

Act for Promoting Quality Assurance in Public Works

(Purpose)

Article 1

In that ensuring the quality of public works contributes both to enriching the lives and assuring the safety of the public, to environmental conservation (including the creation of an amenable environment), and to the formation of independent local communities with individual character through the provision of high-quality social capital, and in that such quality assurance benefits present and future generations, this law sets forth a basic philosophy for ensuring the quality of public works in order to clarify the responsibilities of the central government and other stakeholders. It also sets forth basic policies to promote quality in public works in order to improve the public welfare and contribute to the sound development of the national economy.

(Definitions)

Article 2

For the purposes of this law, "public works" are defined as in Article 2.2 of the Act for Promoting Proper Tendering and Contracting for Public Works (Law No. 127, 2000).

(Basic Philosophy)

Article 3

1. In that public works, providing social capital that supports the well-being and economic activities of the public, have important socioeconomic implications, the central and local governments, as well as other entities that place and receive orders for public works, should ensure the quality of public works for present and future generations of the Japanese people in fulfilling their respective roles.

2. In that construction work has such unique characteristics as that its quality can be confirmed only after structures are provided for use, its quality depends to a great degree upon the technological capabilities of contractors, and its conditions differ significantly between individual projects, various factors in addition to price should be considered to ensure the quality of public works; due consideration should also be given to economic efficiency, resulting in the conclusion of contracts that comprehensively consider pricing and quality.

3. In that work efficiency, safety, environmental impact and other factors are important considerations in ensuring the quality of public works, quality assurance should employ the most appropriate technologies available.

4. To ensure the quality of public works, due attention should be given to ensuring the transparency of tendering and contracting processes and the content of contracts, the fairness of competition for contracts, the removal of construction companies that are not qualified as contractors, the elimination of improper activities such as collusion and bid-rigging, and the use of proper construction practices.

5. To ensure the quality of public works, due consideration should be given to the private companies employed in public works projects, including the proper evaluation of their capabilities; the proper reflection of these capabilities in tendering and contracting; and the use of their technical proposals (herein meaning proposals on technology utilization submitted for public works contracts to be awarded competitively), originality, and ingenuity.

6. To ensure the quality of public works, due attention should be given to the conclusion of fair contracts based on agreements between parties negotiating on an equal footing, and to the good-faith implementation of these contracts.

コメント: "Loyal" is not quite natural here, but its meaning is included in "good faith."

7. To ensure the quality of public works, the quality of surveys on and designs for public works shall be ensured in accordance with the principles set forth in the preceding paragraphs, in that the quality of such surveys and designs significantly affect the quality of public works.

(Responsibilities of the Central Government)

Article 4

The central government, pursuant to the basic philosophy set forth in the preceding article (henceforth the "basic philosophy"), shall assume responsibility for formulating and implementing comprehensive measures to ensure the quality of public works.

(Responsibility of Local Governments)

Article 5

Local governments, pursuant to the basic philosophy, shall assume responsibility for formulating and implementing measures to ensure the quality of public works in cooperation with the central government,

while giving due consideration to local needs.

(Responsibilities of the Ordering Party)

Article 6

1. To ensure the quality of public works, the party placing an order for the construction of a public facility (henceforth the "ordering party"), shall properly perform such duties (henceforth the "duties of the ordering party") as the production of written specifications, evaluation of prices, determination of tendering and contracting methods, selection of the contractor, supervision and inspection of work, and confirmation and evaluation of the progress of construction during the work period and at the time of completion.

2. The ordering party shall maintain records of evaluations of public works construction, as well as other reference materials, to be available for use in the placement of future orders by the ordering party or others.

3. The ordering party shall establish a system for the performance of its duties, and assign the staff necessary to maintain that system.

(Responsibility of the Contractor)

Article 7

The contractors for public works projects shall perform contracted work in a proper manner pursuant to the basic philosophy, and shall improve their technological capabilities to that end.

(Basic Principles)

Article 8

1. The central government shall set forth basic principles for the comprehensive implementation of measures to ensure the quality of public works.

2. Basic principles shall be set forth on the following matters:
(1) Matters concerning the significance of promoting quality assurance in public works projects;

(2) Measures to promote the quality of public works.

3. In formulating basic principles, the central government shall give consideration to the autonomy of quasi-governmental agencies (herein defined as in Article 2.1 of the Act for Promoting Proper Tendering and Contracting for Public Works) and of local governments.

4. The central government shall give public notice the basic principles upon which it decides without undue delay.

5. The provisions set forth in preceding paragraphs 3 and 4 shall be applied mutandis to changes to basic principles.

(Responsibilities Based on Basic Principles)

Article 9

Heads of each ministry or agency (as defined in Article 20.2 of the Public Finance Law [Law No. 34, 1947]), representatives of quasi-governmental agencies or independent administrative agencies (as defined in Article 2.1 of the Law for General Rules for Independent Administrative Institutions [Law No. 103, 1999]), the heads of these institutions, and the heads of local governments shall implement necessary measures to promote the quality of public works in accordance with basic principles.

(Systematic Cooperation between Related Administrative Organizations)

Article 10

The central government, in formulating and implementing basic principles, shall establish systematic cooperation between concerned administrative organizations.

(Examination of the Technological Capabilities of Those Participating in Competitive Bidding for Public Works Contracts)

Article 11

The ordering party, in selecting contractors for public works projects by competitive bidding shall examine the capabilities of those participating in the bidding, including their experience in constructing public works, their past construction experience and the expertise of the engineers to be assigned to a given project.

Technical Proposals from Participants in Competitive Bidding)

Article 12

1. The ordering party shall request that participants in competitive bidding (herein including those planning to participate in competitive bidding) submit technical proposals, unless the ordering party deems such proposals unnecessary due to the nature of the public works project in question.

2. The ordering party shall properly examine and evaluate technical proposals if it requests and receives such proposals. In doing so, the ordering party shall implement measures to ensure the neutrality

and fairness of its examination and evaluation of proposals, including measures providing for the proper handling of complaints from concerned parties.

3. If the ordering party of a public works project for which the contractor will be selected by competitive bidding deems it impossible to ensure the successful implementation of a public works project according to a submitted technical proposal, the ordering party may elect not to adopt that proposal.

4. The ordering party, in requesting that participants in competitive bidding submit technical proposals and in selecting contractors based on these proposals, shall give public notice of both the request and the method of evaluating proposals in advance, and shall subsequently make public the results of its evaluations. However, public notice of the results of evaluations of technical proposals for public works projects to which the provisions on public notice OR set out in Articles 4 to 8 of the Act for Promoting Proper Tendering and Contracting for Public Works do not apply is not required.

(Improvement of Technical Proposals)

Article 13

1. The ordering party may request that those who have submitted technical proposals improve their proposals, or may offer them a chance to improve their proposals. In this case, the ordering party shall provide an overview of the technical proposal improvement process.

2. The provision in paragraph 4 of the preceding article shall be applied *mutatis mutandis* to the provision of the overview of the technical proposal improvement process.

(Requests for Price Caps in Technical Proposals Involving Advanced Technologies)

Article 14

The ordering party, in requesting technical proposals that involve advanced technologies, may cap estimates based on the results of its evaluations of proposals. In examining technical proposals, the ordering party shall seek the opinions of knowledgeable persons who can offer fair judgments from a neutral position.

(Utilization of People or Organizations That Can Properly Perform the Duties of the Ordering Party)

Article 15

If the ordering party deems it difficult to perform the duties of the ordering party properly due to a lack of expert knowledge or for other reasons, the ordering party shall utilize people or organizations whose abilities enable them to perform its duties properly in part or in whole, including the national and local governments and those authorized to perform the duties of the ordering party by laws, regulations, or contracts. In such cases, the ordering party shall choose people or organizations that meet the requirements for performing its duties, including seconded officials who have the knowledge and expertise to perform the duties properly and to establish systems to ensure compliance with laws and regulations as well as confidentiality.

2. In the event that the ordering party selects such people or organizations to perform its duties in part or in whole, the ordering party shall implement measures to ensure that they perform the duties of the ordering party in a fair manner.

3. The central and prefectural governments shall implement measures to support the ordering party, including measures to develop the human resources needed to perform properly the duties of the ordering party for which expert knowledge or skills are required, and to cooperate in the selection of those who can fairly perform the duties of the ordering party.

Supplementary Provisions

(Effective Date)

1. The law shall take effect on April 1, 2005.

(Examination)

2. The central government shall examine the effects of the law three years after it takes effect, and based on the results of this examination, shall implement necessary measures.

Resolution on the Bill for Ensuring the Quality of Public Works (Draft)
March 29, 2005
Committee on Land and Transport, the House of Councilors, the National
Diet of Japan

The Committee on Land and Transport has resolved that the central government, in enforcing the law, should implement measures to accomplish the following objectives and to ensure the satisfactory implementation of the law.

1. To ensure that all bad and unqualified companies shall be excluded from bidding on contracts for public works projects.
2. To properly reflect the opinions of third parties such as knowledgeable persons regarding the tendering and contracting process for public works, and to properly handle complaints from concerned parties, including the enactment of legislation where necessary.
3. To not hinder the participation of companies newly entering the market by means of the criteria for participation in competitive bidding.
4. To manage rating and examination procedures properly in the registration process for those wanting to participate in tenders, in order to ensure the proper evaluation of construction companies participating in tenders.
5. To ensure the presentation to the ordering party of {documents detailing} construction schedules and plans, including the names of subcontractors and the scope of their work by the prime contractor, for the proper management of construction work.
6. To ensure the autonomy of the ordering party and the reaching of proper judgments based on the contents of management plans and technical proposals.
7. To ensure the proper examination and evaluation of technical proposals by local governments that have yet to establish examination and evaluation systems.
8. To ensure proper estimates of prices based on the results of examinations of technical proposals that give due consideration to the opinions of knowledgeable persons.
9. To promote proper relations between prime contractors and subcontractors, including the conclusion of contracts that clearly provide for the scope of the work of each, other conditions, and proper payment to subcontractors, by means of documented construction

plans and onsite inspections of contractors' offices, in order to ensure proper management of construction work by prime contractors and proper payment of subcontractors.

10. To consider the extension of defect liability periods and guarantees of responsibility for defects from a comprehensive viewpoint in order to further ensure the quality of public works.

11. To promote the establishment of a database to support ordering parties and to ensure the proper management of this database in order to promote the sharing of information about contractors' experience in public works and evaluations of their work.