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Agenda Item: 14

Prevention of Bid Rigging in Public Procurement in Japan

Purpose: Information
Submitted by: Japan



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公正取引委員会
Japan Fair Trade Commission

Prevention of bid rigging in public procurement in Japan

Presentation by Japan

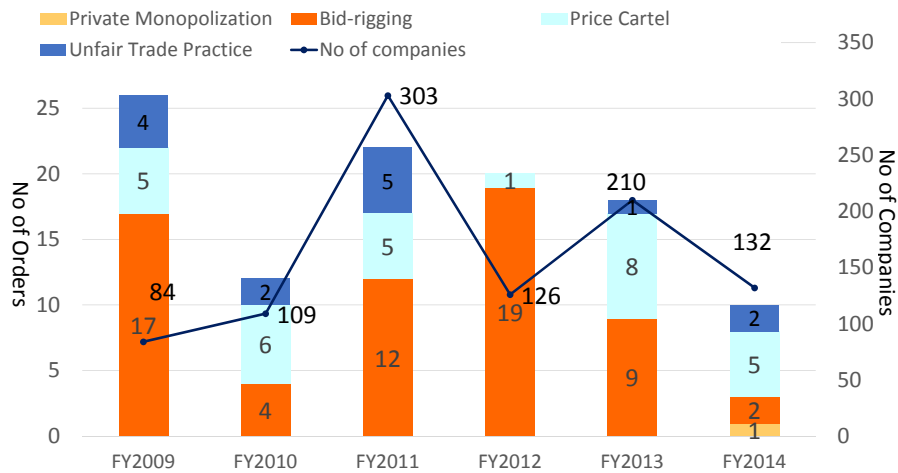
28 February, 2016

At the APEC Competition Policy and Law
Group Meeting in Lima, Peru

1. Efforts to enhance detection and deterrence of bid rigging in Japan

The JFTC's Enforcement Against Bid Rigging

Bid rigging in public procurement has been “One of top priorities in the JFTC's enforcement agenda”



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Bid Rigging in Public Procurement in Japan

- Public procurement makes up a significant portion of the Japanese economy.
 - Government & affiliated organs: 7.1 trillion JPY (FY2012)
 - Local governments: 12.7 trillion JPY (FY2011)
- Public engineering and construction are major industries, particularly in cities where business and employment opportunities are scarce.
 - Total number of licensed construction companies : 500 thousand ; almost the same for the last 30 years
- Procurement officials may not be necessarily interested in making an effort to ensure the competitiveness of bidding process. They may tend to lack awareness of the damages from bid rigging and might be vulnerable to the corruption.
- Historically, main tender system in Japan was “**Designated tender system**”
 - Procurement agencies restrict the number of bidders and designates those that are permitted to participate in the bidding process.
 - Municipal governments generally designate local construction companies to participate, in order to promote the economic situation of the city.
 - Bidders can easily rig bids and officials may easily involve in bid riggings.



Bid rigging in Public Procurement has been prevalent in Japan. 4

Procurement Process Reform since 1990s

- Since mid-1990s, the government of Japan has:
 - Required the disclosure of order plans, tender contents and contract results for the public procurement.
 - Promoted open tender systems.
 - Introduced a competitive proposal system, in which contractors are selected according to various elements in addition to price.
 - Required procurement organizations to report information concerning possible bid rigging to the JFTC.
 - Included the suspension of bidders from participation in tender systems for a certain period as an administrative measure by the procurement organization when the JFTC takes measures against bid rigging.
 - Included a written oath by the contractor of public procurement that the contractor pays a certain percent of the amount of the contract as the compensation for damages when the JFTC takes measures against the bid rigging.

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Enhancing Deterrence and Detection

- Since the mid-1990s, the AMA has been amended to enhance the JFTC's enforcement powers. (Increase of surcharge rate, criminal penalty, etc.)
- The 2006 amendments of the AMA introduced a leniency program and increased the maximum surcharge rate for illegal cartels.
 - increased the probability of detection and the sanction, which enhanced deterrence against infringement.
- The public prosecutors' office has also publicly declared that they will take strict actions against bid rigging, where warranted.
- The news media has broadly reported the detection of bid rigging by the JFTC and the public prosecutors.



The fact that bid rigging is an illegal activity that wastes tax payer's money, and needs to be strictly controlled, is spreading throughout the Japanese society.

- Detection and enforcement against bid rigging by the JFTC and public prosecutors has resulted in the most effective advocacy to the general public.

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2. Strong needs for outreach to procurement officials

Involvements of Procurement Officials

Part of bid rigging cases have been found to be instructed or assisted by officials of the relevant procurement agency.

(Motives of the procurement officials to be involved in the bid rigging)

- Expecting golden parachutes
- React to lobbying
- To continue exiting contract
- To preserve interest of industry/local business etc.

⇒ Along with criminal & disciplinary penalties, high needs to improve awareness & culture among procurers' side

The Involvement Prevention Act

The Involvement Prevention Act to prevent bid rigging involving government officials was enacted in 2002.

- The act grants the JFTC authority to require the head of procurement bodies to implement improvement measures when the JFTC finds involvement of procurement officials in the bid rigging.
⇒ So far, the JFTC has demanded that procurement agencies implement improvement measures concerning 11 cases based on the Involvement Prevention Act.
- With regard to the prevention of involvement in bid rigging, governmental agencies have to cooperate by coordinating with each other (Article 7)

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Recent Case of Bid Rigging in Public Procurement

Snow-Melting Equipment Engineering Works for Hokuriku Shinkansen (super-express train)



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JFTC's Action Against the Snow-melting Equipment Case

1. The JFTC filed a criminal accusation against 8 companies and their 8 employees with the Prosecutor-General (March 2014)
 - The court found them guilty (September – November 2014)
 - Fines to companies: 120 to 160 million JPY per company
 - Imprisonment for employees: 14 to 18 months (with suspension)
2. The JFTC issued a cease and desist order (11 companies) and surcharge payment orders (7 companies) (9 October 2015)
 - Total amount of surcharges: 1,035million JPY
3. The employees of JRCTTA were found to have disclosed the confidential information (upper-limit prices) to the companies
 - The JFTC demanded improvement measures to JRCTTA in accordance with the Involvement Prevention Act (March 2014)
 - ✓ More than half of stocks of JRCTTA are possessed by the government.
 - ✓ JRCTTA employees provided particular bid participants with planned upper limit prices that were not to be disclosed before biddings.
 - ✓ To eradicate “Kansei Dango,” not only bid participants, but procuring side must be required to take measures so as not to repeat such a conduct.

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Importance of Outreach to Procurement Officials

■ Why Outreach to Procurement Agencies is Necessary

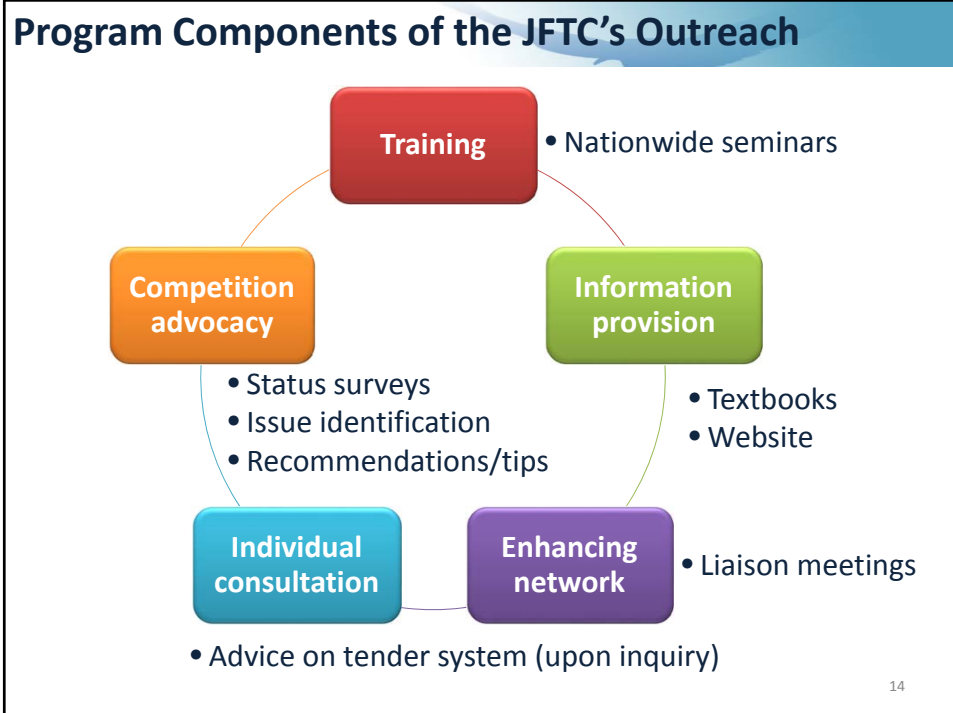
- Institutional reform related to procurement only does not prevent bid rigging.
- Substantial change of awareness and behavior of procurement agency is necessary.

■ Outreach to Procurement Agencies Can Help...

1. To make them more conscious of importance of competitiveness in public procurement and harms by bid rigging
2. To help procurement officials improve their capability to prevent/detect bid rigging
3. To build more effective relationship with them
 - c.f.) information exchange, “hot-line” for reporting
4. To prevent official's involvement in bid rigging process

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3. Components of the JFTC's outreach to procurement officials



Program Components of the JFTC's Outreach (2)

Status surveys

- Analyzing public procurement market and competition issues
- Recommended measures:
 - To make tender systems more competitive and resistant to bid rigging (2003, 2004, 2006 & 2008)
 - To prevent officials from being involved in bid rigging (2005 & 2011)

Strengthening relationship

- Appoint liaison persons in each central governmental agency
- Set up annual meetings with them for deeper channel and information exchange, since 1993 (FY2013: 9 place in Japan, 10 times)

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Training Seminars for Procurement Officials (1)

The JFTC hosts seminars and/or dispatches its staff to seminars by each procurement agency.

- The staff members of HQ office as well as 8 local offices assigned as lecturers
- No fees and expenses needed
- All materials (e.g. textbooks) provided by the JFTC



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Training Seminars for Procurement Officials (2)



Textbook ...**“Toward the deterrence of bid rigging”**

- Updated annually
- 14,000 copies distributed a year
- Downloaded 13,500
- Contents:
 - (i) Basic facts and cases
 - (ii) Skills & knowledge to prevent/detect bid rigging
 - (iii) How to report to the JFTC
 - (iv) Risks/costs of involvement in bid rigging

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Training Seminars for Procurement Officials (3)

Keep increasing from year to year

	Staff dispatched	Trainings hosted
FY2008	87	16
FY2009	99	18
FY2010	142	23
FY2011	158	20
FY2012	214	21
FY2013	288	24
FY2014	294	24

More than 20,000 officials participated every year.

Positive feedbacks from trainees

96% says “it helps better understanding”

95% says “it is useful in practice”

Many repeat clients

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4. International efforts

International Efforts

The JFTC has been trying to contribute to international efforts by sharing its experiences

■ OECD

- “Guidelines for Fighting Bid Rigging in Public Procurement” (2009) & “Recommendation on Fighting Bid Rigging in Public Procurement” (2012)
- Common forms of bid rigging and checklists for both “designing the procurement process to reduce risks of bid rigging” and “detecting bid rigging in public procurement”

■ ICN

- Compilation of materials for cartel enforcement as well as awareness and outreach
- New Anti-cartel Enforcement Manual Chapter on Relationships between Competition Authorities and Public Procurement Bodies (started in 2014/2015)
- Catalogue of Investigative Powers for Cartel Investigation(2015)

Thank you for your kind attention !!



Japan Fair Trade Commission
(<http://www.jftc.go.jp/en/index.html>)