

# Essential Requirements for Procurement Contracts

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## I. General Principles

(Basis and objective of prescribing)

1. This Essential Requirements is prescribed pursuant to paragraph 1 of Article 63 of the Government Procurement Act (hereinafter referred to as the "Act") for the reference of entities in setting procurement contracts.

Entities shall select from this Essential Requirements when setting procurement contracts in accordance with the special characteristics and actual needs of the respective procurements.

(Matters that may be prescribed in the contract)

2. According to the special characteristics and actual needs of the procurement, entities may select from the following items and prescribe them in the contract;

- (1) Names, addresses, and telephone numbers of the entity and the supplier.
- (2) Names and titles of the contact persons of the entity and the supplier.
- (3) Definitions of terms used in the contract.
- (4) Documents included in the contract.
- (5) Work items of the supplier or subject of payment.
- (6) Matters to be carried out by the entity.
- (7) Language used in the contract.
- (8) Weighting and measuring system.
- (9) Date of contract signing.
- (10) The major part of the contract to be performed by the contractor and sub-contracting matters.
- (11) Source of origin of the subject of contract.
- (12) Acquisition of approval documents.
- (13) Management of worksite for contract performance, progress management,

environmental protection, work safety and hygiene, cleanliness and maintenance of worksite environment, transportation maintenance, or co-ordination matters of work interface.

- (14) Quality management.
- (15) Supervision of contract performance.
- (16) Disaster response.
- (17) Words or symbols required to be displayed for the subject of contract.
- (18) Time and place for contract performance or acceptance of property.
- (19) Transport mode.
- (20) Packaging mode.
- (21) Mutual notification method by the entity and the contractor.
- (22) Contract amendment.
- (23) Contract transfer.
- (24) The processes and time-limit for checking, testing, or inspection and acceptance.
- (25) Item, quantity, unit price, sub-item price and total price of the subject of contract performance.
- (26) Terms of payment.
- (27) Documents to be provided by the supplier.
- (28) Type, amount, deposit, non-return, return and termination of guarantees.
- (29) Contract price to be adjusted according to price index.
- (30) Tax, fee and tariff to be borne.
- (31) Time-limit of contract performance.
- (32) Liquidated damages for delay.
- (33) Time-limit and responsibility for warranty or maintenance.
- (34) Supply of spare parts and accessories.
- (35) Rights and responsibilities.
- (36) Type, value, policy purchase and claim of insurance.
- (37) Contract termination, rescission or temporary suspension.
- (38) Handling of contract dispute.
- (39) Governing Act.
- (40) Other matters related to contract performance.

(Contract document)

3.Contract document includes the following contents:

- (1) The text of the contract and any revisions or supplements thereof.
- (2) Tender documentation and any revisions or supplements thereof.
- (3) Tender and any revisions or supplements thereof.

- (4) Contract appendices and any revisions or supplements thereof.
- (5) Documents or data of contract performance to be put forward according to the contract.

The aforementioned documents include original or copied items presented in written form, audio and video recording, photograph, microfilm, electronic data, or samples.

(The effectiveness and order of priority of contract documents)

4.The documents included in the contract shall be indicated with the effectiveness and order of priority.

(Contract language)

5.The contract shall be written in Chinese. Where there is any discrepancies between Chinese and foreign language, except otherwise stipulated in the contract, the Chinese shall prevail. However, in the following circumstances, the foreign language shall prevail as provided for in the tender documentation or the contract:

- (1) Procurement from international organizations, foreign governments or their authorized entities.
- (2) Pictorial data about special technology or material.
- (3) Procurement conducted by limited tendering procedures.
- (4) Procurement carried out according to Article 106 of the Act.
- (5) Documents provided by international organizations, foreign governments or their authorized entities, unions or business organizations.
- (6) Other circumstances where the entity decides that it is necessary.

(Weighting and measuring units)

6.The weighting and measuring units used in the contract document, except otherwise stipulated in the contract, shall be metric.

(Contract signing)

7.The date of contract signing, except otherwise provided for in tender documentation, means the day that both parties jointly complete contract signing.

The contract shall have originals and each of the entity and the supplier shall retain one copy of the original contract and several copies of copied version contract. Both parties shall, according to the rules, attach a revenue stamp.

## II Management of Contract Performance

### (Sub-contractors)

8.The contractor shall not give subcontracting work to suppliers that do not have the capability to complete sub-contracting work or are not legally registered or established. The contractor shall be fully responsible for the part of contract performed by sub-contractors. Sub-contracting contracts reported to the entity will also be the full responsibility of the contractor.

The entity may review the items and subcontractors that the contractor intends to sub-contract.

### (Acquisition of approval documents)

9.Where import/export, supply, construction or use involves government-regulated permits, licenses or other approval documents, the entity or the supplier shall be responsible for acquiring them, according to which party will be the issue. However, the entity may stipulate in the contract that the supplier acquire the document on its behalf, with the entity bearing associated costs.

### (Co-ordination and co-operation of contract performance)

10.Where there are two or more contractors at the same time performing their contracts respectively for an entity, and the contract performance matters are connected or require co-ordination, the parties shall mutually co-ordinate with a spirit of co-operation and avoid a situation where the actions of one party affect either another party's contract performance or the performance of the whole contract.

Where it is necessary for the various contractors to use the same site for contract performance provided by the entity, a contractor shall not refuse its use by another.

### (Property security)

11.After the entity transports its property to the supplier's premises for processing, improvement or maintenance, the supplier shall be liable to pay compensation in the event of loss, damage, or occupation.

### (The Supplier's responsibility for work safety)

12.The supplier shall be fully responsible for the suitability, reliability and safety of its work site operations and work methods.

Where there is a danger that the supplier's work site operations may lead to accidents, the supplier shall take immediate preventive measures. If an accident occurs, the supplier shall immediately take actions on rescue, recovery, reconstruction, and pay compensation to the entity and the third parties where necessary.

(Responsibility for safeguarding)

13.The supplier shall have full responsibility for safeguarding the on-going project, and its materials, machines and work site facilities before the completion of work.

The supplier shall be responsible for clearing up the work site and the trash created by work when the project is still underway and after it is completed.

(Removal of unsuitable personnel)

14.Where the supplier's personnel to perform the contract are unsuitable, the entity may notify the supplier to replace them and the latter shall not object.

(Work management)

15.During contract performance, the supplier shall avoid interfering with local traffic, occupying roads and damaging private or public property, polluting the environment or disturbing the living of the people. In the event that such breaches cause losses to the entity or the third parties, the supplier shall be responsible for paying compensation.

(Time and place of delivery)

16.The place of delivery for the subject of procurement and the place of contract performance shall be clearly set in the contract.

The time of delivery of the subject of procurement at the delivery place described in the preceding paragraph shall be clearly prescribed in the contract. Where it is not prescribed, delivery shall be made during the entity's working hours.

(Packaging method)

17.In accordance with the special characteristics and actual needs of the procurement, the packaging method for the subject of procurement shall be selected from the following and stated clearly in the contract:

- (1) Moisture proof, waterproof, shake proof, breakage-proof, anti-deterioration, anti-corrosion, anti-sun ray, anti-saline, anti-pollution or anti-bump, etc.
- (2) Constant temperature, refrigerated, frozen, or sealed.
- (3) Weight, volume or quantity per unit.
- (4) Packaging materials.
- (5) Words or symbols that shall be displayed on the inside and outside of the packaging, or accompanying documents.
- (6) Other necessary methods

(Time-limit for improvement)

18.If the entity anticipates defects in the supplier's performance of the contract or in the event of other contract breaches, the entity may notify the supplier to carry out improvements within a time-limit.

If the supplier does not carry out improvements or act as notified within the aforementioned time-limit, the entity may take the following action:

- (1) Ask a third party to carry out improvements or the pending work, with the dangers and costs to be borne by the supplier
- (2) Terminate or rescind the contract and request compensation for losses.

(Method of mutual notification)

19.Notification between the entity and supplier, except otherwise stipulated in the contract, shall be in the form of written document, letter, fax, or email sent to the person or place stipulated by the other party.

The aforementioned notifications shall be effective from the date of arrival or date of effectiveness specified on the notification, whichever is the later.

### III. Contract Amendment

(The entity notifies supplier of contract amendment)

20.Within the scope of the contract the entity may notify the supplier to revise the contract. Except otherwise stipulated in the contract, the supplier shall present documents relating to subject of procurement, price, time-limit of contract performance, payment schedule or other contract matters that require revision after receiving the notification.

Before the entity accepts the related revision documents, the supplier may not change the contract by itself. Except otherwise requested by the entity, the supplier shall not, because of the notification of the preceding paragraph, delay its responsibility of contract performance.

If, before the entity accepts the documents from the supplier that require revision, the entity asks the supplier to carry out the work or supply in advance, and afterwards contract revision is not made according to the original notification, or where only a part is changed, the extra expenses incurred to the supplier shall be compensated by the entity.

(The supplier requests contract amendment)

21. In the following situations the subject of procurement agreed in the contract can be replaced by another one with the same or better specification, function and effectiveness if the supplier gives a reason and attaches a comparison table including specification, function, effectiveness and price after approval of the entity. However, this must not be used as an excuse for increasing the contract price. When this reduces the supplier's cost of contract performance, it shall be deducted from the contract price:

- (1) The original brand or model in the contract is no longer manufactured or supplied.
- (2) The original sub-contractor in the contract is no longer in business or refuses to supply.
- (3) Change is required due to force majeure.
- (4) Better than that of the contract or more advantageous for the entity.

(The handling of void items in the contract)

22. Where a matter prescribed in the contract is in breach of laws or regulations, or cannot be implemented, it shall be void. However, when the contract can still be valid after removing this part, the validity of the other parts will not be affected.

With respect to the aforementioned void part, the entity and supplier may, when necessary, amend it according to the original objective of the contract.

(Contract assignment)

23. The supplier shall not transfer all or part of the contract. However, this restriction will not apply with written approval from the entity in event of that there is a need

for assignment due to split-up of a company, the carrying out of joint guarantee by bank or insurance company, bank mortgage, or similar situation.

(Contract amendment)

24. Any amendment to the contract will be invalid without a written agreement signed or stamped by both the entity and the supplier.

#### IV. Inspection and Acceptance

(The process and time-limit for inspection and acceptance)

25. Procurement contracts for construction work or property shall clearly indicate the process and time-limit for inspection and acceptance.

The provision of the preceding paragraph shall apply *mutais mutandis* to procurement contracts for services.

(Inspection of contract performance)

26. Procurement contracts for construction work shall indicate inspection procedures and standards for the major items of the construction work. The supplier shall be responsible for quality control, environment protection, as well as safety and hygiene of the work.

The provision of the preceding paragraph shall apply *mutais mutandis* to a contract for property or services not readily available, and required to be performed through certain performance process.

(Expenses and work method of inspection)

27. The contract shall clearly provide that the entity or its representative may carry out checking, testing or inspection.

The contract may state clearly that the supplier shall provide the necessary equipment and data free of charge to the entity for the purpose of conducting checking, testing and inspection.

For checking, testing or inspection outside the scope of the contract, the supplier shall bear costs if the results do not meet the requirements of the contract. Otherwise, the costs will be borne by the entity.

Where results from checking, testing or inspection do not meet the requirements of the contract, the entity may refuse to accept and the supplier shall improve, demolish, re-do, recall or replace the subject free of charge.

The supplier will not evade its responsibilities of the contract and the bearing of related costs due to checking, testing or inspection conducted by the entity.

The entity's right to check, test or inspect the subject of the contract performed by the supplier will not be restricted by the fact that the subject has once passed other checking, testing or inspection.

(Checking and safeguarding of entity equipments and materials)

28. When the entity provides equipment or materials for the supplier to perform the contract, the supplier shall make the necessary checking on acceptance and be responsible for any loss or damage that occurs afterwards.

(Test before inspection and acceptance)

29. In conducting the inspection and acceptance for a procurement, the entity may stipulate in the contract regarding test run, test operation or trial use of the subject of contract at a certain place and time and under specified conditions for the purpose of inspection and acceptance.

The expense of aforementioned test run, test operation or trial use, except otherwise stipulated in the contract, shall be borne by the supplier.

## V. Contract Price

(Listing of the contract price)

30. The contract shall list the total price. Where there is no total price, the contract shall indicate item, unit price, and the limitation for value or quantity.

Where the total price was set after price reduction and the adjustment method of item price has not been indicated in the contract, all itemized prices will be reduced by the same rate. The aforesaid shall apply where the summation of the item prices indicated in the bid is different from the total price.

(The payment of the contract price)

31. The contract price may be paid by one of the methods listed below and set clearly

by the entity in the contract:

- (1) According to the total price of contract.
- (2) According to the work item and quantity actually done or supplied.
- (3) Some paid by the price specified in the contract, some paid by work item and quantity actually done or supplied.
- (4) Other necessary methods.

(Adjustment of the contract price)

32. Unless otherwise specified in the contract, the contract price may be adjusted when the contract was awarded and paid by the total price, provided that the performance of the contract has any of the following circumstances:

- (1) Where the items or quantities of contract performance are increased or reduced due to contract revision, the modified parts shall be added or subtracted in settlement.
- (2) Where the actual quantity of respective items of construction work done by the supplier is more than or less than that agreed in the contract by over 5%, the contract price shall be increased or decreased in the name of design changes for the portion over 5%. Where the percentage does not reach 5%, the contract price shall not be increased or reduced.
- (3) Taxes, profits, management fees or other related expenses relating to the preceding two sub-paragraphs shall be calculated separately and be increased or reduced according to the percentage of settled amount over the original contract price.

(The application of the quantity list of construction work)

33. The quantities specified in the quantity lists of the construction contract for the supplier to use in bidding are an estimate and shall not be taken as the actual quantities that the supplier must construct or supply in performing the contract.

(Terms of payment)

34. The following terms of payment shall be listed in the contract:

- (1) Matters of contract performance that shall be completed before the supplier requests for payment.
- (2) The documents that the supplier shall provide.
- (3) The amount to be paid.

- (4) The method of payment.
- (5) The time-limit of payment.

Where contract price is to be paid according to the progress of contract performance, the progress that shall be reached for each payment shall be clearly indicated and the supplier shall put forward a progress report of contract performance. The entity shall pay by actual progress after checking.

(The documents that a supplier shall provide for payment)

35. The entity may, according to the special characteristics and actual needs of the respective procurements, clearly provide in the contract the documents to be presented by the supplier for payment.

(The circumstance to deposit a refund guarantee for advance payment)

36. The entity may, depending on needs, prescribe in the contract the circumstances of advance payment payable to the supplier and the requirement that the supplier shall provide a refund guarantee in advance for advance payment.

(Taxes, regulatory fees and compulsory insurance premiums included in the contract price)

37. The entity may, depending on needs, provide in the contract that the contract price shall include taxes, regulatory fees and compulsory insurance premiums to be paid by the supplier and its personnel required by the related laws and regulations of this nation. However, it is the responsibility of the supplier to pay taxes, regulatory fees and tariffs of other countries or areas outside this nation.

(Adjustment in contract price due to government actions)

38. Where the supplier, when performing the contract, encounters any of the following government actions that result in increase or reduction in the cost of contract performance, the contract price may be adjusted:

- (1) Introduction of new laws, or amendments to the existing laws.
- (2) New taxes or regulatory fees or changes to existing ones.
- (3) Changes to the fees and expenses under government control.

For the aforementioned circumstances resulted from the government action of this nation, an increase in cost of contract performance thereby will be borne by the entity, while a reduction in cost of contract performance will be automatically

deducted from the contract price.

In the case of government action by other nations that results in increase or decrease in the cost of contract performance, the contract price will not be adjusted.

(Contract price adjustment according to price index)

39. Where a contract provides that the contract price is adjustable according to price index, salary index or their indices, the following shall be listed in the contract:

- (1) The items and the value to be adjusted.
- (2) Prices, salaries or their indices, and the base period for adjustments.
- (3) Circumstances where adjustments may or may not be made.
- (4) Adjustment formula.
- (5) Adjustment figures and back-up data that the supplier shall provide.
- (6) Administration fees and profits are not to be adjusted.
- (7) For the segment that exceeds the time-limit of contract performance, the prices, salaries or their indices at the original time-limit of contract performance stipulated in the contract shall be the current period data. However, the above shall not apply where the delay in contract performance is attributable to the entity.

(Contract price to be calculated by cost plus fees method)

40. Where the contract price is calculated by cost plus fees method, the following shall be provided in the contract:

- (1) The supplier shall record every item of costs and provide receipts permitted by the entity. The entity may visit the supplier for checking and verification.
- (2) Cost cap and response where the cap is reached.

(Handling of bribery and other illegal acts)

41. A supplier shall not give bribe, commission, proportional payment, brokerage, thank-you payment, kickback, gift, treat, or other improper benefits to the entity's personnel, or personnel of a supplier entrusted by the entity. The aforesaid shall also apply to sub-contractors.

Where there is a breach of the requirement of the preceding paragraph, the entity may terminate or rescind the contract, or deduct the over-valued and any other

benefits from the contract price.

(The costs of third party inspection)

42. Where the contract stipulates that the subject of contract must be inspected by the third party, the costs incurred by the inspection shall be borne by the supplier, except otherwise stipulated in the contract.

## VI. The Setting of Time-limit of Contract Performance

(Setting of the time-limit for contract performance)

43. The time-limit of contract performance may be set in one of the following methods and be indicated in the contract by the entity:

- (1) The contract must be fulfilled within a certain period from the date following the date of award, contract signing or entity notification.
- (2) The contract must be fulfilled before designated time-limit.
- (3) The contract must be fulfilled within a certain period from the date following the date that the supplier receives the entity's letter of credit, advance payment or other similar situation.
- (4) A separate time-limit for each important stage of contract performance or shipment of supply.
- (5) Other agreed methods.

(Calculation of the period of contract performance)

44. Calculation of the contract performance period, except otherwise stipulated in the contract, may be one of the following methods and be set by the entity in the contract:

- (1) Completion by a designated deadline: Saturdays, Sundays, national holidays and other days of rest shall be included.
- (2) Completion by calendar day: whether Saturdays, Sundays, national holidays and other day of rest are included shall be set in the contract.
- (3) Completion by working day. Saturdays, Sundays, national holidays, and other days of rest shall not to be included.

The period of contract performance refer to in the preceding paragraph may be extended on condition of force majeure or a circumstance not attributable to the supplier. If the delay is less than half a day it will be counted as half a day. If it

lasts over half a day but less than a full day, it will be counted as one day.

## VII. Delays

(Calculation of the amount of liquidated damages for delay)

45. The amount of liquidated damages for delay is a pre-set amount of liquidated damages for compensation and is calculated, by day, by one of the following methods to be stated in the contract with deduction method:

- (1) A designated amount.
- (2) A certain percentage of the contract price.

The amount of liquidated damages in the preceding paragraph shall not exceed 20% of the total contract price.

The method of deduction referred to in paragraph 1 may be the way that the entity deducts it from the contract price payable. Where there is an insufficient amount for deduction, the entity may notify the supplier to pay for it or it will be deducted from the guarantee bond.

(The situations that the amount of liquidated damages for delay shall not be calculated)

46. Where the supplier meets the following circumstances in its contract performance, it may inform the entity in writing with evidence. After assessing the circumstance, the entity may decide to extend the period of contract performance and not to calculate the amount of liquidated damages for delay:

- (1) The circumstance is a force majeure.
- (2) The revision of contract or suspension of work informed by the entity that is not attributable to the supplier.
- (3) The data, equipment or site to be provided by the entity to the supplier, or measures such as checking or consenting to be taken by the entity have not been carried out by the entity.
- (4) The delay is attributable to another supplier that is a contractor of the entity.
- (5) Other circumstances are attributable to the entity or not attributable to the supplier

(The amount of liquidated damages for delay in completion for use or transfer by

stage)

47.If a contract has set stages of progress and the overall time-limit of contract performance, the amount of liquidated damages for delay in completion for use or transfer by stage shall be calculated by the following principles:

- (1) Where there is a delay in the overall time-limit of contract performance but not in stages, the amount of liquidated damages will be calculated based on the delay over the overall time-limit of contract performance after deducting the value of the already completed or transferred stages.
- (2) Where there is a delay in stages but no in the overall time-limit of contract performance, the amount of liquidated damages will be calculated based on the delayed stage.
- (3) Where there is a delay in stages and the overall time-limit of contract performance, the amount of liquidated damages will be separately calculated. However, the amount of liquidated damages for delay in the overall time-limit shall be calculated after deducting the value of the already completed or transferred stages.
- (4) Where the time-limit in stages of contract performance is related to the progress of another procurement contract, the amount of liquidated damages for delay may be calculated for each stage without application of the last sentence of the preceding subparagraph.

(The amount of liquidated damages for delay in full completion for use or transfer)

48. If a contract has set stages of progress and the overall time-limit of contract performance, the amount of liquidated damages for delay in full completion for use or transfer shall be calculated by the following principles:

- (1) Where there is a delay in the overall time-limit of contract performance but not in stages, the amount of liquidated damages will be calculated based on the delay over the overall time-limit of contract performance.
- (2) Where there is a delay in stages but no in the overall time-limit of contract performance, the amount of liquidated damages taken for stage delays shall be returned after the overall time-limit is not exceeded.
- (3) Where there is a delay in stages and the overall time-limit of contract performance, the amount of liquidated damages taken for stage delays shall be deducted while calculating the amount of liquidated damages for delay in the overall time-limit.
- (4) Where the time-limit in stages of contract performance is related to the

progress of another procurement contract, the amount of liquidated damages for delay in stage may be calculated without application of subparagraphs 2 and 3.

(Force majeure)

49. Where it is due to force majeure such as natural disasters or extreme circumstances, or other circumstances not attributable to the contracting parties, that the contractual time-limit can not be fulfilled by the entity or the supplier, the time-limit may be extended; or that the contract can not be fulfilled, the contractual obligations may be exempted.

### VIII. Subject of Contract Performance

(The subject to be supplied or completed in performing the contract)

50. The subject to be supplied or completed in performing the contract shall meet the requirements of the contract without reducing or losing its value or with defects that make it unsuitable for normal or the agreed use.

(Handling of defects found in inspection or acceptance)

51. Where a defect is discovered at the subject of the supplier's contract performance by inspection and acceptance, the entity may require the supplier to improve, demolish, re-do, recall or replace (hereinafter referred to as the " modification ") within a certain time limit and set the amount of liquidated damages for delay in modification.

If the supplier does not make modifications in the time-limit, refuses to modify or when the defects can't be modified, the entity may adopt any the following measures:

- (1) Carry out modifications by itself or through a third party and ask the supplier to pay the cost of modification.
- (2) Rescind the contract or reduce the contract price. However, if the defect is a minor one, the entity is not allowed to rescind the contract.

If the defect of contract performance is attributable to the supplier, the entity may also request compensation from the supplier in addition to the provisions of the preceding two paragraphs.

(Setting the period of warranty or guarantee)

52. The contract may clearly prescribe the period of warranty or guarantee for defects.

If the subject of procurement is not useable for a period due to defects, then the period shall not be included in the period referred to in the proceeding paragraph.

(The price of consumable parts)

53. The entity may, depending on the special characteristics of the procurement and actual needs, include in the contract the unit prices for consumable parts that the subject of procurement will require for operation, or a price list for reference, or the method of price adjustment.

The consumable parts required for operation in the first year shall, in principle, be procured jointly with the subject of procurement and be stated clearly their unit prices.

(The contract for maintenance service)

54. Where it is necessary for the original supplier to provide maintenance service during the period of use of the subject of procurement, the first year's maintenance service shall, in principle, be jointly procured with the subject of procurement, and the said one year may be adjusted based on the characteristics of the procurement and actual needs.

The aforementioned contract for maintenance service shall indicate the service items to be provided by the supplier, price and payment method.

Where the maintenance service referred to in the first paragraph is required to be provided by the original supplier in the long term, the entity may indicate in the contract that the maximum of an annual service expense and the supplier cannot refuse to provide the service.

The service items referred to in the second paragraph may include regular maintenance, parts supply or breakdown repair, etc.

## IX. Rights and Obligations

(The supplier's obligation for rights claimed by the third party)

55. The contractor must guarantee that the third party can not claim against the entity

any rights on the subject of contract performance.

The supplier shall be responsible for and bear all legal responsibility for infringement on the legal rights of a third party when performing the contract.

(The ownership of intellectual property rights)

56. When the result of the supplier's contract performance involves intellectual property rights, the entity may, depending on needs, prescribe in the contract that it may own part of or all of rights or be authorized.

(The avoiding of compensation demands from the third party)

57. The entity and the supplier shall take necessary measures to ensure that the other party does not, due to perform the contract, receive compensation demands from the third party. Where the third party suffers losses that are attributable to the entity or the supplier, the party to be blamed shall be responsible for compensation.

(Request for damage compensation)

58. For liability of damage compensation out of the amount of liquidated damages for delay prescribed in Article 45, the entity may, in accordance with the special characteristics and actual needs of the procurement, specify in the contract regarding the item, scope or cap of compensation, and the circumstances in which its application is excluded.

The amount of damage compensation that the supplier shall be responsible for may be deducted from the amounts payable to the supplier by the entity. When this is insufficient, it may be deducted from the guarantee bond or the supplier will be notified to pay the insufficient amount to the entity.

(Compensation responsibility for planning, design, supervision or management)

59. For contracts entrusting planning, design, supervision, or management, the supplier shall bear the compensation responsibility for its erroneous planning and design, irresponsible supervision or poor management that has caused damages to the entity.

For damages referred to in the preceding paragraph, the entity may, in accordance with the special characteristics and actual needs of the procurement, specify in the contract regarding the item, scope or cap of compensation, and the circumstances

in which its application is excluded.

(Matters for which the entity will not bear the responsibility for compensation)

60. If the supplier's personnel suffer death or injury or property loss while performing the contract, the entity will not be responsible for compensation.

The supplier shall buy the necessary insurance to cover the risks of death or injury or property loss referred to in the preceding paragraph.

(The effectiveness of assessment, confirmation or approval made by the entity)

61. The supplier has a responsibility to fulfill the contract and this responsibility will not be reduced or lifted because of assessment, confirmation or approval made on the matters of supplier's contract performance by the entity.

## X. Insurance

(Types of insurance)

62. The entity may, depending on the characteristics and actual needs of the procurement, select from the following types of insurance that the supplier is required to purchase for the period of contract performance and state this in the contract.

- (1) General construction insurance that may include the accident insurance of the third party.
- (2) General installation insurance that may include the accident insurance of the third party.
- (3) Employer liability insurance.
- (4) The third party insurance for car, motorcycle or aircraft.
- (5) General insurance for building tools, machinery, electronic equipment and furnace.
- (6) Insurance for transportation.
- (7) Professional liability insurance.
- (8) Other necessary insurances.

(Time consumed for insurance claims)

63. The supplier shall not request for an extension of the time-limit of contract performance on account of the time consumed in making an insurance claim.

(Responsibility for non-insurance)

64. Where the supplier does not purchase insurance required in the contract, the scope of insurance is insufficient, or sufficient insurance payment cannot be gained from the insurer, the losses or compensation incurred shall be borne by the supplier.

#### XI. Termination, Rescission or Suspension of Contract

(Circumstances that the contract will be terminated or rescinded)

65. The entity may provide in the contract the circumstances that the contract will be terminated or rescinded on its notification.

The entity may provide in the contract that it can take what it deems suitable measures to complete the terminated or rescinded contract by itself or by another supplier, and the increased costs incurred will be borne by the original contracting supplier when the contract is terminated or rescinded due to reasons attributable to the supplier.

(Contract terminated or rescinded due to the policy change)

66. Where the supplier's continuous performance of the contract is against the public interest due to policy change, the entity may terminate or rescind all or part of the contract after acquiring approval from superior entity, and compensate the supplier for any loss resulting there from.

(Payment of contract price after termination of the contract)

67. When the contract has been terminated in accordance with the provision of the preceding article, the subject of procurement completed by the supplier before receiving notification of the entity may be paid for according to the contract price provided that it is usable. The entity may select from the following means to deal with the supplier when only part of the subject of procurement is completed or the part is not useable yet:

- (1) Completion by continuous performance and payment according to the contract price.
- (2) Halting of manufacturing, supply or work but effecting payment including costs to the supplier for manufacturing, supply or work already done and reasonable profits.

(Temporary suspension)

68. The contract may state that the entity may notify the supplier at any time to suspend part or all of contract until improvement and approval to resume contract performance when the supplier doesn't perform the contract in accordance with the provisions of the contract.

For circumstances referred to in the preceding paragraph, the contract shall state that the supplier shall not request for an extension to the time-limit of contract performance or an increase in the contract price due to temporary suspension.

(Compensation for temporary suspension)

69. The contract may provide that the entity may compensate the supplier for the loss incurred if the entity notifies the supplier to suspend part or all of contract for reasons not attributable to the supplier.

For temporary suspension referred to in the preceding paragraph, the entity may, depending on the circumstances, extend the time-limit of contract performance.

## XII. Dispute Settlement

(Dispute settlement of contract performance)

70. The contract shall state that the entity and the supplier shall honestly, sincerely and harmoniously work out a solution based on the provisions of laws, regulations, and the contract and taking into account the public interests, fairness, and reasonableness, when there is a dispute between them as a result of performing the contract. Any of following means may be used to resolve the dispute when an agreement is unable to be reached :

- (1) Apply to the Complaint Review Board for Government Procurement for mediation according to Article 85.1 of the Act.
- (2) File a protest or complaint when the circumstance meets the provision of Article 102 of the Act.
- (3) Refer to arbitration.
- (4) Refer to a civil litigation.
- (5) Apply for mediation according to other laws.
- (6) Resort to other means provided in the contract or agreed by both parties.

(Entities to accept and handle disputes in relation to the performance of contract)

71. The contract shall state names, addresses and telephone numbers of the following

entities that accept and handle disputes in relation to the performance of contract:

- (1) The Complaint Review Board for Government Procurement that accepts and handles mediation according to Article 85.1 of the Act.
- (2) The Complaint Review Board for Government Procurement that accepts and handles complaints according to Article 102 of the Act.

(Contract performance where there is a dispute)

72. The contract shall state the following principles to be followed in dealing with matters of contract performance after a dispute in relation to the performance of the contract occurs:

- (1) Unrelated or unaffected parts of the contract shall be continued unless otherwise agreed by the entity.
- (2) Where the supplier temporarily suspends the performance of the contract due to dispute, and the dispute is deemed to be unreasonable on the part of the supplier after reviewing the causes related thereto, it shall not request for an extension to the time-limit of contract performance or the exemption of contractual obligations for the part of the contract that was suspended.

(Litigation)

73. The contract shall stipulate that laws of this nation will be the governing law and the court of first instance shall be the district court where the entity is located in the event of litigation. However, foreign law may be used as the governing law and a foreign court can be used as the court with jurisdiction when there is any of the following circumstance and an agreement from the supplier as to that of the first sentence is not available:

- (1) Procurement from international organization, foreign governments or their authorized institutions.
- (2) Procurement using limited tendering procedures.
- (3) Procurement carried out according to Article 106 of the Act.
- (4) Other circumstances that the entity deems necessary.

(Arbitration)

74. The contract may state that disputes may be resolved by arbitration according to the Arbitration Act and the place of arbitration.

### XIII. Supplementary Provisions

(Certificate of paying a fee in substitute)

75. The contract shall state that the proportions of the physically or mentally handicapped and aboriginal employees respectively shall not be less than 1% of the total number of employees hired locally, which is calculated in whole number and fractions of whole number shall not be counted, when the contractor hires more than 100 employees in this nation during the term of contract performance. Where the winning tenderer pays a fee in substitute in accordance with applicable regulations due to insufficient hiring such persons, the payment for the previous month shall be effected respectively to the special account for handicapped employment foundation established by the responsible authority of labor affairs in the municipality county or city where the foregoing contractor is located and the special account for aboriginal employment foundation established by the central responsible entity of aboriginal affairs. Foreign workers shall not be hired to make up the shortage in question.

The data of the contractors who hire more than 100 employees locally referred to in the preceding paragraph shall be provided by the procuring entity to the award database of the responsible entity according to Article 14 of Regulations for Publication of Tender Notice and Issuance of Government Procurement Gazette for the responsible entities of labor affairs and aborigines affairs to check and verify the circumstance of substitute-fee payment.

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