>			
<u>For the portion that is more than \$500,000,000 and less than \$ 1,000,000,000</u>		<u>1.4</u>			
<u>For the portion that is over \$1,000,000,000</u>		<u>1.2</u>			
<u>2-1 Supervision of building construction</u>					
<u>Construction expense</u> <u>(in New Taiwan Dollar)</u>		<u>Types of building construction</u>			
		<u>Type 1</u>	<u>Type 2</u>	<u>Type 3</u>	<u>Type 4</u>
<u>For the portion that is less than \$ 5,000,000</u>		<u>3.2</u>	<u>3.4</u>	<u>3.6</u>	<u>3.8</u>
<u>For the portion that is more than \$ 5,000,000 and less than \$ 25,000,000</u>		<u>2.7</u>	<u>2.9</u>	<u>3.2</u>	<u>3.4</u>
<u>For the portion that is more than \$ 25,000,000 and less than \$ 100,000,000</u>		<u>2.3</u>	<u>2.5</u>	<u>2.7</u>	<u>2.9</u>
<u>For the portion that is more than \$ 100,000,000 and less than \$ 500,000,000</u>		<u>1.8</u>	<u>2.0</u>	<u>2.3</u>	<u>2.5</u>
<u>For the portion that is over \$ 500,000,000</u>		<u>1.3</u>	<u>1.5</u>	<u>1.7</u>	<u>1.9</u>
<u>2-2 Supervision of non-building construction</u>					
<u>Construction expense (in New Taiwan Dollar)</u>		<u>Maximum percentages (%)</u>			
<u>For the portion that is less than \$ 10,000,000</u>		<u>4.0</u>			

<u>For the portion that is more than \$ 10,000,000 and less than \$ 50,000,000</u>	<u>3.5</u>
<u>For the portion that is more than \$ 50,000,000 and less than \$ 100,000,000</u>	<u>3.0</u>
<u>For the portion that is more than \$ 100,000,000 and less than \$ 500,000,000</u>	<u>2.5</u>
<u>For the portion that is over \$ 500,000,000</u>	<u>2.2</u>

Note:

1. The types of building construction are the same as that types illustrated in table 1, the technical services fees for supervision of work of type 5 are the same as that of type 4, or using the method of cost plus fees to be evaluated.
2. The maximum percentages of service fees illustrated in this table shall be calculated in different portions of amount, and shall be applied as the recommended maximum rates.
3. Where the provider is entrusted with a service of supervision of construction under Article 7, the consultation and examination fees of supervision of work and the management of contract performance fees shall not be paid twice.
4. Where a professional construction management covers the work of items 1 and 2, the recommended maximum percentages of service fees for building construction are the summary of item 1 and item 2-1, and for non-building construction works the summary of item 1 and item 2-2.
5. The service fees shall be calculated by all constructions expense in the same service contract, except for the constructions are divided by the different construction durations or areas and the contract, or the individual constructions in service open contract (excluding the divided procurements in the same construction), prescribe that the service fees are payable by installment or areas.