

# GOVERNMENT PROCUREMENT ACT

*Promulgated by presidential decree on May 27, 1998;*

*Amended and promulgated by presidential decree on January 10, 2001 for Article 7;*

*Amended and promulgated by presidential decree on February 6, 2002 for Articles 6, 11, 13, 20, 22, 24, 25, 28, 30, 34, 35, 37, 40, 48, 50, 66, 69, 70, 74 to 76, 78, 83, 85, 85.1 to 85.4, 86 to 88, 93.1, 95, 97, 98, 101 to 103, 114 and the title of Chapter 6;*

*Amended and promulgated by presidential decree on July 4, 2007 for Article 85-1.*

## Chapter I General Principles

### Article 1

This Act is enacted to establish a government procurement system that has fair and open procurement procedures, promotes the efficiency and effectiveness of government procurement operation, and ensures the quality of procurement.

### Article 2

The term "procurement" as used in this Act shall refer to the contracting of construction work, the purchase or lease of property, the retention or employment of services, etc.

### Article 3

Procurement conducted by any government agency, public school or government-owned enterprise (hereinafter referred to as the "entity") shall be governed by the provisions of this Act. With regard to the matters not provided for in this Act, other relevant laws shall govern.

### Article 4

A juridical person or organization which takes a grant from an entity shall conduct a procurement in accordance with this Act and be under supervision by the entity provided that the amount of the grant is not less than half of the procurement value and also reaches the threshold for publication.

### Article 5

An entity may entrust a juridical person or organization to conduct its

procurement.

The procurement referred to in the preceding paragraph shall be governed by this Act, and the juridical person or organization shall be supervised by the entrusting entity.

## Article 6

In conducting any procurement, an entity shall observe the principle of protecting public interests, fairness and reasonableness, and shall not accord differential treatment to suppliers without due cause.

The procurement personnel may base on the consideration of public interest, procurement efficiency or professional judgment to make an appropriate procurement decision, to the extent not contrary to the provisions of this Act.

Judicial, control or other entities may request the responsible entity to provide assistance, examination service, or professional opinions when conducting investigation, indictment, trial, impeachment, censure, etc. against a procuring entity or personnel.

## Article 7

The term "construction work" referred to in this Act means the activities performed above or underneath the ground for building, augmenting, altering, repairing, or dismantling structures and their respective auxiliary equipment/facilities, or reforming natural environment, including architectural, civil, hydraulic, environmental, transportation, mechanical, electrical, and chemical construction works and others as determined by the responsible entity.

The term "property" referred to in this Act means any and all articles (raw and fresh agricultural or fishery products excepted), materials, equipment, machines, tools, and other personal property, real property, rights, and other properties as determined by the responsible entity.

The term "service" referred to in this Act means professional services, technical services, information services, research and development, business operation management, maintenance and repair, training, labor and other services as determined by the responsible entity.

Where the content of a procurement involves construction work, property and service, or any two of them, and it is difficult to categorize the content of the procurement as construction work, property, or service, the one which takes the

highest percentage of the budget of procurement shall govern.

#### Article 8

The term "supplier" referred to in this Act means any company, industrial or commercial firm under partnership or sole proprietorship, or any natural person, juridical person, institution or organization that may offer construction work, property or service to the entity.

#### Article 9

The term "responsible entity" referred to in this Act means the Procurement and Public Construction Commission. A Minister without Portfolio shall be assigned concurrently as Chairperson of the Commission.

The term "superior entity" referred to in this Act means the entity at a level immediately above the procuring entity. If there is no such superior entity, then the procuring entity shall perform the functional duties of the superior entity as provided for in this Act.

#### Article 10

The responsible entity shall be in charge of the following matters with respect to government procurement:

1. researching and formulating government procurement policies and system, and promoting and advocating government procurement policies and regulations;
2. researching, formulating, amending, and interpreting government procurement laws and regulations;
3. reviewing and approving standard procurement contracts;
4. collecting, publishing, and compiling statistics of government procurement information;
5. training government procurement professionals;

6.coordinating and supervising all entities in connection with procurement affairs, and assessing procurement performance thereof;

7.handling complaints against central government entities in connection with procurement; and

8.other matters related to government procurement.

#### Article 11

In order to provide reference information to the entity for drafting the budget and government estimate, a procurement information center shall be established by the responsible entity to compile common business information and classification of equivalent products, and to set up price database for construction materials and equipment. Other than those that have to be kept confidential, the information shall be provided free of charge for the suppliers.

A procurement personnel training center may be established by the responsible entity for training procurement professionals.

#### Article 12

For a procurement of a value reaching the threshold for supervision, the entity shall, within a prescribed time-limit, submit relevant documents to its superior entity and request the same to send representative(s) to monitor proceedings conducted by the entity including tender opening, price competition under restricted tendering, price negotiation under single tendering, contract awarding, and inspection and acceptance; nevertheless, the superior entity may, based upon the actual needs, prescribe the authorization conditions under which it allows the entity to proceed without its monitoring.

For a procurement of a value not reaching the threshold for supervision, but the value of contract as awarded or as amended subsequently equals to or exceeds the threshold, the entity shall supplement relevant documents to its superior entity for filing.

The threshold for supervision shall be prescribed by the responsible entity.

#### Article 13

For a procurement of a value reaching the threshold for publication, proceedings conducted by the entity including tender opening, price competition

under restricted tendering, price negotiation under single tendering, contract awarding, and inspection and acceptance shall, except for special circumstances, be monitored by its comptroller (accounting) and other relevant units.

Measures of supervising a procurement of a value not reaching the threshold for publication shall be prescribed by either the responsible entity or the municipal or county (city) governments, depending upon whether the procurement is conducted by a central government or a local government. If no other applicable measures are to be prescribed, the provision of the preceding paragraph shall be followed.

The threshold for publication, which shall be less than the threshold for supervision, shall be prescribed by the responsible entity by taking the international standards into account.

The regulations for monitoring referred to in paragraph 1 shall be prescribed jointly by the responsible entity and the Directorate-General of Budget, Accounting and Statistics of the Executive Yuan.

#### Article 14

An entity shall not circumvent this Act by artificially dividing any procurement requirement of a value reaching the threshold for publication. Where there is a need to divide a procurement requirement, and such division is approved by the superior entity, the total value of each divided procurement shall apply to each divided one as if undivided, and the regulations for procurement reaching the threshold for publication, or the regulations for procurement reaching the threshold for supervision shall apply as the case may be.

#### Article 15

Former procurement personnel and procurement supervision personnel shall be prohibited from contacting the entity that they previously worked for either for their own sake or on a supplier's behalf for three years following their resignation for matters related to their former duties within five years prior to their resignation.

The procurement personnel and procurement supervision personnel shall withdraw themselves from a procurement and all related matters thereof if they or their spouses, relatives by blood or by marriage within three degrees, or other relatives who live with and share the property with them have interests involved therein.

Upon finding that the procurement personnel or procurement supervision personnel failed to withdraw themselves for any cause of withdrawal provided for in the preceding paragraph, the head of the entity shall order such personnel to withdraw and reappoint the personnel for replacement.

A supplier shall not participate in the procurement of a procuring entity in the event that the relationship between the head of the procuring entity and the supplier itself or the responsible personnel of the supplier have the situation as that mentioned in paragraph 2. This requirement may be waived provided that enforcement of it is against fair competition or public interests, and that an approval has been obtained from the responsible entity.

The procurement personnel and the procurement supervision personnel of an entity shall report their properties status pursuant to relevant requirements of the Act Governing the Report of Properties by Public Officials.

#### Article 16

Entreating or lobbying is preferred to be in writing or to be recorded.

The anti-corruption office may inspect the said writings or records.

Entreating or lobbying received shall not be used as reference in the evaluation of tenders.

#### Article 17

The participation of foreign suppliers in the procurement by each entity shall be governed by the requirements set forth in the treaties or agreements to which this nation is a party.

Except for the situation prescribed in the preceding paragraph, the regulations governing the participation of foreign suppliers in the procurement by each entity shall be prescribed by the responsible entity.

The responsible entity may restrict or ban suppliers, products or services from a country to participate in the procurement where the country imposes restriction or ban on the suppliers, products or services from this nation by laws or regulations.

## Chapter II Invitation to Tender

## Article 18

The tendering procedures for procurement include open tendering procedures, selective tendering procedures, and limited tendering procedures.

The term "open tendering procedures" referred to in this Act means the procedures under which a public notice is given to invite all interested suppliers to submit their tenders.

The term "selective tendering procedures" referred to in this Act means the procedures under which a public notice is given to invite all interested suppliers to submit their qualification documents for pre-qualification evaluation basing upon specific qualification requirements and, after such evaluation, the qualified suppliers are invited to tender.

The term "limited tendering procedures" referred to in this Act means the procedures under which, where no public notice is given, two or more suppliers are invited to compete or only one supplier is invited for tendering.

## Article 19

An entity shall apply open tendering procedures to all procurement of a value reaching the threshold for publication, except otherwise provided for in Articles 20 and 22 hereof.

## Article 20

Under any of the following circumstances, an entity may apply selective tendering procedures to a procurement of a value reaching the threshold for publication:

1. where there is a recurring demand;
2. where the review of tenders takes a long time;
3. where the supplier's cost for preparation of a tender is high;
4. where the qualification requirements for suppliers are complicated; or

5. where it is a procurement concerning research and development.

## Article 21

In order to apply the selective tendering procedures, an entity may conduct qualification evaluation in advance and establish a permanent list of qualified suppliers; provided, however, that the entity shall always allow suppliers to request of qualification evaluation and periodically review and update the permanent list of qualified suppliers.

Where a supplier not on the permanent list of qualified suppliers requests to participate in a particular procurement, the entity shall review the qualification of such supplier provided that the review does not interfere the tendering procedures and can be completed in time. After reviewing, the entity shall invite such supplier to participate in the procurement provided that the supplier is qualified.

The permanent list of qualified suppliers adopted for the procurement in connection with recurring demands shall contain at least six suppliers.

In conducting selective tendering procedures, the entity shall give qualified suppliers an equal opportunity to be invited.

## Article 22

Under any of the following circumstances, an entity may apply limited tendering procedures to a procurement of a value reaching the threshold for publication :

1. where there is no tender in response to an open tender, selective tender, or the open procedures referred to in subparagraphs 9 through 11, or where the tenders submitted have been not in conformity with the requirements in the tender, provided, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;
2. where the subject of a procurement is an exclusive right, a sole source product or supply, a work of art, or a secret, which can be supplied only by a particular supplier and no reasonable alternative or substitute exists;



3. in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the subject of the procurement could not be obtained in time by means of open or selective tendering procedures;
4. for additional deliveries by the original supplier which are intended either as follow-up maintenance, or parts and components replacement for existing supplies or installations, or as extension of existing supplies, services, or installations where a change of supplier would not meet the requirements of compatibility or interchangeability with already existing supplies, services, or installations;
5. where the subject of a procurement is a prototype or a subject first produced or supplied which is developed in the course of research, experiment, or original development;
6. when additional construction work which was not included in the initial contract but which was within the objectives of the original tender documentation has, through unforeseeable circumstances, become necessary, and the entity needs to award contracts for the additional construction work to the contractor carrying out the construction work concerned to achieve the objectives of the initial contract since the separation of the additional construction work from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction work may not exceed 50 per cent of the amount of the main contract;
7. for any further procurement whose period, value, or quantity to be expanded is indicated in the tender notice and tender documentation;
8. for property purchased on a commodity market;
9. in the case of contracts for professional services, technical services or information services awarded to the winner selected publicly and objectively;
10. in the case of contracts awarded to the winner of a design contest and the winner selection has been conducted publicly and objectively;
11. in the case of designating an area for its real property procurement in response to the need of business operation provided that the real property procured has been solicited publicly in accordance with its requirements

and criteria;

12. where the subjects of a procurement are supplies or services not for profit provided by the physically or mentally disabled, the aborigines, prisoners, philanthropic organizations of the physically or mentally disabled, registered organizations of the aborigines, prisoners works, or philanthropic organizations;
13. in the case of a research and development of science, technology introducing, administration or academic concern entrusted to a leading natural person in a professional area or a leading academic or non-profit organization screened as a winner by open notice;
14. in the case of inviting or entrusting a professional person, institution or organization of culture or art concern to perform or join in culture or art activities provided that they have the characteristics or specialties required or have been screened as a winner by open notice;
15. where a procurement is for the purposes of commercial resale or production of goods or provision of services for resale, and is not appropriate for conducting open or selective tender considering the characteristics or actual needs of the party for resale, manufacturing process, or source of supply; or
16. other circumstances as prescribed by the responsible entity.

The regulations for the selection of suppliers and the formulas for the calculation of service fees under subparagraphs 9 and 10, and the implementing regulations under subparagraphs 11, 13, and 14 of the preceding paragraph shall be prescribed by the responsible entity.

Subparagraphs 13 and 14 of paragraph 1 are not applicable to construction works.

## Article 23

The tendering procedures to be applied to a procurement of a value not reaching the threshold for publication shall be prescribed by the responsible entity at the central government level; or by the municipal or county (city) government at the local government level. If no other procedures are to be prescribed at the local government level, the procedures prescribed at the central government level shall govern.

## Article 24

An entity may, according to the needs of efficiency and quality, conduct the procurement on a turn-key basis.

The term "turn-key" referred to in the preceding paragraph means the procurement of construction work or property by consolidating the procurement of design and work, supply, installation, or maintenance within a certain period, etc. into a contract for tendering.

The regulations for the implementation of turn-key shall be prescribed by the responsible entity.

## Article 25

An entity may, depending on the characteristics of an individual procurement, specify in the tender documentation to permit joint tendering by a limited number of suppliers.

The term "joint tendering" referred to in the preceding paragraph means the activity of two or more suppliers participating jointly in tendering, executing jointly the procurement contract after being awarded, and assuming the joint and several liability thereunder, with a view to contracting for construction work or to supplying property or services.

Joint tendering shall only be permitted where it can increase the competition among suppliers or not restrain competition without due cause.

A joint tendering by suppliers of the same line of business shall meet the requirements set forth in each of the subparagraphs of Article 14 of the Fair Trade Act.

Suppliers participating in a joint tendering shall submit a joint tendering agreement along with the tender.

The regulations for joint tendering shall be prescribed by the responsible entity.

## Article 26

For a procurement of a value reaching the threshold for publication, the tender documentation shall be prescribed in terms of function or performance. In the event that there are applicable international standards or national standards, the tendering specifications shall be prescribed therewith.

Technical specification laying down the characteristics of the products or services to be procured, such as quality, performance, safety, dimension, symbol, terminology, packaging, marking and labelling, or the processes and methods for their production and assessment procedures prescribed by the entity, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to competition.

There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific source of origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as “or equivalent” are included in the tender documentation.

#### Article 27

For open tendering procedures or selective tendering procedures, an entity shall publish a notice of invitation to tender or of qualification evaluation on the Government Procurement Gazette, and also make it available on the information network. The same shall also apply if the notice is amended.

The content of a notice, the number of days for publication, means of publication, and the regulations for publication of the Government Procurement Gazette referred to in the preceding paragraph shall be prescribed by the responsible entity.

Procuring entities shall estimate the number of procurement to be conducted and the value of each procurement. The budget and the estimated value of a procurement may be disclosed in the tender notice.

#### Article 28

For tendering procedures, an entity shall prescribe a reasonable time-limit for tendering from the date of publishing a notice of invitation to tender or the date of inviting suppliers to tender until the deadline for submission of tender or the deadline for receipt of documents. Standards for the time-limits shall be prescribed by the responsible entity.

## Article 29

Tender documentation for open tendering procedures and the documents for qualification evaluation for selective tendering procedures shall be made publicly available for free or for sale on site or via mail, from the date of publication through the deadline for submission of tender or the deadline for receipt of documents. The names of suppliers to whom the tender documentation is provided for free, for sale, or via mail may not be recorded.

The documentation for selective tendering procedures shall explicitly enumerate the reasons of and the need for supplier qualification.

The documentation referred to in paragraph 1 shall include all the information required for the submission of tenders by tenderers.

## Article 30

In conducting a procurement, an entity shall provide in the tender documentation that a tenderer shall deposit a bid bond, and that the winning tenderer shall deposit a guarantee bond or, in lieu thereof or in addition thereto, other guarantees, except in the following circumstances:

1. where the procurement is for services, the bid bond or guarantee bond may be waived;
2. where the procurement is for construction work or property of a value not reaching the threshold for publication, the bid bond or guarantee bond may be waived;
3. where there is only one supplier invited for tendering, the bid bond may be waived; or
4. where there is no need or possibility to require a bid bond or guarantee bond by the business practice or attributes of procurement.

The bid bond and guarantee bond shall be deposited by tenderers in the form of cash, financial institution's promissory notes, financial institution's checks, certified checks, postal money orders, bearer's government bonds, certificates of deposit pledged to the procuring entity, irrevocable stand-by letters of credit issued or confirmed by a bank, or bank guarantees or insurance policies under which the bank or insurer shares the liability with the tenderer jointly and severally.

The types, amounts, and ways of deposit, refund, and termination of bid bond, guarantee bond, and other guarantees shall be prescribed by the

responsible entity.

#### Article 31

After award of contract, an entity shall refund or return, without interest, the bid bond deposited by unsuccessful tenderers. The same shall also apply if the tendering procedure is nullified.

The entity may provide in the tender documentation that the bid bond deposited shall not be refunded or returned to the tenderer and the refunded or returned bid bond shall be recovered if any of the following circumstances exists:

1. the tenderer used forged or altered documents to tender;
2. the tenderer borrowed the name or certificate of another to tender;
3. the tenderer assumed the name or certificate of another to tender;
4. the tenderer withdrew its bid before expiration of the bid;
5. after opening of tenders, the tenderer refused to be awarded or refused to execute a contract;
6. after being awarded, the tenderer failed to deposit sufficient guarantee bond or to provide other guarantees sufficiently within a prescribed time-limit;
7. a bid bond has been served as a guarantee bond; or
8. the responsible entity found that there is a violation of laws and regulations which affects the fairness of the procurement.

#### Article 32

An entity shall prescribe in the tender documentation the causes not to return the guarantee bond and the interest accruing thereon, or the circumstances under which the liability of a guarantor arises, and also stipulate for the said circumstances the liability for breach of contract, the extent to which the guarantee bond can be offset, and the liability of the guarantor.

### Article 33

The tender shall be submitted in writing and sealed, by mail or personal delivery, and at the procurement entity or any designated place before the deadline for tendering.

The suppliers may use electronic devices to send the tender referred to in the preceding paragraph; provided that it is explicitly permitted in the tender documentation, and a formal written tender is submitted subsequently before a prescribed deadline.

The entity may provide in the tender documentation that a tenderer is permitted to amend or supplement its tender before opening of tenders as long as the amendment or supplement does not involve the essential parts of the contract.

### Article 34

In conducting a procurement, an entity shall keep confidential the content of the tender documentation before publishing the tender notice, except for the need of conducting a public presentation or soliciting reference data or information from suppliers.

In conducting a procurement, an entity shall not disclose, before opening of tenders, the government estimate, the names and number of the suppliers which have obtained the tender documentation or submitted a tender and any other relevant information which may result in competition restraint or unfair competition.

The government estimate shall be kept confidential till award of contract even after opening of tender. The government estimate shall be disclosed after award of contract except for special circumstances. The entity may, however, based on actual needs, disclose the government estimate in the tender documentation.

Unless otherwise required for official use or provided for in the relevant laws and regulations, the tenders submitted by suppliers shall be kept confidential by the entity.

### Article 35

An entity may provide in the tender documentation that a supplier is allowed to submit an alternative technology, technical methodology, materials, or equipment to shorten construction period, save expenditure, or increase the efficiency, provided that the original function requirement is not impaired. The implementing regulations shall be prescribed by the responsible entity.

#### Article 36

In conducting a procurement, an entity may prescribe basic qualifications of tenderers based upon actual needs.

For a special or large procurement which must be performed by suppliers of substantial experience, performance record, manpower, financial capability, equipment, etc., specific qualifications may be prescribed for tenderers.

The qualification of and the qualification documents to be submitted by foreign suppliers may be prescribed separately in the tender documentation based upon actual needs. A notarized or certified Chinese translation shall be attached to the qualification document as above required.

The scope and criteria of the basic qualifications referred to in paragraph 1 and the specific qualifications and the special or large procurement referred to in paragraph 2 hereof shall be prescribed by the responsible entity.

#### Article 37

An entity shall not restrain competition unduly and shall only prescribe the qualifications essential to contract performance in prescribing the qualifications referred to in the preceding Article.

The tender submitted by a supplier who does not meet the qualification requirements referred to in the preceding Article shall not be accepted, except for financial qualifications that the supplier may submit in lieu a bank guarantee or an insurance policy under which the bank or insurer shares the performance and compensatory liability with the supplier jointly and severally.

#### Article 38

A political party and a supplier who is affiliated to a political party shall not participate in tendering.



The provisions of “Affiliated Enterprise” prescribed in the Company Act shall apply *mutatis mutandis* to the aforementioned supplier who is affiliated to a political party.

#### Article 39

In conducting a procurement, an entity may entrust a supplier, according to this Act, with the project management related to planning, design, supply, or contract performance.

The responsible person or partner of the supplier entrusted with the project management shall not at the same time serve as the responsible person or partner of the supplier handling the planning, design, construction or supply.

The supplier entrusted with the project management and the supplier handling the planning, design, construction or supply shall not be affiliated to each other or affiliated to the same other enterprise.

#### Article 40

An entity may entrust another entity of professional capacity to conduct its procurement.

For entity which does not possess the requisite professional procuring capacity, the superior entity may order such entity to entrust other entity that has the requisite professional procuring capacity to conduct the procurement for it.

#### Article 41

Where a supplier has questions about the content of the tender documentation, such questions shall be submitted in writing to the entity before the deadline set forth for such purpose in the tender documentation.

The entity shall give a written reply to the inquiring supplier before the deadline set forth for such purpose in the tender documentation, and may publish such reply if necessary. In case that any amendment or supplement to the content of the tender documentation must be made as a result of such questions, the entity shall publish a notice concerning such amendment or supplement, or notify each supplier in writing for cases of soliciting technical proposals and price proposals under selective tendering procedures and for cases of limited tendering procedures, and may extend the time-limit for tendering if required. The aforementioned requirements shall also apply in the event of amending or

supplementing the content of tender documentation on the entity's own initiative.

#### Article 42

For open tendering procedures or selective tendering procedures, an entity may apply multi-step opening of tenders with respect to the qualification, technical specification, and price.

In conducting multi-step opening of tenders, an entity shall publish a notice at the first step and may omit publishing invitation notices at the subsequent steps.

#### Article 43

An entity conducting a procurement may adopt one of the following measures and specify the measures in the tender documentation, except otherwise prohibited by the treaties or agreements to which this nation is a party:

1. To request from a tenderer commitments to purchase goods locally produced to a certain extent, to transfer technology, to have inward investment, to facilitate local export, or to take any other similar measures, and include such commitments in evaluation, provided that they shall not weigh over one third in the evaluation.
2. Where a foreign supplier's tender is the lowest tender according to the principle of contract award prescribed in Article 52, a domestic supplier may be awarded at such a price by preference.

#### Article 44

Where a foreign supplier's tender is the lowest bid according to the principle of contract award prescribed in Article 52, an entity conducting a particular procurement may, except otherwise prohibited by the treaties or agreements to which this nation is a party, award by preference to a local supplier which supplies property with at least 50% value added locally, or supplies construction work or service locally, provided that the awarded price shall not exceed the aforementioned lowest bid by a certain percentage.

The scope, percentage, and implementing regulations for the preference prescribed in the preceding paragraph shall be prescribed by the responsible entity together with the relevant competent entities, provided that no preference shall be given except for policies of employment or industrial development, and

there shall be no percentage exceeding 3% or period of preference exceeding five years.

### Chapter III Award of Contracts

#### Article 45

Unless otherwise provided for in laws or regulations, an entity shall open tenders in public at the time and place specified in the tender documentation for an open tendering procedure or selective tendering procedure.

#### Article 46

Unless otherwise provided for in this Act, an entity shall set a government estimate for a procurement. The government estimate shall be itemized based upon the drawings, specifications, and contract requirements by taking into account the costs, market prices, and past award records of government entities, and be approved by the head of the entity or the personnel authorized by the head.

The time for setting the government estimate referred to in the preceding paragraph shall be determined according to the following:

1. in the case of open tendering procedures, prior to the opening of tenders.
2. in the case of selective tendering procedures, prior to the opening of tenders for the step next to the qualification evaluation.
3. in the case of limited tendering procedures, prior to the conducting of price negotiation with one single supplier or price comparison among two or more suppliers.

#### Article 47

Under the following circumstances, an entity may conduct a procurement without setting a government estimate; provided, however, that the reasons of not setting a government estimate and the terms and principles of awarding the contract shall both be provided in the tender documentation:

1. where there are actual difficulties in setting a government estimate for the procurement;
2. where the contract is to be awarded to the most advantageous tender; or
3. for small procurement.

For procurement under subparagraphs 1 and 2 of the preceding paragraph, a tenderer may be required to enumerate in its tender the content of its price offer in details.

The amount of small procurement shall be set, at the central government level, by the responsible entity, and at the local government level, by the municipal or county (city) governments; provided that the said amount shall not exceed one tenth of the threshold for publication. Where a local government does not set the amount, the amount set by the central government shall govern.

#### Article 48

In conducting a procurement pursuant to this Act, an entity shall open the tenders and award the contract in accordance with the timeframe set forth in the tender documentation where there are three or more qualified suppliers submitting their tenders, except for any of the following circumstances under which tenders may not be opened or awarded:

1. where the content of tender documentation is amended or supplemented;
2. where illegal or improper activities that may impair the fairness of the procurement are found;
3. where the opening of tenders is postponed according to Article 82 hereof;
4. where the procurement procedure is suspended according to Article 84 hereof;
5. where the entity corrects its breach of laws and regulations as required by Article 85 hereof;
6. where there is an emergency;
7. where the plan for procurement is changed or cancelled; or

8. for any other special circumstances as determined by the responsible entity.

Where the opening of tenders cannot be proceeded due to less than three tenders, a second tendering shall be arranged and the time-limit for such tendering may be shortened, and the three tenders requirement as provided in the preceding paragraph shall not apply for the second tendering.

#### Article 49

For a procurement of a value not reaching the threshold for publication but is not less than one tenth of the threshold, offers or proposals in writing shall be obtained openly from at least three suppliers, except for the circumstances specified in each subparagraph of paragraph 1 of Article 22.

#### Article 50

In case that any of the following circumstances occurs to a tenderer, an entity shall not open the tender of such tenderer when such circumstance is found before tender opening, nor shall award the contract to such tenderer when such circumstance is found after tender opening:

1. The tendering does not comply with the requirements of the tender documentation;
2. The content of the tender is inconsistent with the requirements of the tender documentation;
3. The tenderer borrows or assumes any other's name or certificate to tender, or tenders with forged documents or documents with unauthorized alteration;
4. The tenderer forges documents or alters documents without authorization in tendering;
5. The contents of the tender documents submitted by different tenderers show a substantial and unusual connection;
6. The tenderer is prohibited from participating in tendering or being awarded of any contract pursuant to paragraph 1 of Article 103 hereof;

or

7. The tenderer is engaged in any other activities in breach of laws or regulations which impair the fairness of the procurement.

When any of the circumstances referred to in the preceding paragraph occurs to the winning tenderer before the award of contract but is found after award or signing of the contract, the entity shall revoke the award, terminate or rescind the contract, and may claim for damages against such tenderer except where the revocation of the award or the termination or rescission of the contract is against public interests, and is approved by the superior entity.

Where the situation of not opening or not awarding a contract as referred to in paragraph 1 causes the procurement procedures unable to continue, the entity may declare that the procurement is nullified.

#### Article 51

An entity shall review the tenders submitted in accordance with the requirements set forth in the tender documentation. In case of any ambiguity as to its content, the entity may request the tenderer to clarify.

The entity shall notify each tenderer of the outcome of the review referred to in the preceding paragraph and provide reasons for disqualified tenderers.

#### Article 52

The award of contract conducted by an entity shall follow one of the following principles and the principle adopted shall be specified in the tender documentation:

1. where a government estimate is set for the procurement, a tenderer whose tender meets the requirements set forth in the tender documentation and is the lowest tender within the government estimate shall be awarded;
2. where no government estimate is set for the procurement, a tenderer whose tender not only meets the requirements set forth in the tender documentation with a reasonable price, but also is the lowest tender within the budget amount shall be the winning tenderer;

3. the tenderer whose tender meets the requirements set forth in the tender documentation and is the most advantageous one shall be the winning tenderer; or
4. to adopt multiple award. An entity may prescribe in the tender documentation that contracts may be awarded to different tenderers by different items or different quantities, but the spirit of competition as to the lowest price or the most advantageous tender shall be respected.

The preceding subparagraph 3 shall only be applied to cases where tenderers are allowed to submit tenders for construction work, property, and services with different qualities and therefore the preceding subparagraphs 1 and 2 are not suitable for application.

Tenderers need not be notified to be present upon the award of contract, whereas they shall be notified of the outcome.

#### Article 53

Where the lowest tender which meets the requirements set forth in the tender documentation exceeds the government estimate, the entity may request the tenderer to reduce the price once. If the reduced price still exceeds the government estimate, the entity may request all tenderers whose tenders meet the requirements set forth in the tender documentation to reduce their prices and then make a comparison. Such price reduction and comparison shall not be more than three times.

If, after following the procedure set forth in the preceding paragraph, the lowest tender still exceeds the government estimate but not over the budget amount, and the entity needs to award the contract for emergency, then the award of contract shall be approved by the person who has approved the government estimate or the authorized personnel of such person, and the value of the winning award shall not exceed the government estimate by more than eight percent provided however that the award of contract shall in addition be approved by the superior entity in advance for cases where the value of procurement reaches the threshold for supervision and the value of the award exceeds the government estimate by more than four percent.

#### Article 54

Where an award is conducted in accordance with subparagraph 2 of paragraph 1 of Article 52, and the lowest tender which meets the requirements set forth in the tender documentation exceeds the budget amount or an amount

recommended by a committee, the entity may request the tenderer to reduce the price once. If the reduced price still exceeds such amount, the entity may request all tenderers whose tenders meet the requirements set forth in the tender documentation to reduce their prices and then make a comparison. Such price reduction and comparison may be limited to certain times which shall not be more than three times. If, after following the procedure set forth in the foregoing, the lowest tender still exceeds either of the said amounts, the tendering procedure shall be nullified.

#### Article 55

Where an entity plans to award a contract to the lowest tender but cannot award the contract according to the preceding two Articles, the entity may alternatively award the contract through negotiation, provided that such negotiation has been approved by the superior entity and announced in advance in the notice of invitation and the tender documentation.

#### Article 56

Where an award is conducted in accordance with subparagraph 3 of paragraph 1 of Article 52, the evaluation criteria set forth in the tender documentation shall be used to determine the most advantageous tender by comprehensively evaluating the technology, quality, function, commercial terms, or price of the tenders with ranking or score. The price offered or the quotient of price divided by the score resulted from comprehensive evaluation may be used as a sole item for evaluation or the criteria for award of contract. Other items not listed for evaluation shall not be used as a reference for the evaluation. The most advantageous tender shall be determined by the head of the procuring entity or the concurrence of the majority of the evaluation committee. If the most advantageous tender is unable to be determined, negotiations may be conducted, and then make another comprehensive evaluation to determine the most advantageous tender. A determination thereof shall be accompanied with reasons. Such comprehensive evaluation shall not be more than three times.

If, after following the procedure set forth in the preceding paragraph, the most advantageous tender still can not be determined, the tendering procedure shall be nullified.

Before conducting a tendering procedure that the award of contract is made to the most advantageous tender, the entity shall report to the superior entity and obtain its prior approval.

The evaluation regulations for determining the most advantageous tender shall be prescribed by the responsible entity.



## Article 57

Where negotiations are adopted according to the provisions of the preceding two Articles, the entity shall conduct the process in accordance with the following principles:

1. The procedures and contents of tender opening, tenders, and tender evaluation shall be kept confidential.
2. No tenderers meeting the requirements set forth in the tender documentation shall be discriminated during the negotiations. If necessary, video or audio recordings shall be used for evidence purpose.
3. Only the content of those items that are specified as negotiable in the tender documentation may be subject to negotiation.
4. Where the negotiable items referred to in the preceding subparagraph is amended, all tenderers permitted to participate shall be informed of such amendment in writing.
5. Upon completion of negotiation, tenderers referred to in the preceding subparagraph shall be given an opportunity to modify their tenders and re-submit their tenders within a time-limit according to the negotiation.

## Article 58

Where a contract is to be awarded to the lowest tender, an entity may set a time-limit for the tenderer offering the lowest tender to provide an explanation or a security if the total or a part of the offered price is so low that it evidently appears to be unreasonable, and the quality of performance is likely to be impaired or the contract is not likely to be performed in good faith, or there is any other extraordinary situations. If such tenderer fails to submit a reasonable explanation or a security before the deadline set forth by the entity, the contract may not be awarded to the tenderer, and the tenderer offering the second lowest tender shall then be deemed as the tenderer offering the lowest tender.

## Article 59

For procurement conducted in accordance with selective or limited tendering procedures, the contract price shall not be higher than the lowest price the supplier offered for the same construction work, property, or service under the same market conditions.

A supplier shall not induce the procuring entity to sign a contract by giving others commission, percentage, brokerage, kickback, or any other benefits.

Where a supplier is in breach of the requirements of the two preceding paragraphs, the entity may terminate or rescind the contract, or deduct the over-valued portion and any other benefits from the contract amount.

The provisions of the three preceding paragraphs shall apply *mutatis mutandis* to procurement where the tenders received are less than three.

#### Article 60

Where an entity notifies a supplier to explain, reduce price, engage in price competition, negotiate, modify the content of the original tender, or re-submit a new price offer in accordance with Articles 51, 53, 54 or 57 hereof, and the supplier fails to respond within a time-limit set forth in the notification, then such supplier is deemed waiving its rights.

#### Article 61

Except for extraordinary circumstances, an entity shall publish the outcome of an award on the Government Procurement Gazette and notify all tenderers in writing within a specific period of time after award of contract provided that the procurement is of a value reaching the threshold for publication. The foregoing shall also apply if the contract cannot be awarded.

#### Article 62

The award data shall be provided by the procuring entity to the responsible entity periodically.

### Chapter IV

#### Administration of Contract Performance

#### Article 63

The essential requirements for various types of procurement contracts shall be prescribed by the responsible entity by taking the international and domestic practices into consideration.

In contracting for the services of planning, design, supervision, or management, an entity shall stipulate in the contract the responsibility of the supplier in the event that erroneous planning and design, irresponsible supervision, or poor management has caused damages to the entity.

#### Article 64

It may be provided in a procurement contract that when continuous performance by the supplier pursuant to the contract is against the public interest due to policy change, an entity may, with the approval of a superior entity, terminate or rescind such procurement contract, in part or in whole, and compensate the supplier for any loss resulting therefrom.

#### Article 65

The contractor shall perform the contract for construction work or services by itself and may not assign the contract to others.

The term of contract assignment referred to in the preceding paragraph means an arrangement under which a contractor makes another supplier perform all or the major part of the contract for it.

The preceding two paragraphs shall apply *mutatis mutandis* to a contract for property not readily available and required to be supplied through certain performance process.

#### Article 66

In the event that a contractor is in breach of the requirement of the preceding Article by assigning a contract to another supplier, the entity may terminate the contract, rescind the contract, or forfeit the contractor's guarantee bond, and in addition claim for damages.

The assignee referred to in the preceding paragraph and the contractor shall bear the liabilities for performance and damages jointly and severally. The foregoing shall also apply to the cases of re-assignments.

#### Article 67

A contractor may subcontract the contract to other suppliers. The terms "subcontracting" means an arrangement not constituting an assignment but pursuant to which another supplier performs a part of the contract for the contractor.

In the event that a subcontract has been reported to the entity for file and that the subcontracted part has been pledged by the contractor to the subcontractor, the subcontractor will have the mortgage right under Article 513 and the claim based on addition under Article 816 of the Civil Code in terms of the claim of the contractor for the contract value or compensation against the entity.

Under the circumstance referred to in the preceding paragraph, the subcontractor for the part subcontracted to it shares the liabilities of warranty with the contractor jointly and severally.

#### Article 68

The claim of a contractor against an entity for contract value or compensation under a contract, whether in whole or in part, may be the object of a pledge.

#### Article 69

(Deleted)

#### Article 70

An entity conducting a procurement for construction work shall stipulate the responsibility of the supplier for quality control, environment protection, as well as safety and hygiene of the work, and shall also establish inspection procedures and standards for the major items of the construction work.

The entity may effect an inspection by segment during the supplier's performance of the contract, and the outcome of such inspection may be used as a basis for the acceptance.

The central, municipal, and county (city) governments shall each establish construction work surveillance unit(s) to periodically monitor their subordinate entities on matters of construction quality, progress, etc.

The regulations governing the organization of the construction work surveillance unit shall be prescribed by the responsible entity and promulgated after approval of the Executive Yuan. The regulations of its operation shall be prescribed by the responsible entity.

Paragraphs 1 and 2 shall apply *mutatis mutandis* to a contract for property or services not readily available, and required to be performed through certain performance process.

## Chapter V Inspection and Acceptance

### Article 71

An entity conducting a procurement for construction work or property shall set a time-limit for inspection and acceptance, and may conduct partial acceptance.

The inspection and acceptance shall be conducted by an appropriate chief inspector, which is appointed by the head of the entity or his/her authorized personnel, and the unit taking or using the work or property shall be informed to accompany the chief inspector for inspection and acceptance.

Personnel of the procurement unit of an entity shall not act as a chief inspector or an inspector for samples or materials of the procurement conducted by the unit.

The provisions of the three preceding paragraphs shall apply *mutatis mutandis* to the procurement for services.

### Article 72

In conducting the inspection and acceptance for a procurement, an entity shall make a record thereof signed jointly by the participating personnel. For any item found not in conformity with the requirements specified in the contract, drawings and/or samples after inspection and acceptance, the supplier shall be required, by a notice, to make improvement, to remove the rejected item or to

re-do the work, or to recall or to replace the rejected item within a time-limit. Where the result of the inspection and acceptance indicates that the non-conforming item is not material and the remaining items are nonetheless usable, and the entity deems that it is necessary to use such remaining items before the said non-conformity is corrected, a partial acceptance may be conducted for the remaining items and the contract value may be paid partially for the accepted portion, subject to the approval by the head of the entity or his/her authorized personnel.

Where the result of inspection indicates any non-conformity with the contractual requirements, but the non-conformity neither hinders the safety or use required nor decreases the general function or the function designated by the contract, an acceptance with price-reduction may be conducted under conditions that the entity has determined that there is no need or it is difficult to make replacement. Before conducting the foregoing, the entity shall report the case to the superior entity for approval if the value of the procurement reaches the threshold for supervision, or to the head of the entity or his/her authorized personnel if the value of the procurement does not reach the threshold.

The inspectors may, as they deem necessary, disassemble the covered parts of a construction work or property for inspection or conduct analytical inspection thereof.

#### Article 73

For a construction work or property which has passed the inspection and acceptance, the inspection and supervision personnel shall sign on the certificate of settlement and acceptance.

The provision of the preceding paragraph shall apply *mutatis mutandis* to the inspection and acceptance of services.

### Chapter VI Dispute Settlement

#### Article 74

For any dispute between an entity and a supplier arising out of the invitation to tender, the evaluation of tender, or the award of contract, a protest or complaint may be filed in accordance with this chapter.

#### Article 75

A supplier may, in the period as specified below, file a protest in writing with an entity if the supplier deems that the entity is in breach of laws or regulations or of a treaty or an agreement to which this nation is a party (hereinafter referred to as the "Acts and Regulations") so as to impair the supplier's rights or interest in a procurement.

1. Where the protest is filed for the content of the tender documentation, one quarter of the period for tendering starting from the date following the date of publication or invitation to tender and a segment of less than one day shall be counted as one day; provided that the whole period shall not be less than ten days;
2. Where the protest is filed for the interpretations, subsequent explanations, amendments or supplements of the tender documentation, ten days from the date following the date of receipt of the notification from an entity or the date of public notice given by the entity;
3. Where the protest is filed for the procedures or the outcome of the procurement, ten days from the date following the date of receipt of the notification from an entity or the date following the date of public notice given by the entity; or ten days from the date following the date when said procedures or outcome are known or can be known if such procedures or outcome are not notified or published; provided that the period shall not exceed fifteen days from the date following the date of the award of contract.

The entity inviting tenders shall make proper disposition and notify the protesting supplier in writing of such disposition within 15 days from the date following the date of receipt of the protest. In case that such disposition involves amendment or supplement to the content of the tender documentation, the entity shall publish a notice concerning such amendment or supplement, or notify each supplier in writing for cases of soliciting technical proposals and price proposals under selective tendering procedures and for cases under limited tendering procedures, and may extend the time-limit for tendering if required.

#### Article 76

Where the value of procurement reaches the threshold for publication, a supplier may file a written complaint with the Complaint Review Board for Government Procurement ("CRBGP") as established by the responsible entity, or the municipal or the county (city) governments, depending upon whether the procurement is conducted at the level of central government or local government, within fifteen days from the date following the date of receipt of the disposition if the supplier objects to the disposition, or from the expiry of the period

specified in paragraph 2 of the preceding Article if the entity fails to dispose the case within the period. A local government which does not establish a CRBGP may entrust the responsible entity to handle the complaint.

In the event that a supplier files its complaint to a wrong entity rather than the CRBGP, the date on which such complaint is filed with the wrong entity shall be counted as the date of receipt of the complaint.

The entity referred to in the preceding paragraph shall, within 3 days from the date following the date of receipt of the complaint, forward the complaint to the CRBGP and shall inform the supplier to that effect.

#### Article 77

The complaining supplier shall prepare a written complaint including the following particulars and affix its signature or seal thereon:

1. the name, address and telephone number of the complaining supplier and the name, gender, birth date, and domicile or residence of the responsible person;
2. the entity which handled the protest;
3. the facts and reasons of the complaint;
4. evidence; and
5. year, month and day of the written complaint.

The complaint may be filed by an agent on behalf of the complainant, and the agent shall submit a power of attorney indicating the name, gender, birth date, occupation, telephone number and domicile or residence of the agent.

The provision of Article 70 of the Code of Civil Procedures shall apply *mutatis mutandis* to the situation referred to in the preceding paragraph.

#### Article 78

When filing a complaint, the supplier shall also provide a copy of the



complaint to the entity. The entity shall present its response in writing to the competent CRBGP within ten days from the date following the date of receipt of such copy.

The CRBGP shall complete its review within forty days from the date following the date of receipt of the complaint, and shall notify the supplier and the entity of its decision in writing. If necessary, the foregoing period may be extended for another forty days.

#### Article 79

A complaint shall not be accepted if it is filed beyond the statutory period or is not in conformity with the statutory procedures or format. However, if the aforementioned errors can be corrected, the complainant shall be allowed to make the correction within a specified time-limit. Failure to make the correction within the time-limit shall render the complaint unacceptable.

#### Article 80

The review of a complaint with respect to a procurement may be conducted only with files.

The CRBGP may, *ex officio* or upon request, inform a complaining supplier or an entity to present their opinions orally at a place designated by the CRBGP.

In conducting a review, the CRBGP may entrust government authorities, schools, associations, or persons that have professional knowledge and experience to provide examination services, and may also call the relevant persons for explanations or request the entity or the supplier to provide relevant documents and materials.

The CRBGP may collect from the supplier review fees, examination fees, and other necessary expenses before conducting a review. The schedules of such fees and expenses and the methods of payment shall be prescribed by the responsible entity.

The regulations for the review of complaints shall be prepared by the responsible entity and be promulgated after approval of the Executive Yuan.

#### Article 81

A supplier may withdraw its complaint at any time before the service of a review decision. Once a complaint is withdrawn, the complainant is barred from submitting another complaint in respect of the same matter.

#### Article 82

A review decision prepared by the CRBGP shall be in writing, contain the facts and reasons, and indicate whether the procurement was conducted by the procuring entity in a manner that is in breach of Acts and Regulations. Where there is a breach, the CRBGP may recommend the procuring entity ways to proceed.

The CRBGP may, before completion of review, notify the procuring entity to suspend the procuring procedures, if necessary.

The CRBGP shall take the public interest, the interest of the relevant suppliers, and other relevant circumstances into account when making a recommendation or notification under the preceding two paragraphs.

#### Article 83

A review decision shall be deemed as a decision on an administrative petition.

#### Article 84

Where a procuring entity deems that a protest or complaint filed by a supplier is justifiable after reviewing the causes related thereto, the procuring entity shall nullify or change the initial result or suspend the procurement procedures, except for emergencies or public interest, or where the causes of complaint or protest are not likely to affect the procurement.

The procuring entity shall promptly notify the competent CRBGP of any outcome arising from the action it takes according to the preceding paragraph in response to a complaint.

#### Article 85

Where a review decision specifies that the procuring entity is in breach of

Acts and Regulations, the procuring entity shall proceed with a lawful alternative.

When the CRBGP makes recommendation in its decision to the procuring entity on the way of handling the matter in question, and the procuring entity declined to follow such recommendation, the procuring entity shall, within 15 days from the date following the date of receipt of the decision, report it to the superior entity for approval. If approved, the superior entity shall, within 15 days from the date following the date of receipt of such report, provide a written explanation with reasons to the CRBGP and the supplier.

Where the circumstance set forth in paragraph 1 occurs, the supplier may request the procuring entity to reimburse the necessary expenses incurred by the supplier for the preparation of tender and the filing of protest and complaint.

#### Article 85-1

In the event that the entity and the supplier failed to reach an agreement over the dispute in relation to the performance of the contract in question, any of the following means may be used to resolve the dispute:

1. apply to CRBGP for mediation.
2. refer to an arbitration institution for arbitration.

In the event that the application for mediation referred to in the preceding paragraph is made by the supplier, the entity may not object to such application. In the event that the unsuccessful mediation of construction work due to the entity does not agree with proposal or resolution for mediation proposed by CRBGP, the entity may not object to the arbitration filed by the supplier.

The provisions of mediation of the Code of Civil Procedures shall apply *mutatis mutandis* to the procedure and effect of the mediation by CRBGP, unless otherwise provided in this Act.

Regulations governing the mediation of disputes shall be prescribed by the responsible entity, and promulgated after approval of the Executive Yuan.

#### Article 85-2

Payment shall be made for mediation fee, verification fee and other

necessary fees on application for mediation. The schedule of fees, method of payment and the amount to be borne shall be prescribed by the responsible entity.

#### Article 85-3

The result of mediation shall either come into force upon consensus of the parties, or fail to come into force if there is no consensus.

During the mediation process, a mediator may, by his/her authority, propose a written resolution recommendation in the name of the CRBGP. If the entity does not agree with such recommendation, it shall report to its superior entity for approval before providing its written explanation to the CRBGP and the supplier in question.

#### Article 85-4

In the course of mediating the dispute over the performance of the contract in question, if the parties failed but very close to reach a consensus, the CRBGP shall propose a mediation proposal by its authority by taking into consideration all circumstances, consulting with the mediator, finding a balance over the interests of the parties, and not departing from the scope of the parties' main points.

The parties or interested parties which participate in the mediation may, as regards the proposed proposal mentioned in the preceding paragraph, raise an objection to the CRBGP, within 10 days from the date following the date of receipt of such proposal.

The mediation shall be deemed unsuccessful if objection has been raised during the period mentioned in the preceding paragraph, and shall be deemed successful if no objection has been raised during such period.

Where an entity raises its objection in accordance with the preceding paragraph, the provisions set out in paragraph 2 of Article 85.3 shall apply *mutatis mutandis*.

#### Article 86

In order to handle the complaints filed by suppliers for procurement at the levels of central government and local government, and the disputes arising from the performance of contract between the procurement entities and the suppliers, CRBGPs established by the responsible entity and the municipal and the county

(city) governments at each level respectively shall consist seven to twenty five members selected from persons impartial and of professional knowledge in legal or procurement affairs and appointed by the responsible entity or the municipal or county (city) governments. Three of such members may be high-ranking officials of the responsible entity or the municipal or county (city) governments provided that the number of such officials may not exceed one-fifth of the total number of members

The CRBGP shall perform its official duties impartially. The regulations governing the organization of CRBGP shall be prepared by the responsible entity and submitted to the Executive Yuan for approval and promulgation.

## Chapter VII Penal Provisions

### Article 87

A person who commits violence or threat, administers drugs, or applies hypnosis with the intent to cause a supplier not to tender or to tender contrary to its real intention, or cause the winning tenderer to forego the award or to assign or subcontract after award shall be punished with imprisonment for not less than one year but not more than seven years; in addition thereto, a fine of not more than three million New Taiwan Dollars may be imposed.

If death results from the offense specified in the preceding paragraph, the offender shall be punished with imprisonment for life or for not less than seven years; if serious bodily injury results therefrom, the offender shall be punished with imprisonment for not less than three years but not more than ten years; in addition thereto, a fine of not more than three million New Taiwan Dollars may be imposed.

A person who commits fraud or uses any other illegal means to make the supplier unable to tender or cause the opening of tenders to have an incorrect result shall be punished with imprisonment for not more than five years; in addition thereto, a fine of not more than one million New Taiwan Dollars may be imposed.

A person who causes the supplier not to tender or not to proceed with price competition by means of contract, agreement or other forms of meeting of minds, with the intent to adversely affect the price of award or to gain illegal benefits, shall be punished with imprisonment for not less than six months but not more than five years; in addition thereto, a fine of not more than one million New Taiwan Dollars may be imposed.

A person who borrows or assumes any other's name or certificate to tender, with the intent to adversely affect the result of procurement or to gain illegal benefits, shall be punished with imprisonment for not more than three years; in addition thereto, a fine of not more than one million New Taiwan Dollars may be imposed. The foregoing shall also apply to the cases of a person who allows any other person to borrow or assume his name of certificate to tender.

An attempt to commit an offense specified in paragraphs 1, 3 or 4 is punishable.

#### Article 88

A personnel of a supplier who is entrusted by an entity to conduct planning, design, review, monitoring, project management, or procurement but imposes unlawful restrictions or review on the technologies, technical methodology, materials, equipment, or specifications with the intent to gain personal illegal benefits and thereby obtains benefits, shall be punished with imprisonment for not less than one year but not more than seven years; in addition thereto, a fine of not more than three million New Taiwan Dollars may be imposed. In addition, the foregoing personnel who imposes unlawful restrictions or review on the qualifications of suppliers or sub-suppliers with the intent to gain personal illegal benefits and thereby obtains benefits, shall be subject to the same punishment.

An attempt to commit an offense specified in the preceding paragraph is punishable.

#### Article 89

The personnel of a supplier who is entrusted by an entity to conduct planning, design, project management, or procurement but discloses or delivers confidential documents, drawings, information, things, or any other data related to the procurement with the intent to gain personal illegal benefits and thereby obtains benefits, shall be punished with imprisonment for not more than five years or detention; in lieu thereof or in addition thereto, a fine of not more than one million New Taiwan Dollars may be imposed.

An attempt to commit an offense specified in the preceding paragraph is punishable.

#### Article 90

A person who commits violence or threat with the intent to cause the personnel of an entity who is engaged in planning, design, handling, or supervision of a procurement, or the personnel of a supplier who is entrusted by an entity either to provide services of planning, design, or project management of a procurement or to conduct its procurement, not to decide on matters with respect to the procurement or to decide on such matters contrary to his/her own mind, shall be punished with imprisonment for not less than one year but not more than seven years; in addition thereto, a fine of not more than three million New Taiwan Dollars may be imposed.

If death results from the offense specified in the preceding paragraph, the offender shall be punished with imprisonment for life or for not less than seven years; if serious bodily injury results therefrom, the offender shall be punished with imprisonment for not less than three years but not more than ten years; in addition thereto, a fine of not more than three million New Taiwan Dollars may be imposed.

An attempt to commit an offense specified in paragraph 1 is punishable.

#### Article 91

A person who commits violence or threat with the intent to cause the personnel of an entity who is engaged in planning, design, handling, or supervision of a procurement, or the personnel of a supplier who is entrusted by an entity either to provide services of planning, design, or project management of a procurement or to conduct its procurement, to disclose or deliver the confidential documents, drawings, information, things, or any other data related to the procurement, shall be punished with imprisonment for not more than five years; in addition thereto, a fine of not more than one million New Taiwan Dollars may be imposed.

If death results from the offense specified in the preceding paragraph, the offender shall be punished with imprisonment for life or for not less than seven years; if serious bodily injury results therefrom, the offender shall be punished with imprisonment for not less than three years but not more than ten years; in addition thereto, a fine of not more than three million New Taiwan Dollars may be imposed respectively.

An attempt to commit an offense specified in paragraph 1 is punishable.

#### Article 92

Where a representative, agent, employee, or any other staff of a supplier

who, in performing his/her duty, commits an offense specified in this Act, the wrongdoer shall be subject to the punishment prescribed in the relevant Articles; in addition thereto, the supplier shall also be subject to the fine prescribed therein.

## Chapter VIII Supplementary Provisions

### Article 93

An entity may execute an inter-entity supply contract with a supplier for the supply of property or services that are commonly needed by entities.

### Article 93-1

An entity may conduct a procurement electronically, and the electronic data thus provided shall be deemed as formal written document which may be waived.

The regulations of operation for electronic procurement specified in the preceding paragraph covering invitation to tender, receipt of tender documentation, submission of tender, opening of tender, award of contract, and receipt and expenditure of fees shall be prescribed by the responsible entity.

### Article 94

An entity conducting an evaluation shall establish an evaluation committee in which there shall be five to seventeen members and at least one third of the members shall be experts and scholars. A recommended roster of experts and scholars shall be prepared jointly by the responsible entity, the Ministry of Education, the Ministry of Examination, and other relevant entities.

The regulations governing the organization of and the regulations for review by the evaluation committee shall be prescribed by the responsible entity.

### Article 95

It is preferred for an entity to conduct its procurement by professional procurement personnel.

The regulations covering qualification, examination, training, certification,



and management of professional procurement personnel of the preceding paragraph shall be prescribed jointly by the responsible entity and the related entity.

#### Article 96

An entity may provide in the tender documentation that preference shall be given to a product which has been permitted to use a label of environment protection approved by the government, and in addition has the same or similar functions. The said preference may include a price preference of not exceeding ten percent. Such preference shall also be given where a product or its raw material is manufactured, used, and disposed of in such manner that conform to recycled materials, returnable products, low pollution, or energy-saving requirements.

The preceding paragraph shall apply *mutatis mutandis* to other products which either increase social benefits or reduce social costs, and have the same or similar functions required.

The categories and coverage of products referred to in the two preceding paragraphs and the implementing regulations thereof shall be jointly prescribed by the responsible entity, the Environmental Protection Administration of the Executive Yuan, and other competent entities.

#### Article 97

The responsible entity may take into account the requirements of the relevant laws and regulations to adopt measures assisting small and medium enterprises in contracting or subcontracting to the extent not less than certain percentage of government procurement in value.

The regulations of assistance referred to in the preceding paragraph shall be prescribed by the responsible entity.

#### Article 98

A winning tenderer who hires more than 100 employees locally shall employ the physically or mentally disabled or the aborigines to a minimum of two percent of the total number of employees during the term of contract performance; otherwise, the foregoing tenderer shall pay a fee in substitute and shall not hire foreign workers to make up the shortage in question.

## Article 99

Unless otherwise provided for by other laws, the provisions of this Act shall apply to the procedures under which an entity selects an investor to construct or operate a project approved by the competent authority to be open for private investment, provided that the project is one in transportation, energy, environment protection, tourism, etc., and planned or approved by the government.

## Article 100

The responsible entity, the superior entity, and the accounting entity may supervise an entity at any time concerning the progress of procurement, inventory, or service conditions of the subject procured, and may also demand the entity to submit a report.

An entity may transfer its surplus property which is still usable to other government agencies or public schools free of charge.

## Article 101

Where a procuring entity finds that a supplier has any of the following circumstances, the entity shall notify the supplier of the facts and reasons related thereto, and indicate with a note in the notification that it will be published on the Government Procurement Gazette if the supplier does not file a protest:

1. where the supplier allows any others to borrow its name or certificate to participate in a tender;
2. where the supplier borrows or assumes any other's name or certificate or uses forged documents or documents with unauthorized alteration to tendering, contracting, or performing a contract;
3. where the supplier has substantially reduced the work or materials without obtaining a prior approval;
4. where the supplier forges or alters without authorization documents related to tendering, contracting, or contract performance;
5. where the supplier participates in tendering during the period when its business operation has been suspended by a disciplinary action;

6. where the supplier has committed any of the offenses prescribed in Articles 87 to 92 hereof, and has been sentenced by a court of the first instance;
7. where the supplier refuses to execute a contract without due cause after award;
8. where an inspection indicates any serious non-conformity with the contractual requirements;
9. where the supplier does not fulfill its obligation of guarantee after inspection and acceptance;
10. where the time-limit for contract performance is seriously delayed due to causes attributable to the supplier;
11. where the supplier is in breach of the requirement of Article 65 by assigning a contract to others;
12. where a contract is rescinded or terminated for causes attributable to the supplier;
13. where the supplier is under the procedure of bankruptcy; or
14. where the supplier seriously discriminates women, aborigines, or personnel of disadvantaged groups.

Where there is a supplier who shares the liability with the contractor jointly and severally and the entity notifies the supplier to fulfill its liability, the preceding paragraph shall also apply.

## Article 102

A supplier who deems that the notification made by an entity according to the preceding Article is in breach of this Act or untrue may file a written protest to the entity within twenty days from the date following the date of receipt of the notification.

The supplier may file a written complaint with the competent CRBGP within fifteen days from the date following the date of receipt of the disposition of the protest referred to in the preceding paragraph if the supplier objects to the disposition, or from the expiry of a period of fifteen days starting from the date following the date the entity receives the protest if the entity fails to dispose the case within such period, irrespective of whether the procurement is of a value reaching the threshold for publication or not.

Where an entity has notified a supplier pursuant to the preceding Article and the supplier does not file a protest or complaint within the prescribed time-limit, or the complaint filed is not accepted, or the review decision indicates that the notification is not in breach of this Act or untrue, the entity shall immediately publish the name of the supplier and the relevant circumstance on the Government Procurement Gazette.

The provisions prescribed in Chapter VI hereof shall apply *mutatis mutandis* to the handling of protests and complaints provided for in paragraphs 1 and 2.

#### Article 103

A supplier whose name has been published on the Government Procurement Gazette pursuant to paragraph 3 of the preceding Article is prohibited from participating in tendering, or being awarded or sub-contracted within the following periods:

1. three years from the next day to the date of publication arising from circumstances of subparagraphs 1 to 5 of Article 101 hereof, or a sentence of imprisonment under subparagraph 6 of the same Article; provided that the period shall be suspended where the original penalty has been revoked or that a final “not guilty” verdict has been entered; or
2. one year from the next day to the date of publication arising from circumstances of subparagraphs 7 to 14 of Article 101 hereof; or imposition of detention, fine, or probation under subparagraph 6 of the same Article; provided that the period shall be suspended where the original penalty has been revoked or that a final “not guilty” verdict has been entered.

Where there is a special need for an entity to conduct a procurement without following the requirement of the preceding paragraph, the entity may do so with an approval from its superior entity.

## Article 104

Procurement conducted by military entities shall follow the provisions of this Act except where procurement is for weapons, ammunition, war supplies, or related to national security or national defense and has one of the following situations:

1. where this nation is confronted with a war, in mobilization for a war, or in a war, this Act may not apply;
2. where the procurement is a confidential or strictly confidential one, Articles 27, 45 and 61 hereof may not apply;
3. where there is an emergency which may jeopardize an important military mission, Articles 26, 28, and 36 may not apply; or
4. where there is only one supplier invited for tendering, the first sentence of paragraph 3 of Articles 26 may not apply;

The coverage of procurement referred to in the preceding paragraph and the regulations thereof shall be prescribed jointly by the responsible entity and the Ministry of National Defense, and be sent to the Legislative Yuan for reviewing.

## Article 105

The provisions of invitation to tender and award of contracts of this Act may not apply to the following procurement:

1. where the procurement is an emergent one in response to wars, natural disasters, epidemics, or economic or financial crises confronted by this nation;
2. where the procurement is an emergent one in response to imminent danger to the life, body, health, or property of the people;
3. where the procurement is an acquisition of property or service between governmental entities and approved by an immediate superior entity; or
4. where the procurement from an international organization, a foreign

government, or any of their authorized institutions is conducted in accordance with a treaty or agreement to which this nation is a party and which has specific provisions for the invitation to tender and award of contracts.

Where it is necessary to prescribe regulations for procurement referred to in the preceding paragraph, the regulations shall be prescribed by the responsible entity.

#### Article 106

Except otherwise prohibited by the treaties or agreements to which this nation is a party, a procurement conducted by an entity stationed abroad either for itself or as agent may be exempt from the provisions of the following subparagraphs in response to local circumstances or the constraint of local practices, provided that the ways to handle the matters referred to in the following subparagraphs 2 through 4 shall be specified in the tender documentation.

1. The publication on the Government Procurement Gazette under Article 27 hereof;
2. The bid bond and guarantee bond under Article 30 hereof;
3. The granting of priority in price reduction, and price reduction and comparison under paragraph 1 of Article 53 and Article 54 hereof; and
4. The protest and complaint set forth in Chapter VI hereof.

Where a procurement referred to in the preceding paragraph is of a value reaching the threshold for supervision, a report explaining the reasons shall be submitted to the superior entity together with relevant documents for file afterwards.

#### Article 107

An entity shall, in addition to the documents kept pursuant to the requirements of the Accounting Act or other laws, keep a copy of the procurement documents at a place designated by the responsible entity.

#### Article 108

The central, municipal, and county (city) governments shall each establish procurement control unit(s) to monitor and supervise procurement affairs.

The regulations governing the organization as well as the regulations of operation of the control unit referred to in the preceding paragraph shall be prescribed by the responsible entity, and submitted to the Executive Yuan for approval and promulgation.

#### Article 109

For procurement conducted by an entity, an auditing entity may audit it at any time.

#### Article 110

The Controller of the Directorate-General of Budget, Accounting and Statistics, the Controller of the Ministry of Audit, or the Prosecutor of the Ministry of Justice may bring an action, join the parties of an action, or appeal on behalf of an entity for a procurement case.

#### Article 111

An entity shall report annually to the responsible entity the service condition and the efficiency analysis of a subject procured in a large procurement during the service period, and the responsible entity may send its personnel to inspect for verification.

The responsible entity shall have an annual efficiency analysis for the important procurement that have been done, and the outcomes shall be published on the Government Procurement Gazette except those shall be confidential.

#### Article 112

The responsible entity shall prescribe ethics regulations for the procurement personnel.

#### Article 113

The enforcement rules of this Act shall be prescribed by the responsible entity.

#### Article 114

This Act shall take effect one year after promulgation.

The amendment to this Act (including the amendment to Article 7 promulgated on January 10, 2001) shall take effect on the date of promulgation.

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