

JICA Rules on Measures for Fraudulent Practices, etc. in Projects of ODA Loan and Grant Aid (Provisional Translation)

(Rules No. 43 (Proc) of October 1, 2008)

Article 1 (Purpose)

These Rules set forth matters necessary for the Japan International Cooperation Agency (hereinafter referred to as "JICA") to impose measures (hereinafter referred to as "Measures") to exclude persons or legal entities (hereinafter collectively referred to as "Person"), who are determined to have been engaged in incidents, or corrupt or fraudulent practices meeting the conditions for Measures in the Exhibit in Financial Projects (meaning the projects defined in Article 13, Paragraph 1, Items 2(a) and 3(a) of the Act of the Incorporated Administrative Agency – Japan International Cooperation Agency (Act No.136 of 2002)), from contracts (hereinafter referred to as "Procurement Contract") for the procurement of equipment or services necessary for implementation of the Financial Projects as entered into between JICA and a country (hereinafter referred to as "Beneficiary Country") and country's agency that implements the said project.

Article 2 (Deliberation)

The deliberation of the Measures pursuant to these Rules shall be conducted under the jurisdiction of the Measures Deliberation Committee established under Article 16 of the Rules for Organization of JICA (Rule No. 4 (Gen) of 2004).

Article 3 (Measures)

1. If it is determined that a Person selected, or likely to be selected, as a contractor for Procurement Contract (hereinafter referred to as "Contractor"), pursuant to Article 5 of these Rules, falls under any of the conditions for Measures set forth in the Exhibit, JICA shall impose the Measures in the following items.
 - (1) Reject the approval of Contractor as a party to the Procurement Contract or eliminate the said Procurement Contract from the scope of Financial Projects.
 - (2) Reject a Person engaged in the Fraudulent Practices, etc. newly becoming a party (including participation as a member of a consortium) to Procurement Contract as provided for in Article 6 or eliminate any Procurement Contract as provided for in Article 6 that may be newly awarded to that Person from the scope of Financial Projects for a period commensurate to the circumstances and pursuant to the applicable item under the Exhibit and Articles 7 and 8 (The period under any Measures imposed pursuant to this paragraph shall be hereinafter referred to as "Period of Measures.").
 - (3) Not to approve a Person engaged in the Fraudulent Practices, etc. becoming a subcontractor (including contract workers and other suppliers; hereinafter the same) under any other Procurement Contract during the Period of Measures. Not to approve said person subject to Measures becoming a sub-borrower of fund from a Beneficiary Country. The Measures in these cases shall apply to the said subcontractor and the sub-borrower.
 2. Notwithstanding Article 3.1, JICA may exclude from the scope of Measures pursuant to the request by the Beneficiary Country in unavoidable cases, such as where it is determined to be clearly contrary to the interests of Beneficiary Country or the nature or purpose of the contract does not allow for tendering, by taking into account, among others, the details of such Fraudulent Practices, etc. and the progress of the Financial Projects, etc.
 3. JICA may repeatedly impose Measures without waiting for the end of the Period of Measures already being imposed if the Person subject to Measures is newly determined to fall under the conditions for Measures in the Exhibit due to separate reasons under the provisions of Article 5 during the Period of Measures. In such case, the Period of Measures exceeding 36 consecutive months shall not be precluded.
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Article 4

1. If a Person is engaged in Fraudulent Practices, etc. in connection with a project implemented by the Japanese government or a local government, etc., JICA may apply Measures against the said Person in accordance with these Rules, after consultations with the Japanese government.
2. If a Person is subject to Measures pursuant to the JICA Rules on Measures against Fraudulent Practices, etc. in Contracts Awarded by JICA (No. 42 (Proc) of 2008), JICA may impose Measures against the said Person in accordance with these Rules.

Article 5 (Determination of Measures)

1. If falling under any of the items set forth below, JICA shall determine that such fact falls under the conditions for Measures set forth in the Exhibit.
 - (1) Contractor or any of its officers or employees is arrested or prosecuted without being arrested, or becomes subject to punishment from an administrative organ, on suspicion of offense under any of the laws and regulations set forth in the conditions for Measures in the Exhibit.
 - (2) Contractor or any of its officers or employees acknowledge the involvement in Fraudulent Practices, etc. which falls under any of the conditions for Measures set forth in Items 1 through 18 of the Exhibit.
 - (3) JICA determines as an objective fact that such case is Fraudulent Practices, etc. falling under any of the conditions for Measures set forth in Items 1 through 18 of the Exhibit.
2. JICA may make the determination in the preceding paragraph by deeming that any action violating laws and regulations of a foreign country equivalent to the Japanese laws and regulations set forth in the items of the conditions for Measures in the Exhibit is a violation of Japanese laws and regulations. Provided, however, that in the case of making a determination under Item 1 of the preceding paragraph, consideration shall be given to the current situation for criminal justice or administrative procedures in the said foreign country.

Article 6 (Scope of Application of Measures)

1. Any Procurement Contracts subject to the Measures imposed pursuant to Article 3.1.2 of these Rules shall be a contract for which all or part of the procedures concerning Procurement Contracts to be covered by Financial Projects (hereinafter referred to as "Procurement Procedures") are carried out during the Period of Measures.
2. The Procurement Procedures referred to in Article 6.1 above shall mean procedural steps as set forth below from the commencement of the respective procedures to the consent (concurrence) or verification by JICA on the Procurement Contract, which are classified by the types of Procurement Contracts and the types of selection procedures by a Beneficiary Country as set forth below. Provided, however, that if the consent from JICA shall not be necessary, there shall be a series of procedures until execution of the contract.
 - (1) Consulting contract
 - a) Application for consent to the short list of bidders, if a counterparty to the contract is selected from the short list of bidders
 - b) Appointment, if a certain consultant is appointed as a counterparty to the contract
 - (2) Contract for procuring equipment or services
 - a) Advertisement for prequalification, if a counterparty to the contract is selected through bidding and qualification screening of bidders is carried out in advance
 - b) Advertisement for bid, if a counterparty to the contract is selected through bidding and qualification screening of bidders is not carried out in advance
 - c) Application for consent to the procurement method, if a counterparty to the contract is selected through a procurement method other than bidding (including limited international bidding and optional contract; hereinafter the same under this Article 6.2(2)) and JICA adopts an approval process on the procurement method
 - d) Appointment, if a counterparty to the contract is selected through a procurement method other than bidding and JICA does not adopt an approval process on the procurement method

Article 7 (Measures concerning Consortium or Subcontractor)

1. If a Person subject to Measures (hereinafter referred to as "Person Subject to Measures"), pursuant to Article 3 or 4 of these Rules is a member of a consortium, JICA may impose Measures against the consortium for a period commensurate to the circumstances and within the period range of the Measures imposed against the Person Subject to Measures.
2. If JICA imposes Measures against a consortium pursuant to the preceding paragraph, JICA shall also impose Measures against any member in the said consortium (excluding those members determined clearly not to have responsibility for the said Measures) for a period commensurate to the circumstances and within the period range of the Measures imposed against the said consortium.
3. If it becomes clear that a certain subcontractor should be responsible for the Measures imposed pursuant to Article 3 or 4 of these Rules, JICA shall also impose Measures against the said subcontractor for a period commensurate to the circumstances within the period range of Measures imposed against the master contractor.

Article 7-2 (Measures concerning Corporate Group, Etc.)

1. If there is the following legal entities or individuals in a Person Subject to Measures, JICA may impose Measures against such legal entities or individuals for period within the period range of the Measures for the Person Subject to Measures.
 - (1) A legal entity the management of which is substantially controlled by a Person Subject to Measures including, but not limited to, a stock company a majority of all votes in which are owned by a Person Subject to Measures
 - (2) A legal entity or an individual who substantially controls the management of Person Subject to Measures (excluding national government, local government or other organization similar thereto)
 - (3) A legal entity the management of which is substantially controlled by a legal entity or an individual provided in the preceding items including, but not limited to, a stock company a majority of all votes in which are owned by a legal entity or an individual provided in the preceding items
2. If JICA determines in the case in which a Person Subject to Measures has transferred its business, assets or rights and obligations to a legal entity or an individual as a result of merger, demerger, transfer of business, or dissolution, and the other legal entity or individual can be recognized as being identical or similar to the Person Subject to Measures (including the case of the other legal entity or individual belonging to the same corporate group (meaning the group composed by the persons provided for in Items 1 to 3 of the preceding paragraph)), JICA may impose Measures against such legal entity or individual for the period within the period range of the Measures for the Person Subject to Measures.

Article 8 (Extension, Reduction, or Exemption of the Period of Measures)

1. If a Contractor who was engaged in Fraudulent Practices, etc. falls under two or more conditions for Measures under the Exhibit as a result of one incident of Fraudulent Practice, etc., the longest minimum period and the longest maximum period among the periods provided for each applicable condition shall be the respective minimum and maximum period of the Measures.
2. If any of the following items applies to a Contractor engaged in Fraudulent Practices, etc., the minimum Period of Measures against the Contractor shall be the twice the minimum period set forth in the applicable item under the Exhibit (or one and a half times if the initial Period of Measures is less than 1 month, or two and a half times if conditions for Measures under Item 10 of the Exhibit applies).
 - (1) During the Period of Measures relating to any of the conditions for Measures set forth in the items under the Exhibit or within 2 years after the expiration of the said period, the Contractor becomes subject to any of the conditions for Measures set forth in the Exhibit.
 - (2) At any time after the lapse of 2 years after the expiration of the Period of Measures relating to the conditions for Measures set forth in Item 6 of the Exhibit and before the lapse of 4 years following such expiration, the conditions for Measures set forth in Item 6 of the Exhibit become applicable to the Contractor again.
 - (3) At any time after the lapse of 2 years after the expiration of the Period of Measures relating to the conditions for Measures set forth in Items 7 through 16 of the Exhibit and before the lapse of 4 years following such expiration, the conditions for Measures set forth in Items 7 through 16 of the Exhibit become applicable to the Contractor again.

3. If a Contractor engaged in Fraudulent Practices, etc. has any extenuating circumstances, the application of Measures may be exempted or the minimum Period of Measures under the items of the Exhibit or under Article 8.1 or 8.2 above may be further reduced.
4. If it becomes necessary to further extend the period than the maximum Period of Measures under the items of the Exhibit and Article 8.1 above due to reason of extremely malicious nature or due to extremely serious consequences in relation to a Contractor engaged in Fraudulent Practices, etc., the Period of Measures may be extended to twice the length of the said maximum period (provided, however, that if doubling the period of maximum period becomes longer than 36 months, such period will remain at 36 months). The same shall apply if the investigation of such Fraudulent Practices, etc. to be conducted by JICA is impeded or cooperation therein is not given without good reason and the implementation of the fair Measures has been prevented.
5. If, during the Period of Measures, any extenuating circumstance or reason of extremely malicious nature is found in relation to a Contractor engaged in Fraudulent Practices, etc., the Period of Measures may be changed within the period range set forth in the applicable item of the Exhibit and in the preceding paragraphs above.
6. If Measures are implemented by the Japanese government, JICA may, upon consultations with the Japanese government, adjust its Period of Measures, etc., to a period which corresponds with the period range, etc. implemented by the Japanese government.

Article 9 (End or Cancellation of Measures)

1. The Person subject to Measures shall submit either of the following Items prior to the expiration of the Period of Measures. JICA reviews the content of measures to prevent reoccurrences or compliance program and if JICA determines the content to be suitable, the Measures shall end.
 - (1) Measures to prevent reoccurrences, if the Person subject to Measures is an individual, or a legal entity subject to the Measures due to falling under any of the conditions set forth in Items 1 through 5, 17 or 18 of the Exhibit.
 - (2) Compliance program which applies to the entire legal entity (if subject to Measures concerning corporate group, etc. in Article 7-2, such corporate group etc.), if the said Person subject to Measures became subject to the Measures due to the fact that the said Person subject to Measures fell under any of the conditions set forth in Items 6, 7, 10, 11 or 16 of the Exhibit.
2. If it is found during the Period of Measures that a Contractor engaged in the Fraudulent Practices, etc. was not responsible for the practices subject to the said Measures, JICA shall cancel the Measures against the Contractor.

Article 10 (Notice of Measures)

1. If JICA imposes Measures pursuant to Article 3, 4, 7, 7-2, or 11.2 of these Rules, changes the Period of Measures pursuant to Article 8.5 hereof or cancels Measures pursuant to Article 9.2 above, JICA shall notify the applicable Beneficiary Country and Person subject to the Measures without delay.
2. If JICA imposes the Measures, changes the Period of Measures or cancels the Measures, JICA shall publish such facts. Provided, however, that if JICA determines that the publication of the facts of the Measures will cause serious disadvantage to a third party, JICA may not publish the facts of the Measures.

Article 11 (Circumstances not Resulting in Measures)

1. JICA may give a warning to a Contractor and a Person provided for in Articles 4, 7 and 7-2 or call to their attention any necessary matters in either written or verbal form (hereinafter referred to as a "Warning") if it is found necessary to do so in the cases where Measures are not imposed.
2. If a Contractor who received a Warning pursuant to Article 11.1 above repeatedly creates situations resulting in the issuance of a Warning under Article 11.1 above during a period of 1 year following the initial Warning, JICA may impose Measures against the said Contractor within the period range set forth in the applicable item of the Exhibit.

Article 12 (Delegation of Authority to the Director General of the General Affairs Department)

Forms of documents and other administrative procedures necessary for the enforcement of these Rules shall be separately provided by the Director General of the General Affairs Department.

Supplementary Provisions

These Rules shall come into force from October 1, 2008.

Supplementary Provisions (Rules No. 19 (Proc) of July 13, 2009)

These Rules shall come into force from July 14, 2009.

Supplementary Provisions (Rules No. 28 (Gen) of October 1, 2009)

These Rules shall come into force from October 1, 2009.

Supplementary Provisions (Rules No. 6 (Gen) of March 11, 2011) These Rules shall come into force from March 11, 2011.

Supplementary Provisions (Rules No. 3 (Gen) of March 3, 2014) These Rules shall come into force from March 3, 2014.

Supplementary Provisions (Rules No. 28 (Gen) of August 5, 2014)

These Rules shall come into force from the date specified by the Director General [October 9, 2014] of the General Affairs Department. Supplementary Provisions (Rules No. 34 (Gen) of September 2, 2014)

These Rules shall come into force from September 2, 2014.

Supplementary Provisions (Rules No.24 (Gen) of September 21, 2018)

1. These Rules shall be enforced from October 1, 2018.

2. Notwithstanding the provisions of JICA Rules on Measures for Fraudulent Practices, etc. in Projects of ODA Loan and Grant Aid after amendment by these Rules, the Measures against Fraudulent Practices, etc. to be implemented by the date prior to the enforcement date of these Rules shall be applied as previously.

Exhibit

Criteria for Measures

Conditions for Measures		Period
(False statements)		
1	It is determined that a Contractor has made a false statement in any of the procurement documents and related documents for the Procurement Contract.	Not less than 1 month and not more than 6 months from the date of the determination
(Negligent operations)		
2	It is determined that a Contractor has caused a material defect due to negligent operations under the Procurement Contract.	Not less than 1 month and not more than 6 months from the date of the determination
(Breach of contract)		
3	In cases other than those described in the foregoing two items, it is determined that a Contractor has caused a breach of the contract in the course of operations under the Procurement Contract.	Not less than 2 weeks and not more than 4 months from the date of the determination

(Damage or injury to the public)		
4	It is determined that a Contractor caused injury or death of or property damage to a member of the public in the course of operations under the Procurement Contract due to Contractor's improper safety management.	Not less than 1 month and not more than 6 months from the date of the determination
(Damage or injury to a person involved in the operation)		
5	It is determined that a Contractor caused injury or death of or property damage to a person involved in operations under the Procurement Contract in the course of operations due to Contractor's improper safety management.	Not less than 2 weeks and not more than 4 months from the date of the determination
(Bribery)		
6	Any individual, who is a Contractor or any officer or employee of a Contractor has conducted an act in violation of Article 198 (Giving of Bribes) of the Penal Code (Law No. 45 of 1907) or Article 18 (Prohibition of the provision of illicit profits, etc. to foreign public officials, etc.) of the Unfair Competition Prevention Act (Law No. 47 of 1993) to a related person in the Beneficiary Country or in the Contractor's home country or to an official of JICA, any of whom is engaged in the Financial Project. In this case if the Contractor is subject to the Measures in spite of having signed the pledge not to engage in fraudulent practices, etc in advance, the period of the Measures shall be the longest term.	Not less than 4 months and not more than 18 months from the date of the determination
(Violation of the Antimonopoly Act)		
7	Contractor has violated Article 3, Article 6 or Item 1 or 2 of Article 8, Paragraph 1, of the Act on Prohibition of Private Monopolization and the Maintenance of Fair Trade (Law No. 54 of 1947; hereinafter referred to as the "Antimonopoly Act") in connection with the Procurement Contract and is therefore determined to be inappropriate as a counterparty to a contract.	Not less than 3 months and not more than 12 months from the date of the determination
8	In cases where a final and binding judgment, a definitive cease and desist order, or a payment order for a surcharge by the Japan Fair Trade Commission has been issued based on a violation of the Antimonopoly Act, it becomes clear that a Contractor (or any of its officers or employees) is a ringleader.	Twice the minimum period set forth in Item 7 of the Exhibit for the minimum Period of Measures (or two and a half times if falling under Item 10 of the Exhibit)

9	Contractor (or any of its officers or employees) falls under Article 7-2, Paragraph 7 of the Antimonopoly Act.	as same above
10	Contractor faces a criminal charge for the violation of Article 3, Article 6 or Item 1 or 2 of Article 8, Paragraph 1 of the Antimonopoly Act (including cases in which an individual who is a Contractor or an officer or employee of a Contractor faces a criminal charge or is arrested) in connection with the Procurement Contract.	Not less than 6 months and not more than 36 months from the date on which JICA becomes aware of the criminal charge, arrest or prosecution
(Bid rigging)		
11	Individual who is a Contractor or an officer or employee of a Contractor has committed an act of bid rigging (as defined in Article 96-6, Paragraph 2 of the Penal Code; hereinafter the same) in connection with the Procurement Contract.	Not less than 3 months and not more than 12 months from the date of the determination
12	In cases where JICA obtains the information about bid rigging or where an official of JICA becomes aware of enough facts to suspect bid rigging, and an act conducted by a Contractor falls under any Item 7, 11 or 16 of this Exhibit, despite the fact that the said Contractor signed a written oath stating that the Contractor had not engaged in bid rigging.	Twice the minimum period set forth in Item 11 of the Exhibit for the minimum Period of Measures (or two and a half times if falling under Item 16 of the Exhibit).
13	In cases where a final and binding judgment is rendered for obstruction of auctions or bids (an act that impairs the fairness of a public auction or bid, as defined in Article 96-6, Paragraph 1 of the Penal Code; hereinafter the same) or for bid rigging, it becomes clear that a Contractor (or any of its officers or employees) is a ringleader.	as same above
14	In cases where it becomes clear that there is or was an act of bid rigging by a Contractor as a result of an investigation by the head of the competent ministry or agency under Article 3, Paragraph 4 of the Act on the Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Officials that Harm the Fairness of Bidding, etc. (Act No. 101 of 2002), the said Contractor engaged in any malicious act under Items 7 through 10 of this Exhibit in connection with the said act of bid rigging.	One month shall be added to the minimum period set forth in Item 11 of the Exhibit for the minimum Period of Measures (or one and a half months if falling under Item 10 of the Exhibit).
15	In cases where an official of JICA or any other public institution is arrested or prosecuted without arrest on suspicion of obstruction of auctions or bids or bid rigging, a Contractor is engaged in a malicious act	as same above

	corresponding to the suspected offense by the said official.	
16	Officer or employee of an entity which is a Contractor or an individual who is a Contractor or his/her employee, is arrested or prosecuted without arrest on suspicion of obstruction of auctions or bids or bid rigging in connection with the Procurement Contract.	Not less than 6 months and not more than 36 months from the date on which JICA becomes aware of the criminal charge, arrest or prosecution
(Wrongful or dishonest acts)		
17	In cases other than those provided in the foregoing items, it is determined that a Contractor has conducted a wrongful or dishonest act in connection with the Procurement Contract.	Not less than 1 month and not more than 18 months from the date of the determination
18	In cases other than those provided in the foregoing items, a representative officer or any other equivalent person of Contractor is prosecuted on suspicion of an offense punishable by imprisonment or heavier penalty, or is sentenced to imprisonment or heavier penalty or to a fine under the Penal Code, and is therefore determined to be inappropriate as a counterparty to the Procurement Contract.	Not less than 1 month and not more than 9 months from the date of the determination
19	Measures pursuant to the JICA Rules on Measures against Fraudulent Practices, etc. in Contracts Awarded by JICA (Rule No. 42 (Proc) of 2008) are imposed against a Person subject to Measures pursuant to those provisions in connection with Procurement Contracts.	Within the period range set forth in these Rules in relation to the act subject to the said measure

In case of discrepancy or dispute, the Japanese text shall prevail.