

Comité Provisional de Contratación Pública

**RÉGIMEN DE CONTRATACIÓN PÚBLICA DEL TERRITORIO ADUANERO
DISTINTO DE TAIWÁN, PENGHU, KINMEN Y MATSU**

**Comunicación del territorio aduanero distinto de
Taiwán, Penghu, Kinmen y Matsu**

El Gobierno del Territorio Aduanero Distinto de Taiwán, Penghu, Kinmen y Matsu ha presentado tres documentos en respuesta a la petición hecha por el Comité Provisional en su reunión de 29 de junio de 1994 con el ruego de que se distribuyan a los miembros de ese Comité. Esos documentos se reproducen como anexos¹ del documento presente, según se indica a continuación:

- Anexo 1: Descripción del marco jurídico de la contratación pública en el Territorio Aduanero Distinto de Taiwán, Penghu, Kinmen y Matsu
- Anexo 2: Introducción a las reformas hechas al régimen de contratación pública del Territorio Aduanero Distinto de Taiwán, Penghu, Kinmen y Matsu
- Anexo 3: Leyes y reglamentos relacionados con la contratación pública en el Territorio Aduanero Distinto de Taiwán, Penghu, Kinmen y Matsu

¹Inglés solamente.

ANNEX 1

**DESCRIPTION OF LEGAL FRAMEWORK OF GOVERNMENT PROCUREMENT
IN THE SEPARATE CUSTOMS TERRITORY OF TAIWAN,
PENGHU, KINMEN AND MATSU**

15 November 1994

I. Laws and Regulations Applied to Government Procurement

The following laws and regulations apply to government entities at all levels, including central, provincial and county governments, and government-owned enterprises, on their procurement of products and construction works.

- (1) Law of Audit, Article 59 and Article 60;
- (2) Ordinance Concerning Inspection Procedure Governing Construction Work, Procurement and Disposal of Properties by Government Agencies;
- (3) Implementation Rules of the Law of Audit, Articles 42 to 68.

II. Main Features of the Government Procurement Rules

1. Exclusion of application:

Contracts in response to natural disasters, economic crises, state of urgency, or other special circumstances, may be excluded from the application of government procurement procedures (refer to Articles 28, 29, 34 and 35 of the Ordinance Concerning Inspection Procedure Governing Construction Work, Procurement and Disposal of Properties by Government Agencies, and Articles 50 and 53 of the Implementation Rules of the Law of Audit).

2. Threshold:

Open tendering procedures shall be used for contracts of products or construction services estimated to equal or exceed NT\$50 million, except for special reasons. Selective tendering procedures may be used when value of the contract falls within NT\$50 million and NT\$5 million, but certain criteria have to be met. Single tendering procedures may be used at the decision of the head of entity when value of the contract falls below NT\$5 million (refer to Articles 6, 7 and 11 of the Ordinance Concerning Inspection Procedure Governing Construction Work, Procurement and Disposal of Properties by Government Agencies).

3. Principles regarding publication of information:

The solicitation notice of open tenders is published in local newspapers for at least two days. No regulation as to what information shall be contained in the notice of proposed procurement or which newspaper shall be used. Solicitations using selective and single tendering procedures are not required to be published. Contract-awarding information for all types of

tendering procedures is not required to be published (refer to Article 10 of the Ordinance Concerning Inspection Procedure Governing Construction Work, Procurement and Disposal of Properties by Government Agencies).

4. Technical specifications:

There are no nationwide regulations on preparation of technical specifications for tender documentation, except in the case of construction contracts. For such contracts, if patented products or products in certain trade names are required due to special needs, such products shall, in principle, have no substitutes or alternatives available, and a detailed specification of such products shall be set forth in the tender documentation. If the value of any of the said products is estimated to equal or exceed a certain threshold amount (NT\$50 million currently), the procurement entity shall substantiate the facts and reasons and obtain a prior approval from a higher authority in charge (refer to Article 43 of the Implementation Rules of the Law of Audit).

5. Procedures to be followed:

- (a) **Open Tendering Procedures:** all interested suppliers may submit a tender.
- (b) **Selective Tendering Procedures:** two or more eligible suppliers will be selected by the procurement entity to respond to a solicitation (refer to Articles 6 and 7 of the Ordinance Concerning Inspection Procedure Governing Construction Work, Procurement and Disposal of Properties by Government Agencies, and Articles 46 and 48 of the Implementation Rules of the Law of Audit).
- (c) **Single Tendering Procedures:** only one supplier will be selected by the procurement entity to respond to a solicitation (refer to Articles 6 and 11 of the Ordinance Concerning Inspection Procedure Governing Construction Work, Procurement and Disposal of Properties by Government Agencies and Articles 46, 47 and 48 of the Implementation Rules of the Law of Audit).

6. Selection and criteria for awarding contract:

The award of contract will, in principle, be made to the bidder whose bid meets the requirements of the tender and whose bid price is not only the lowest one among all acceptable bidders but also equal to or lower than the government estimate. If such bidder's bid price is higher than the government estimate, he may be given a one-time priority to reduce his price. If the reduced bid price is still higher than the government estimate, all acceptable bidders may be given the opportunity to re-bid lower prices for possible selection of a successful bidder whose bid price is the lowest one. In the event that the lowest bid price is higher than the government estimate by 20 per cent or is higher than the budget amount, all bids shall be rejected.

The above award procedure makes it impossible for procurement entities to set evaluation criteria and award a contract to the bidder who is determined to be the most advantageous.

7. Statistical obligations:

There is no rule concerning the statistical obligations for government procurement entities.

ANNEX 2

AN INTRODUCTION ON THE REFORM OF GOVERNMENT PROCUREMENT REGIME BY THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

15 November 1994

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (hereinafter referred to as "CT") is conducting a wide range of reforms in the government procurement régime with the purpose to access the GATT/WTO Agreement on Government Procurement (AGP). The following is a general description of the reforms:

I. Adjustment of the Structure of Government Procurement Organizations

1. Establish the "Committee on Government Procurement" to undertake the following responsibilities:

- (1) to study, promulgate and amend policies and regulations on government procurement;
- (2) to liaise among government entities for the procurement matters;
- (3) to review and approve procurement contracts;
- (4) to supervise and evaluate the practices of procurement by government entities;
- (5) to settle procurement disputes;
- (6) to train procurement specialists; and
- (7) to gather, publish and analyse procurement information.

2. Agencies responsible for implementation of government procurement

- (1) At central government level, there are two types of government procurement:
 - (i) centralized procurement which is applicable to the cases included in CT's offer under AGP, the cases with a separate value exceeding a pre-determined threshold, and the government entities with insufficient procurement specialists;
 - (a) reorganize the "Public Construction Supervisory Board" under Executive Yuan into the "Committee for Public Construction" to be responsible for the procurement of construction services,

- (b) authorize the "Central Trust of China" under the Ministry of Finance to be responsible for the procurement of products and services, and
- (c) establish the "Bureau of Military Procurement" to be responsible for procurement of military supplies.
- (ii) decentralized procurement which is applicable to the cases excluded from CT's offer under AGP and those with a separate value of less than the threshold;

Specialized agencies (e.g. "Bureau of National Highway Construction" in the Ministry of Transportation and Communications) and state-owned enterprises are responsible for their own procurement.

(2) At local government level:

- (i) the centralized procurement system for central government could apply to the local government by designating responsible agencies;
- (ii) specialized agencies and government-owned enterprises in provincial or municipal governments are responsible for their own procurement.

II. Removal of the Discriminatory Policies

1. To abolish the existing tendering procedure by distinguishing between local bids and foreign bids for some procurement cases.
2. To amend the "Statute Governing the Assistance to Retired Military Personnel" by abolishing the provisions regarding the privilege to the Ret-ser Engineering Agency of first priority to negotiate the tender.
3. To amend the discriminatory treatment on foreign suppliers in domestic market, including the abolishment of the area restrictions and the requirement on a new foreign construction firm to start the business in local market with the c-class licence.
4. To accelerate the process of privatization of state-owned enterprises, and gradually reduce the measures of assisting domestic industries through for government procurement.

III. Strengthen Laws and Regulations Related to Government Procurement

1. Drafting the "Statute for Government Procurement"

CT is now drafting a new basic law, the "Statute for Government Procurement", to replace the existing audit laws and regulations governing government procurement. The new basic law follows the rules and principles set forth in the AGP and its main contents are as follows:

(1) Scope of application:

- (i) Central government agencies**
Presidential Office, National Assembly and agencies under the five Yuans
- (ii) Local government agencies**
Provincial (metropolitan) and county (municipal) governments and local assemblies
- (iii) Government-owned enterprises and non-profit organizations sponsored by government.**

(The agencies applied to the AGP will depend on the coming negotiations with signatories of AGP.)

(2) Principles and rules of the Statute:

(i) Principle of competition

- (a)** The Statute will distinguish the tendering procedures into open tendering, selective tendering and limited tendering based on the AGP. The tendering procedures will be established according to the principle of competition. Besides, competitive procedures will be formed for the procurement of long-term supply contract, turnkey construction contract and joint construction services
- (b)** The government procurement exceeding a certain amount must be implemented in the open tendering procedure. The thresholds of procurement applied to the AGP by different government entities will depend on AGP negotiations
- (c)** Technical specifications and qualification of suppliers will be established according to the AGP and international practices, so as to prevent the collusion of bid-tenderings and unfair treatment to different suppliers
- (d)** The ceiling price is applicable to regular procurement contracts. A parallel system without ceiling price will be applicable to purchase of high-tech products and construction works involving special technology.

(ii) Principles of transparency

- (a)** Designate agencies to promptly publish information regarding government procurement covered by the AGP
- (b)** Allow a reasonable period for interested tenders to submit bids

- (c) Establish a system of tendering procedures to ensure a fair, prompt and effective enforcement of the principle set out in the AGP

(iii) Systematization of contract administration

- (a) Establish an effective management system on contract performance and provide the standards and procedures on inspection
- (b) Improve subcontract management
- (c) Establish guidelines for the use of public lands and government properties
- (d) Reasonable control on contract modification

(iv) Effective settlement of procurement disputes

- (a) Establish the "Committee on Dispute Settlement" under government procurement entities and provide procedures for dispute settlement in order to strengthen the function of administrative remedies
- (b) Improve the function of commercial arbitrations in private sector.

2. Drafting related administrative regulations

- (1) The "Committee on Government Procurement" will be authorized by the Statute to prescribe relating regulations generally applicable to all procurement contracts
- (2) Delegate the power to specific agencies to prescribe necessary supplementary orders.

ANNEX 3

**LAWS AND REGULATIONS RELATED TO GOVERNMENT PROCUREMENT
IN THE SEPARATE CUSTOMS TERRITORY OF TAIWAN,
PENGHU, KINMEN AND MATSU**

15 November 1994

(A tentative translation in English for reference)

Table of Contents

| | | |
|-----------|---|----------------|
| 1. | Law of Audit | page 11 |
| 2. | Implementation Rules of the Law of Audit | page 12 |
| 3. | Rules for the Procurement of Foreign Goods | page 19 |
| 4. | Statute for Inspection Procedures Governing Construction Works, Procurement of Products, and Disposal of Properties by Government Agencies | page 21 |
| 5. | Guidelines for Procurement of Technical Services from Technical Consulting Organizations by Government Entities | page 29 |

THE LAW OF AUDIT

Note: The provisions of Articles 59 and 60 are related to government procurement

Article 59

Procurement entities shall comply with the open tendering procedures, selective tendering procedures, or single tenderings for procurement of products, construction services, or the sales of properties, for which the contract value is estimated to equal or exceed the threshold amount prescribed by the Ministry of Audit, and inform the auditing authorities within a certain period of time to send auditors to audit. Auditors shall correct any non-conformity deviating from the procedures or from contractual and regulatory requirements.

The said threshold amount and the auditing procedures will be prescribed by other laws.

Article 60

When a cost-plus-fee contract is awarded for a procurement of products or construction services, the specific conditions for evaluating the contract price shall be identified in the contract. Auditing authorities may audit the allowability of actual cost incurred by the contractor and report the audit finding to the procurement entity.

THE IMPLEMENTATION RULES OF THE LAW OF AUDIT

Note: The provisions of Articles 42 through 68 are related to government procurement

Article 42

If foreign companies are not able to submit at the time of bidding the business certificate and tax-payment certificate applicable to local companies under the open tendering procedures for construction services and product contracts, the procurement entity shall establish in the solicitation documents what certificates shall be submitted by those foreign companies.

Article 43

If patented products or products in certain trade names are required for a construction contract for special reasons, it means in principle that such products have no substitutes or available alternatives, and a detailed specification of such products shall be set forth in the solicitation documents. If the value of any products equals or exceeds the threshold amount, the procurement entity shall substantiate the facts and reasons and obtain a prior approval from a higher authority in charge.

Article 44

In principle, the bidder shall deposit a bid bond in a correspondent bank of the treasury. If such a correspondent bank is not available in its locality or for other special reasons, the procurement entity may appoint another bank to receive the bid bond.

Article 45

When the bids submitted have been collusive for a fraud, or the bidder has threatened others not to submit their bids, the procurement entity shall declare the solicitation void and report the situation to the judicial authority for investigation. If any of the above illegal behaviour is discovered after the contract is awarded, the same legal proceeding shall apply.

Article 46

In the case that a solicitation could not be processed through open tendering procedures for reasons of special construction or product contracts, of the need for technical requirement, of the requirement of keeping secrecy, or of policy concerns, it may be solicited through selective or single tendering procedures, provided that such reasons shall have been duly substantiated to and approved by the high authority within the relevant government organization and an audit authority. The audit authority shall exercise its approval through a committee resolution.

Article 47

Insofar as is necessary when, for the reason of acquiring a foreign special technology to manufacture a product locally, a solicitation could not be performed by using open or selective tendering procedures, it may be solicited by using single tendering procedures, provided that such reasons shall have been duly substantiated to and approved by the Executive Yuan and audit authority. The audit authority shall make its decision through a committee resolution.

Article 48

The single tendering procedures may be used for a solicitation due to the reason of absence of bids, of only one bid in response to an open tender, of bid prices exceeding the government estimate for a construction contract or a product contract, of tendering twice but no bid price is high enough to reach the government estimate for selling a government property, provided that such reason shall have been duly substantiated to and approved by the audit authority.

Insofar as is necessary when, for reasons of only two bids or one bid in response to an open tender for construction contract or product contract, and that the procurement entity confirms that the qualification and specification requirements set forth in the solicitation documents are not inadequate and only these two bidders or the single bidder is qualified for contracting, the open tendering procedures may, after approval by the auditor in presence, be changed into selective or single tendering procedures as the case may be. Such reasons shall be recorded and such change shall be effective only when they are duly substantiated and approved by the audit authority.

The audit authority shall make a decision on approval or disapproval within 48 hours after receiving a written application from the procurement entity.

Article 49

The procurement entity may apply the single tendering procedures to acquire an acceptable real estate at a published or an evaluated price made by a government authority, or other prices related to those dealings at nearby places or of surveyed data, provided that such real estate is solicited by an open tender and a prior approval has been obtained from the audit authority.

Article 50

Insofar as the open, selective and single tendering procedures are not workable to acquire seasonal agricultural products, mineral products, sand, stone, raw materials, or handiworks, the procurement entity may propose an alternative for procuring these products and the prices related thereto. Such proposal shall be submitted to a government authority in charge and an audit authority for approval respectively.

Article 51

A government-owned trading entity may, after obtaining approvals from a high authority in charge and an audit authority, handle by itself for dealings either pursuant to a government policy or at its own benefits. Such approvals shall be obtained yearly.

Article 52

Calculation of the value of a construction service shall include the cost of materials and labour services. If some of the materials have already been acquired under tendering procedures audited by an audit authority, then the open or selective tendering of the rest materials and labour services may be handled by the procurement entity itself, provided that the total value of the rest ones is less than the threshold amount.

Article 53

Insofar as is necessary for a government-owned entity to have its marine vessel repaired in a foreign country, and the repair contract or procurement contract could not be solicited pursuant to the legal procedures concerning open, selective and single tendering, the contract-awarding and acceptance of such repair and procurement contracts can be handled by the entity itself. However, the entity shall submit the documents concerned and report the case to the audit authority for reviewing.

Article 54

If an entity is authorized to handle by itself a construction contract or a product contract whose value equals or exceeds the threshold amount, the entity shall not only follow the legal requirements throughout the procedures, but also submit the documents concerned and report the case to the audit authority within twenty days after signing the contract and finalizing the acceptance procedures respectively.

Article 55

When using the open, selective or single tendering procedures, a list of items and quantities for the products and services specified in the solicitation documents shall be included in the statement of government estimate for cross-checking purposes. The unit price of each item shall represent the current market prices, and be added with taxes, regulatory charges, and a reasonable fee to conclude the government estimate. Such estimate shall be incorporated with itemized price analysis or cost analysis and other supporting data and be submitted to the audit authority within a time-limit for reviewing. If only a few items are solicited, the procurement entity may present such government estimate together with the basis of calculation and other related data to the auditor-in-presence for reviewing at the time before opening of bids or commencing a single-source price negotiation.

Provided that the market price has been changed after submitting the government estimate, the procurement entity may present supporting data to the auditor-in-presence for considering a revision to the estimate. The reasons for revision, the means of calculation, and the relevant data shall be recorded in the minutes of meeting.

The government estimate shall be kept in strict confidence. The estimate provided by the procurement entity shall be the basis for discussion among all government officers in presence at the time of finalizing a government estimate before opening of bids or commencing a single-source price negotiation. If the auditor intends to change the estimate, he or she shall substantiate the position with reasons and facts.

If the procurement entity does not agree with the auditor on the matter of changing the estimate, such entity shall state the reasons in detail in the statement of government estimate with signatures of responsible officers, and the opening of bids shall subsequently be suspended. All bids received shall therefore be packaged, sealed, and signed by all officers in presence. The auditor shall then report the matter to his or her office, and a resolution shall be made available to the procurement entity within forty-eight hours. After that, all the bids can therefore be opened.

Article 56

If there is only one bid in response to selling of a government property, it may be opened for consideration. Provided that the bid price equals or exceeds the government estimate, a contract can be awarded accordingly.

Article 57

If two-step opening of bids is used to solicit a construction contract or a product contract, i.e. to open the technical proposal first and then open the price proposal after evaluation of technical proposal, the procurement entity shall notify the audit authority to monitor at each step. The regulations concerning two-step opening shall be set forth in the solicitation documents.

Article 58

If all the bid prices in response to a solicitation of construction contract or a product contract are higher than the government estimate, the procurement entity may, in a state of urgency or to meet its needs, give the lowest acceptable bidder a one-time priority to reduce its bid price. If the reduced bid price is still higher than the government estimate, all acceptable bidders may be given equal opportunities to re-bid lower prices. In the event that following such procedure, the lowest bid price is still higher than the government estimate by 20 per cent or more, re-tendering is required. If the lowest bid price among all acceptable bidders exceeds the government estimate but is not higher than such estimate by 20 per cent or more, and the procurement entity decides to award a contract at such bid price for a certain reason, the following regulations shall be observed:

- (1) For a construction contract, if such bid price is not higher than the government estimate by 10 per cent or more, the procurement entity may substantiate the reason to the auditor-in-presence for his or her reporting the case to the audit authority for approval. If such bid price is higher than such estimate by 10 per cent or more but is not higher than the estimate by 20 per cent or more, the procurement entity may substantiate the reason and obtain prior approvals from a higher authority in charge and an audit authority respectively.

(2) For a product contract, if such bid price is not higher than the government estimate by 10 per cent or more, the procurement entity may substantiate the reason and record it in the minutes for the auditor-in-presence to have a consent within the authority concerned or, if beyond the authority concerned, to have a reserved consent and to report the case to his or her office for a resolution. If such bid price is higher than the estimate by 10 per cent or more but is not higher than the estimate by 20 per cent or more, and the officers from a higher authority in charge would give their approval to such contract-awarding, then the procurement entity may substantiate the reason and record it together with the fact of such approval from such officers in the minutes for the auditor to make a reserved consent and to report the case to his or her office for a resolution. In the absence of officers from a higher authority in charge at the meeting, the procurement entity shall report the case to the higher authority for its transmitting to the audit authority for approval.

(3) If the audit authority does not send an auditor to monitor the procedure and notify the procurement entity to do it by itself, the entity may make a decision on contract-awarding provided that the price for award is not higher than the government estimate by 10 per cent or more. However, the entity shall report an abstract of bids and the reason of contract-awarding to the audit authority for reviewing. If the price for award is higher than the estimate by 10 per cent or more, but is not higher than 20 per cent or more, the procurement entity may award with reservation, and substantiate the reason to a higher authority in charge for transmitting to the audit authority for approval.

The audit authority shall make a resolution and inform the same to the procurement entity within forty-eight hours after being notified.

The above-mentioned regulations may apply to the selective or single tendering procedures.

Article 59

If the lowest bid price among all acceptable bidders in response to a construction contract or a product contract is lower than the government estimate by 20 per cent or more, the procurement entity may reserve some of the other bid prices, suspend the contract-awarding, and demand the bidder of lowest bid to make an explanation to its bid price on the spot or to submit a cost analysis within a period of three days. The procurement entity shall evaluate the explanation or the cost analysis within the following three days. If the procurement entity is of the opinion that the lowest bid price among all acceptable bidders is unreasonably low which may lead to deterioration of quality, the entity may award the contract to the acceptable bidder who offers the second lowest bid price, provided that it shall have been duly substantiated and approved by a higher authority in charge and an audit authority. In the event that a construction contract is to be awarded at a price which is less than the government estimate by more than 20 per cent, the procurement entity may, in addition to the requested performance bond or guarantee, demand the bidder to deposit a bond for such difference.

Article 60

If the opening, negotiation, or contract-awarding procedures have been monitored by an auditor, the procurement entity shall either send the contract documents to the auditor for verification and filing purpose, or send a duplicate copy of the contract to the audit authorities.

Article 61

When the value of a contract equals or exceeds the said threshold amount, any amendment to the contract which would result in an increase of the contract value by an amount which equals or exceeds the threshold amount shall not be made until the procurement entity has substantiated the reasons to and obtained an approval from the audit authority.

Article 62

A construction contract or a product contract shall be set forth therein the means and standards for measuring, inspection and testing to be applied on performing the acceptance procedures.

Article 63

For a construction contract whose value equals or exceeds the threshold amount, the procurement entity shall submit a progress schedule to the audit authority after commencing the work. By the time of accomplishing the work, the acceptance procedures shall be performed immediately, which in no event shall be suspended for more than thirty days unless for special reasons. The procurement entity shall also submit a preliminary acceptance record to the audit authority and, at least five days before the scheduled beginning date for acceptance procedures, notify the audit authority to monitor the acceptance procedures. Any discrepancy discovered during the acceptance procedures shall be recorded, and the procurement entity shall demand the contractor to remedy such discrepancies within a designated period of time.

Article 64

On performing acceptance procedures, a record concerning the acceptance of a construction work or a product shall be prepared by the procurement entity and signed by the officers in presence. If there are any discrepancies to the drawings, samples, or contract requirements, the auditor shall reject to sign on the acceptance record. If for special reasons the procurement entity would wish to accept a non-conformity work or product but demand a compensation from the contractor as a substitution, such substitution shall have to be approved by the audit authority in advance.

The transferring procedures for selling a government property may follow the same regulation as mentioned above.

The acceptance procedures for a product may be handled by the procurement entity itself when it is difficult to notify the audit authority to monitor the procedures due to the case of deliveries in small quantities or in several shipments, of arrivals in different ports, of immediate service in a state of urgency, or of a quantity to be realized after unpacking all

packages or accomplishing the installation work, provided that such case shall have been substantiated to and approved by audit authority. Under such circumstances, the procurement entity shall send a summary report to the audit authority after accomplishing all acceptance procedures.

Article 65

The waiver of applying audit procedures to a state-owned enterprise for its frequently procured raw materials and consumable materials by the approval of a higher authority in charge and an audit authority shall be effective for a fiscal year only. If the enterprise wishes to extend such privilege to the next fiscal year, the enterprise shall substantiate the reasons to and obtain an approval from a high authority in charge and an audit authority respectively.

Article 66

Insofar as is necessary when, for reason of natural disaster, economic crisis, or a state of urgency, a construction work or a procurement of products is not able to follow the audit procedures, the procurement entity shall substantiate the fact and reason to and obtain a prior approval from the Executive Yuan, and notify the audit authority thereof.

Within twenty days after signing a contract in accordance with the above regulation, the procurement entity shall submit a duplicate copy of the contract and other related data to the audit authority. The procurement entity shall also notify the audit authority to monitor the acceptance procedure.

Article 67

If the contract value is relatively small or for other special reasons, the audit authority may decide whether to send an auditor to monitor the tendering procedures concerning bid-opening, price negotiation, contract-awarding, acceptance, and transferring of a property.

Article 68

If an audit authority does not send its auditor to monitor the tendering procedures, the government entity shall report the case to the audit authority together with a duplicate copy of the contract, drawings, a statement of government estimate, an abstract of bids, an abstract of contract-awarding, and other related data for reviewing by the audit authority. The audit authority may make enquiries or send an auditor to the government entity to review the matters concerned.

RULES FOR THE PROCUREMENT OF FOREIGN GOODS

Article 1

The Rules are promulgated with a view to strengthening the government procurement system and to enhance the consolidated procurement functions.

Article 2

Procurement of goods of foreign origin by central government entities (hereinafter referred to as "Entities") shall be consolidated through Central Trust of China (hereinafter referred to as "CTC"). State-owned enterprises may procure goods of foreign origin on their own or through CTC.

Article 3

Goods mentioned in the Rules shall include agricultural and mineral products, machinery equipment, traffic and mass transportation equipment, facilities, parts and accessories, raw materials, other miscellaneous supplies, and the services incidental to the supply of goods.

Article 4

Entities may, in accordance with the applicable procurement regulations, procure goods of foreign origin on their own, provided that:

- (1) the value of procurement contract is below the threshold of audit prescribed by the Ministry of Audit; or
- (2) the Entities concerned are public universities or colleges, or public academic institutions for research or training, and the goods are procured for educational, researching, or training programmes; or
- (3) the Entities concerned are armed forces, and the procurement programmes proceed in accordance with the armed services procurement regulations; or
- (4) the acquisition plan is a non-consolidated one approved by the Executive Yuan.

Article 5

CTC shall award contracts by means of open tendering procedures, selective tendering procedures, or single tendering procedures, and Entities shall receive and inspect the goods in accordance with the applicable laws and regulations.

Article 6

Deleted.

Article 7

On condition that the contract signed with the successful tenderer requires the buyer to contract for carriage or insurance for importation of goods, CTC shall give domestic carriers and insurers the priority to contract.

Article 8

Entities shall divide the goods to be procured into systematized categories. Goods in the same category shall normally be consolidated into one programme, and the programme shall normally proceed for procurement in one time.

Article 9

Detailed procurement provisions under the Rules shall be established by CTC.

Article 10

The Rules shall be implemented from the date of issuance.

(Effective on September 26, 1990)

**STATUTE FOR INSPECTION PROCEDURES GOVERNING CONSTRUCTION
WORKS, PROCUREMENTS OF PRODUCTS, AND DISPOSAL OF
PROPERTIES BY GOVERNMENT AGENCIES**

Note: The amendment to this Statute is in the process of legislation

Article 1

This Statute is prescribed in accordance with the provision of Article 59 of the Audit Law.

Article 2

The inspection work, procurement of products, or disposal of properties by various government agencies shall be governed by this Statute.

Article 3

Construction works, procurement of products, or disposal of properties by various government agencies shall be processed in accordance with budgetary procedure.

Article 4

Disposal of properties through resale by various government agencies shall require prior approval of the higher governing agency; where the agency concerned is itself a first-echelon agency, its officer-in-charge shall have the authority to approve.

Article 5

Where there is construction work, procurement of products, or disposal of properties exceeding certain prescribed amount, the agency concerned shall report the case to its higher agency, and also notify the auditing agency to despatch personnel to supervise over the invitation to bid, comparison of prices, negotiation, signing of agreement and taking delivery in and out; where there is no higher governing agency, the officer-in-charge of the agency concerned may designate his senior staff to supervise; where the case is not up to certain prescribed amount, it shall be handled by a designated unit under the supervision of the accounting unit in conjunction with other relevant units.

Article 6

Public announcement for open tender shall be made if construction work, procurement of products, or disposal of properties by various agencies involves certain prescribed amount; comparison of quotations shall govern similar cases involving sums exceeding 10 per cent of the prescribed amount; where there are similar cases but each amounting to less than 10 per cent of the prescribed amount, these cases may be processed by the handling unit delegated

with authority by the officer-in-charge of the agency concerned, on the basis of negotiation or comparison of prices quoted by more than two suppliers supported by pro forma invoices.

Article 7

Where a government agency encounters one of the following situations in the handling of construction work, procurement of products, or disposal of properties, the case may be processed by means of comparison of quotation, where the price exceeds the prescribed amount, the whole case, together with facts and reasons relative thereto, shall be first referred to the auditing agency for concurrence in adopting the price-comparison process.

- (1) Investigation shows that there are only two contractors in the area who are qualified to participate in the planned tender for construction work;
- (2) Investigation shows that there are less than three suppliers in the same area who are qualified to participate in the planned tender for procurement of properties;
- (3) There are less than three suppliers who have submitted bids in two successive tenders or although there are three bidders, their bidding prices for construction work or procurement of properties exceed the estimated ceiling prices; or in the case of disposal of properties by resale, the bidding prices in two consecutive auctions were not up to the floor prices and it is difficult to conduct a third auction;
- (4) There are only two bidders after the public announcement of the tender and the urgency of the case does not allow another public announcement for tender, nor a separate comparison of prices;
- (5) Specified area of procurement as authorized by the Executive Yuan;
- (6) It is an emergency case which does not permit processing through open tender by public announcement and which fact has been reported to and approved by the higher governing agency.

Article 8

For cases of tender, comparison of prices, or by negotiation, each of which involves amounts exceeding the prescribed sum, the instructions for the tender or comparison of prices, blueprint specifications, unified tender form, estimated ceiling price or floor price (including the schedules of essential unit prices or cost analyses), draft contract, other related documents, advertisement or public announcement shall be submitted to the auditing agency concerned three days before the opening of bids or negotiation of prices. However, for cases of procurement, or disposal of property which consist of simple items, only the estimate of total price may be submitted beforehand and the estimate of ceiling price may be furnished for the occasion.

Article 9

Where the estimate of ceiling price is within the prescribed amount but the final outcome exceeds it, the blueprints, specifications and schedule of unit prices should be submitted retroactively to the auditing agency for examination. The latter should be requested to supervise the taking of delivery.

Article 10

The agency which issues open tender shall make public announcement to this effect on the bulletin board in front of its office building for five days or more, and advertise in local newspapers for two or more days. Both the public announcement and newspaper advertisement shall be submitted to the auditing agency for examination. The above rule does not apply to a situation where there is no local newspaper and the consent of exemption from newspaper advertisement has been obtained from the auditing agency.

Article 11

In the tender for construction work, procurement or disposal through resale of properties, bids may be opened where there are at least three participants. In the comparison of prices, there should at least be two participants having submitted the pro forma invoices. Where it is occasioned by one of the following situations, the method of negotiation of prices may be employed by the agency after submission of facts and reasons for such cases involving more than the prescribed amount eligible for negotiation:

- (1) Investigation shows that there is only one firm in the area qualified to participate in the tender for construction work, or the procurement of properties;
- (2) Investigation shows that there is only one firm in the area which supplies the planned procurement, or there is no supplier who offers goods conforming with the specifications laid down in the planned procurement;
- (3) The object of the planned purchase or order for manufacture is a patented product, available only from one producer, in trial run by the domestic producer, or being the parts of the original maker, all of which can not be substituted by other type of property;
- (4) There is only one participant in two consecutive comparisons of prices;
- (5) Being a purchase, sale, trade-in of supplies, raw materials, equipment and accessories, or real estate between two government agencies, between a government agency and a foreign government, or an international organization;
- (6) Public owned real estates which can not be sold through open tender, but which may be sold at the publicly assessed price with the consent of the auditing agency;
- (7) Due to business requirement, acquisition of real estates by a government enterprise or institution in an area specified;

- (8) Annual repair of vessels;
- (9) Although there are a number of suppliers answering the procurement, none of them is capable of meeting the whole requirement;
- (10) Military procurement for which the Ministry of National Defense has designated a special supplier for the order, trial run, or urgent supply relative to the resumption from suspended operation, or suspended navigation of a vessel or airplane.

Article 12

Where the prices have been negotiated and the contract has been signed on the basis of cost-plus-profit for construction work, or procurement of local products by various government agencies which involves sum above a specified amount, the auditing agency may despatch personnel to examine the books of the contracting firm relative to its actual costs, and shall inform the various agencies concerned of the result of the examination.

Where the examination has proven that the costs are untrue, thereby resulting in profits in excess of the original agreement, the competent agency shall be informed of this fact and the latter should demand the original contracting firm to refund the differences.

The above requirement of refund for the difference should be provided in the contract.

Article 13

In the registration of bidders required by various government agencies in connection with the holding of open tender for construction work or procurement of properties, the registrants shall be asked to present for examination their business licence, certificate of tax payment, and evidence of its ability to meet the requirement.

Article 14

Each bidder shall put up cash bid bond with the bank acting as the agent of the Treasury; it shall be refunded to the unsuccessful bidders after award.

Article 15

The tender for construction or procurement of properties shall be, in principle, awarded in accordance with the procedure and other instructions of the tender, to the lowest bidder within the estimated ceiling price. Where the procurement agency deems it necessary to award the bid despite that the price of the lowest bidder exceeds the estimated ceiling price by not more than 10 per cent, it shall report the case, together with justifications, to the auditing agency for a decision, through the personnel despatched by the latter to supervise the tender.

Where the procurement agency determines, in the award of the above-mentioned bid, that the lowest bid price is certainly not reasonable which may possibly result in subsequent supply of inferior goods, or other undesirable developments, the award may go to the second

lowest bidder; where the lowest bid price exceeds the estimated ceiling price by more than 10 per cent but less than 20 per cent, the procurement agency may decide the award with the approval of its higher governing agency and the concurrence of the auditing agency; where the lowest bid price exceeds the estimated ceiling price by 20 per cent, another tender shall be held. Their estimated ceiling prices as referred to in the foregoing two paragraphs shall be decided, prior to the opening of bids, by the procurement agency, in conjunction with the supervising personnel of the auditing agency.

Article 16

The opening of bids and comparison of prices in connection with construction work, procurement or disposal of properties shall be made in public; submission of bid by correspondence is allowed. When it is deemed necessary, bidders may not be asked to be present for the awarding announcement.

Article 17

Prior to opening of bids or comparison of prices, both the estimated ceiling price and the bid prices sent in by various bidders must be kept in strict confidence. However, in the event of disposal of properties through resale and with the concurrence of the auditing agency, the estimated floor prices may be announced or published beforehand.

Article 18

In connection with the signing of construction or procurement contracts after the bid was awarded, the awardee shall be required to put certain amount of performance bond or to produce a guarantee issued by a reputable firm.

Article 19

Where in connection with the opening of bids there has been discovered the collusion of the bidders in order to gain unlawful profits by cheating, aside from on-the-spot announcement of the forfeiture of bids, the bidders may be prosecuted by law. If the fraudulent case is found true after the award is made, the above rule shall be applied *mutatis mutandis*.

Article 20

Where the procurement agency wants to modify specifications or other points, or to increase or decrease the prices after signing of the contract for construction work, or procurement of properties exceeding certain prescribed amount, the auditing agency shall be notified to examine the case. Where the case is of major significance because it involves an increase in price above 10 per cent of the original total price, or the increase exceeds certain prescribed amount and requires the fixing of new unit prices, the auditing agency concerned shall be notified so that personnel may be despatched to supervise the proceedings of the negotiation and subsequent agreement.

Article 21

In notifying the auditing agency to supervise the taking of delivery, the various procurement agencies shall submit for examination the schedule of construction work, or the schedule of purchase or order for properties in accordance with the prescribed forms.

The requirement of the above schedule may be exempted if the data contained therein have been consolidated in the statement of acceptance of delivery.

Article 22

Where the officer who supervises the taking of delivery deems it necessary to break up the hidden portion of the goods being delivered for testing, or for making possible detailed inspection, he may do so; during the period of construction, the auditing agency may despatch personnel to make spot check.

Article 23

Where the result of taking delivery has found out that it does not comply with the original contractual provision of the case and that such departure is of significant importance, the officer-in-charge of this case shall be held responsible for the non-conformity; the officer supervising the taking of delivery shall be held jointly responsible if he is involved in collusion or corruption.

Article 24

Persons who handle the construction work or procurement of products shall not be charged with the work of taking and inspection deliveries, or testing of sample materials; the receiving personnel shall not participate in the supervision and inspection of deliveries; persons who handle resale of properties shall not be charged with making delivery.

Article 25

Upon completion of taking delivery, the procurement agency shall prepare a paper certifying delivery to be signed by the persons in charge of supervising over and actually taking such delivery, and have it submitted to the auditing agency for examination.

Article 26

In the processing of emergency construction work, or procurement of products prior to the establishment of the respective budgetary provisions, the agencies concerned shall notify the audition agency to despatch personnel to supervise. However, supervision by the auditing agency shall not constitute a reason for asking for approval or supplementary appropriation.

Article 27

In making award during the auction of properties, the agencies concerned shall give the award to the highest bidder whose prices are above the estimated floor prices. Where there

is prevailing a special situation which tends to keep low the highest bidding prices to be less than the floor prices by 10 per cent and where the auctioning agency deems it necessary to award, it may decide to do so after having submitted the case with justification to the higher governing agency, having obtained approval therefrom, and having acquired the concurrence of the auditing agency. Where the highest bidding price is lower than the floor price by more than 10 per cent, another auction shall be held.

Article 28

Where procurement is made by an agency stationed abroad on behalf of a domestic agency, the procedure set forth by this Statute may be waived. In doing so, however, the procurement agency shall submit the schedule of prices or the schedule of award of bids and copy of contract to the auditing agency for examination.

Article 29

Where the procurement of military supplies or construction of military work is of a highly confidential nature, the military agency concerned may proceed in the manner desired provided that it has been approved by the Executive Yuan, but shall, *ex post*, gather the facts and reasons, together with all relevant documents, and have them submitted to the auditing agency for examination and record. Where it is of military urgency, or for the sake of ensuring the timely usage of the military supplies, the military agency concerned may proceed with the procurement with the approval of the Ministry of National Defense, but shall, *ex post*, gather the facts and reasons, together with all relevant documents, and have them submitted to the auditing agency for examination and record.

Article 30

Where the agency concerned purchases materials and hires workers to carry out certain construction work, and where the total cost of materials and labour exceeds certain prescribed amount, prior approval by the higher governing agency and concurrence by the auditing agency shall be required. After completion, a report about the work done, together with the budget, blueprint, schedule of material and labour and other relevant documents, shall be submitted to the auditing agency for examination and record.

Where the above-mentioned procurement of materials exceeds certain prescribed amount, it shall be processed in accordance with the provisions of this Statute.

Article 31

Where the inspection and testing required by various agencies in connection with the procurement of products are of a technological nature, the case shall be reported by the agency concerned, through the proper channel, to the Executive Yuan for a decision.

Article 32

Where a government agency carries out the construction work or procurement of products not in accordance with the procedure provided by this Statute and where the auditing agency

does not attend to the matter without giving a reason after having been so informed, the officers-in-charge of these agencies shall be liable to administrative penalties.

Article 33

Where an agency splits up the construction work, procurement of products, or disposal of properties into several batches or lots in order to evade the inspection procedure set forth by this Statute, the officer-in-charge shall be liable to administrative penalties; where the above action has caused loss to government funds, he shall be held responsible for indemnity payment.

Article 34

Where a government enterprise needs regularly to purchase raw materials and supplies, and to sell finished goods, it may be exempted from the application of this Statute with the approval of its higher governing agency and the concurrence of the auditing agency.

Article 35

Where the nation encounters major natural disaster or significant economic setback, and where certain emergency procurement or construction work has to be carried out, the procedure governing open tender, comparison of prices or negotiation provided by this Statute may be waived provided that it has been approved by the Executive Yuan.

Article 36

The prescribed amount as mentioned in this Statute shall be decided by the auditing agency.

Article 37

This Statute shall become effective from the date of promulgation.

**GUIDELINES FOR PROCUREMENT OF TECHNICAL SERVICES
FROM TECHNICAL CONSULTING ORGANIZATIONS
BY GOVERNMENT ENTITIES**

Article 1

Government entities shall, when procuring technical services from domestic or foreign technical consulting organizations, handle such procuring matters in accordance with these Guidelines, except otherwise required by other laws and regulations.

Article 2

The domestic technical consulting organizations referred to in the Guidelines shall be either those technical consulting organizations of which establishment has been promoted by government authority, organization is in the form of juridical association, business function is not aimed at commercial interest, and business operation is supervised by the government authority concerned; or other technical consulting organizations which are supervised by the Ministry of Economic Affairs and have passed evaluation by the procuring entity.

Government entities may also procure technical services from a qualified technician's office in accordance with the Guidelines, provided that the office has passed evaluation by the procuring entity.

Article 3

Government entities shall procure technical services from technical consulting organizations within the budget appropriated and the authority delegated. The procuring entity shall report the case and the relevant reasons thereto to a higher authority for a prior approval if the case is beyond the procuring entity's own authority.

Article 4

Government entities may procure the following technical services from technical consulting organizations:

1. Project Planning
 - (a) Planning of a construction project
 - (b) Evaluation of a construction project
 - (c) Initial field survey
 - (d) Geodetic survey, geology survey, soil survey and test, hydrology and weather survey, material survey and test, model test, and other survey and test

- (e) Data analysis**
- (f) Case study and initial planning**
- (g) Cost estimation and economic analysis**
- (h) Financial analysis and recommendation**
- (i) Feasibility report and recommendation**

2. Construction Design

- (a) Basic design**
- (b) Detailed design**
- (c) Drafting of construction specification**
- (d) Quantitative estimation of construction work**
- (e) Selection of machinery equipment and drafting of its specifications**
- (f) Drafting of construction plan and construction schedule**
- (g) Analysis and estimation of construction cost**
- (h) Drafting of financial plan**
- (i) Drafting of budget and tender documentation of construction work**
- (j) Drafting of instruction manuals for the maintenance and operation of machinery equipment.**

3. Surveillance and Instruction of Construction Work

- (a) Evaluation of the qualification of prospective construction contractor or equipment manufacturer**
- (b) Assistance on performing the opening and evaluation of tenders, and recommendation of contract-awarding**
- (c) Assistance on preparing contract documents for signing with a construction contractor or an equipment supplier**
- (d) Review of contractor's work plan, construction equipment, and work schedule**

- (e) Geodetic survey of construction work, and examination of the contractor's lay-out arrangement and survey result
- (f) Inspection and recording of the quality of construction work, and test of materials, all in accordance with approved design drawings and specifications. Or change of design drawings and specifications if the design engineer so agrees
- (g) Consulting service for construction work
- (h) Review, certifying, and recommendation of work progress
- (i) Inspection, certifying, and report of the work completed.

4. Supervision of Construction Work

Provision of residing engineers at job-site for the supervision of construction work.

5. Other Services

- (a) Research, evaluation and supplement work in relation to special technical data and report
- (b) Approval of drawing, supervision of manufacture, inspection, and supervision of installation in relation to special equipment
- (c) Training of construction and operation personnel
- (d) Loan application and equipment acquisition
- (e) Enhancement of business, production and operation techniques
- (f) Other special technical services.

The technical consulting organizations to be qualified for providing technical services shall have employed full-time experts specializing in the services required, which shall be a mandatory criterium of sourcing.

Article 5

Government entities shall give priority to domestic technical consulting organizations before considering foreign ones when procuring technical services.

Article 6

Government entities may procure technical services from domestic technical consulting organizations in any of the following events:

1. The construction project or equipment project concerned is a planned or a complex one where the procuring entity itself is not able to handle due to lack of technology, time or manpower.
2. The domestic technical consulting organization concerned is designated by a foreign company which possess the patents or engineering secret required.
3. Agreement with a foreign technical consulting organization that a certain part of the service contract shall be subcontracted with a domestic technical consulting organization.
4. Any other technical reasons which make contracting-out necessary.

Article 7

Government entities may procure technical services from foreign technical consulting organizations in any of the following events:

1. Domestic industries do not have the technology or experience required for the provision of a construction work or an equipment, and foreign experts are therefore needed for planning and designing purposes.
2. Lack of technology or experience by domestic companies.
3. Requirement of employing foreign technical consultants due to foreign loan agreement.
4. Requirement of foreign equipment and foreign designer due to patent rights.
5. Any other special reasons which make it necessary to employ a foreign technical consultant.

Article 8

Except otherwise required in the Guidelines, the technical service fee may be determined by one of the following methods:

1. Cost-plus-fee pricing
2. Rate-to-construction-expense pricing
3. Per-day pricing
4. Lump-sum pricing or per-unit pricing.

The said service fees shall be negotiated in consideration of the prevailing pricing standards in the business market, but not exceeding the amount determined by the procuring entity or its higher authority. Analysis of the negotiated amount shall be included in the contract for

checking. Any allowance for extra payment, if required, shall be specified in the contract with coverage, fee and limit clearly indicated. Any other payment beyond the contract agreement is prohibited.

Article 9

The cost-plus-fee pricing shall be applicable to complex projects where service fees cannot be easily estimated.

The cost items of such pricing method may include the following:

1. Direct Expense

- (a) **Direct salary:** including salaries for the personnel directly involved in the service work, plus an additional 20 per cent of the salaries to cover leaves and insurance premium. The said personnel may include engineers, planners, experts in the fields of economy, finance, management, business, etc.
- (b) **Other direct expenses:** including all the direct expenses other than direct salary, such as travel expense, allowance for job-site residents, data collection fee, consulting fee and travel expense for outside experts, patent fee, training expense for construction and operation personnel, rent and programme fee for computers, survey expense, inspection fee, test fee, printing expense for drawings and reports, and the taxes related to the direct expenses.

2. Administration Expense

Including those expenses not covered by the direct expense, such as the salary and insurance premium of the administration and accounting personnel, office expense, utilities fee, depreciation or rent of equipment and furniture, office supplies expense, equipment relocation expense, postage, telephone bill, advertising expense, social welfare donation, and the taxes related thereto. However, the total administration expense shall not exceed the total direct salary determined in the above sub-item 1(a).

The fee of the cost-plus-fee pricing is the profit segment of providing a technical service, which may include business promotion expense, productivity promotion expense, work preparation and closing expenses, research expense, professional contact expense, domestic and foreign seminars participation expenses, and taxes related thereto. However, the total fee shall not exceed 40 per cent of the sum of direct salary (sub-item 1(a)) and administration expense (sub-item 2).

The total estimated contract amount to be negotiated by a procuring entity and a technical consulting organization shall be the sum of the aforesaid cost and fee.

Article 10

The rate-to-construction-expense pricing method shall be applicable to non-complex projects of which the service fees shall be determined by the service coverage and the following percentage limits:

| Construction Expense | Fees of Construction Design and Surveillance and Instruction of Construction Work, in percentage to the Construction Expense | Fees of Supervision of Construction Work, in percentage to the Construction Expense |
|--|--|---|
| Less than NT\$10 million | 5.1% | 4.0% |
| NT\$10 million to less than NT\$50 million | 4.5% | 3.5% |
| NT\$50 million to less than NT\$100 million | 3.9% | 3.0% |
| NT\$100 million to less than NT\$500 million | 3.3% | 2.5% |
| NT\$500 million or more | 2.9% | 2.2% |
| | | |

Note: Service items 4.1(b) and 4.1(c) are included in the above coverage.

The aforementioned construction expense means the construction cost required for completion of a construction work, including wages, material cost, depreciation and maintenance expense of construction equipment, etc., but excluding planning expense, design expense, administration expense, financial expense, land expense, royalty, and legal expense.

If the technical service covers only construction design and does not include the surveillance, instruction and supervision of the construction work, the said construction expense may be calculated basing on the construction budget determined by the procuring entity.

Service fees of the following may be added separately to the above limits:

1. Change of an already approved design
2. Initial field survey, geodetic survey, geology survey, soil survey and test, hydrology and weather survey, material survey and test, model test, and other survey, experiment and research

3. Extra surveillance, instruction, and construction supervision in relation to a delayed project performing by other contractors
4. Service fees in relation to re-tendering
5. Service fees in relation to legal procedures
6. Printing expenses for extra copies of design report and drawing.

All the above additional fees shall be determined according to the cost-plus-fee method specified in Article 9.

Article 11

The per-day pricing method shall be applicable to cases of small-scale services where only a few technical experts and a short period of service time are required. The per-day pricing may use one fifteenth of the relevant person's monthly salary as the base price, and then add administration expense and fee calculated in accordance with Article 9 to conclude a daily service fee. Direct expenses other than salaries, such as travel expenses, may be paid in addition to the said daily fee.

Article 12

The lump-sum pricing or per-unit pricing method shall be applicable to cases where service coverage is simple and definite, and the total service fee can be correctly estimated or can be calculated by itemized unit price of each service. The said total service fee or unit price may be determined in accordance with the cost-plus-fee method specified in Article 9.

Article 13

In the event that a technical consulting organization is invited to take over a partially completed technical service, the service fee for the uncompleted portion may be determined in any method specified in Article 8 plus the fee relating to reviewing of the partially completed portion.

Article 14

Service fees for special consulting services or hi-tech technical services may be negotiated on a case-by-case basis.

Article 15

In the event that the time schedule for completion of a technical service is required to be shortened, the service fees concerned may be increased by negotiation on a case-by-case basis.

Article 16

Service fees may be paid partially by down-payment after contract-signing, and the rest may be paid monthly or periodically.

Article 17

When the technical service contract value equals or exceeds NT\$10 million basing on the calculation methods specified in the Guidelines, the procuring entity shall report the case to a high authority for approval. For time-saving purposes, the high authority may delegate authority to the procuring entity so that the latter may make decision by itself on performing special or important construction projects or cases where the procuring entity procures the service on behalf of another entity. However, the contract-awarding for construction work and equipment shall proceed in accordance with the Ordinance Concerning Inspection Procedure Governing Construction Work, Procurement and Disposal of Properties by Government Agencies.

In the event that change of design is required for a contract for which the authority has not been delegated to the procuring entity, the entity shall report to a higher authority concerning the reasons of change and the party which should be responsible for, and obtain a prior approval from the higher authority before execution of the change.

Article 18

The procuring entity may negotiate a service contract with a supplier by using single tendering procedures when, for reasons connected with patents or special techniques, the services can be provided only by a particular supplier; for technical reasons connected with the main equipment to be procured; or for other reasons approved by a higher authority. Except the above, the procuring entity shall invite at least two technical service consulting organizations for evaluation, and select one of them to negotiate a contract or select two or more of them to tender. If the contract value equals or exceeds the threshold specified in Article 17, the procuring entity shall invite its higher authority to send officers to supervise the tendering procedures.

In the event of inviting consulting organizations for evaluation, the procuring entity shall specify service coverage and relevant terms and conditions in the invitation, and inform experienced and renowned consulting organizations, domestic or foreign, to submit their service proposals. The proposals shall be evaluated and compared fairly. The main criteria of evaluation shall be the content of proposal, the goodwill and experience of the technical consulting organization, the education background and working experience of its project manager and other main personnel involved. For cases related to important projects or special technology, the procuring entity may request the Advisory Group of Science and Technology of the Executive Yuan to organize an evaluation team to perform the evaluation.

Article 19

Domestic technical consulting organizations may be selected to participate in a service work contracted with a foreign technical consulting organization. In such case, the contract shall specify in what manner the domestic consulting organizations shall participate.

Procuring entities may permit domestic technical consulting organizations to hire foreign technical consulting organizations to participate in a service work contracted with a domestic technical consulting organization.

Article 20

The terms and conditions to be agreed with a foreign technical consulting organization shall consider not only the general practices applicable to service contracts, but also the following:

1. The governing language of the contract shall be Chinese language. A translation copy in foreign language may be attached therewith.
2. The governing law of the contract shall be the laws of the Republic of China, except otherwise negotiated under special circumstances.
3. The means of arbitration and the court of jurisdiction for dispute settlement shall be specified.
4. The taxes to be paid shall be specified, and the taxpayer shall be the party who is obligated to pay them according to the laws of the Republic of China.
5. The responsibilities to be borne and the good service quality to be guaranteed by the contractor shall be specified.
6. The insurance premium for the persons and equipment to be insured shall be specified, and the amount or percentage of the premium to be borne by each party shall be indicated.
7. In the event that payment shall be made in a certain time schedule, the work progress to be completed by the schedule shall be specified.
8. If the service coverage includes training of the procuring entity's operation or maintenance personnel, except those fees required by the consulting organization, other fees such as travel and living expenses of the trainees shall not be included. These expenses shall be paid by the procuring entity to the trainees directly.
9. The contract shall specify that proprietary rights of the project plan and drawings developed by the technical consulting organization shall belong to the procuring entity, except patent rights or under special circumstances.

10. There shall be no contract clauses that allow the technical consulting organization to transfer its work to a third party. In the event that subcontracting is required, the contractor shall obtain a prior approval from the procuring entity, and the relevant fees shall be adjusted accordingly. A service where domestic technical consulting organizations are able to supply shall not be included in the service coverage to be provided by foreign technical consulting organizations, except those items which foreign ones are technically required and have been explicitly specified in the contract.

Before contract-awarding, the contract documents shall be reviewed by personnel who are familiar with the laws.

Article 21

In consideration of the specific features of a service contract and the importance of timely completion of the service, the procuring entity may require liquidated damages for delay performance and include damages clauses in the contract. The coverage and rate of the liquidated damages may be negotiated by the procuring entity and the consulting organization.

Article 22

Procuring entities shall insert in service contracts damages clauses which require the technical consulting organization to compensate damages suffered by the procuring entity due to errors or faults of the consulting organization.

Article 23

During service period, the technical consulting organization shall submit monthly reports concerning work progress, daily work force and daily work hours in a month to the procuring entity for checking.

Article 24

Domestic technical consulting organizations shall hire a certified public accountant to audit their accounts yearly, and the audit report shall be submitted to the supervising government authority specified in Article 2 for review.

(Effective on 4 December 1993)