

## **Matters to be Paid Attention when Preparing Specifications for Japanese Information Technology Systems Procurement**

March, 2005

Secretariat to the Inter-Ministry/Cabinet Consultative Committee  
on Information Technology System Procurement

In accordance with the [WTO] “Agreement on Government Procurement,” the “Measures Related to Japanese Public Sector Procurements of Computer Products and Service” (January 20, 1992, The Committee for Drawing Up and Promoting the Action Program), etc., procurement of information technology systems must be implemented in a manner that maintains transparency and fairness, and secures fair competition. In consideration of the foregoing, when preparing specifications, and as it is stated in the “Guidance for Preparing Specifications Related to Procurements for Computer Products and Service” (dated May 1995, issued by the Inter-Ministry/Cabinet Consultative Committee on Information Technology System Procurement), it is prohibited to state requirements by using only trade names, etc. In the case when trade name is used, this is only permitted when there is a rational reason to do so, and the content of requirements must be neutral.

Therefore, we ask again each ministry and agency to abide these arrangements and to pay attention that they prepare specifications in a manner that is fair.

Further, concerning this matter, please ensure that procurement offices at your local branches are notified as well.

○ **Agreement on Government Procurement (extract)**

Article 6. Technical Specifications

1. Technical specifications laying down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labeling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

2. Technical specifications prescribed by procuring entities shall, where appropriate: (a) be in terms of performance rather than design or descriptive characteristics; and (b) based on international standards, where such exist; otherwise, on national technical regulations (see footnote 1) recognized national standards (see footnote 4), or building codes.

3. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific 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.

4. Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.

Footnote 1: For the purpose of this Agreement, a technical regulation is a document which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, service, process or production method.

Footnote 2: For the purpose of this Agreement, a standard is a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, service, process or production method.

**Measured Related to Japanese Public Sector Procurements of Computer Products and Service (The Committee for Drawing Up and Promoting the Action Program, January 2, 1992) (Extract)**

4. Specifications will be formulated in an impartial manner. If the procurement will replace or interconnect with an existing system, these specifications will not be designed to preclude competition. Features not essential to the assigned task will not be required.
5. Any supplier directly involved in the development of final specifications in a procurement will not be allowed to participate in the tendering process, if such participation would result in an unfair competitive advantage, except such cases where potential suppliers provide information or assistance to a procuring entity in preparing or refining specifications in a situation where the entity is controlling the process and conducting it in a fair and impartial manner and where a supplier provides, at the request of an entity, product specifications or data about a product it supplies. In such cases, all potential suppliers will be provided with an opportunity to participate or provide such product specifications or data
6. The Government will establish a program to centralize and to facilitate the dissemination of information and provision of training related to specifications-formulation efforts of entity procurement officials.

**“Guidance for Preparing Specifications Related to Procurements for Computer Products and Service” (issued by the Inter-Ministry/Cabinet Consultative Committee on Information Technology System Procurement, dated May 1995) (extract)**

3 (2) How to write specifications.

Normally there are three methods of writing specifications:

(i) Operational Specifications (Descriptions focusing on the operation/service)

Operational specifications are described in general terms how the operations are to be handled by the procured item, by describing in detail the volume of items/jobs the system must handle during a specified time and requesting that the bidders/suppliers provide a method or proposal to satisfy such requirement.

(ii) Technical Specifications (Descriptions focusing on the technical aspects)

Technical Specifications are described by mentioning technical requirements (numeric value, programming language, protocol, etc.) the procurement requires from the perspective of a developer (analyst, designer, programmer, etc) and requesting the suppliers to provide a product proposal to satisfy such request.

(iii) Brand Name Specifications (Descriptions focusing on specific products)

Brand name specifications are described by mentioning a particular trade name, type or style (hereafter referred to as “brand name”) that identifies a certain product (hardware, software), and accompanied with the words “or equivalent.”

This specification can only be used when it is not possible to give a clear and fully understandable description of the requirement without mentioning the brand name.

4. (2) Points keep in mind when writing a specification

When writing specifications, the appropriate one should be selected (or used in combination) in accordance to the objective situation of each individual procurement, by keeping the following points in mind:

(i) Operational Specifications

Generally, operational specifications give definitions that do not give images of a certain product and have the most room for suppliers to design the composition of the equipment and how to realize such technical abilities, and [operational specifications] are believed to be more neutral than brand name specifications, etc.

However, in order to ensure accurate procurement, it is necessary to pay attention to the contents and level of the description so that the suppliers do not misinterpret the specification.

(ii) Technical Specifications

Since technical specifications describe the requirements using items, numeric values, etc, it is easier for the procurement entity to select, compared to operational specifications. However,

at the same time, the suppliers will propose procurement products based on such items, numeric values, etc, and it is necessary to pay attention to setting the items, numeric value, etc.

Please note that describing international standards are included in these types of specifications. If it satisfies the requirements, it is ideal to use such standard as the specification.

(iii) Brand name specification

In determining specifications, the use of brand names by the procurement entity gives more specific description of the requirements of the procured product. However, there is a high chance of limiting the product itself and, therefore, impairing fair and open competition.

This type of specification is often used in the interest of maintaining compatibility with previous systems, but even in this limited circumstance issues such as 1) whether the requirements can be fully described through operational or technical specifications, and 2) whether compatibility should be maintained, should be considered. Brand name specification should only be used after the aforementioned issues are investigated and issues and when there is a rational reason for doing so.

In addition, in reality, various descriptions are used in connection with brand name specifications. Therefore, it is important to note the following points.

1. The Agreement on Government Procurement prohibits mentioning only the brand name in describing the requirements. A specific brand name must be accompanied with the words “or equivalent”.
2. When accompanied with the words “equivalent to” it is unclear whether or not the mentioned brand name product is included in the procurement object, therefore, if included, the wording should be rephrased as “or equivalent.”
3. The word “equivalent” may be used when a specific brand name product is used as the basis of comparison of a function under the requirements. For example, “with the equivalent capability of xxxx (brand name).”
4. In principle, the phrase “in conformity with” should not be used unless it is referring to an international standard.

**Regarding the Formation of the Inter-Ministry/Cabinet Consultative Committee  
on Information Technology System Procurement**

December 6, 2001

Agreement among Ministries and Agencies

1. In accordance with the decision to reexamine the government procurement system for information systems in the “Reform Schedule” (Council on Economic and Fiscal Policy decision, dated September 21, 2001), an “Inter-Ministry/Cabinet Consultative Committee on Information Technology System Procurement (the “Consultative Committee”) will be established. The Consultative Committee will examine various assignments that must be worked on across the ministries and agencies.
2. The membership of the Consultative Committee will be as on the Attachment. If a member is to be added, it will be consulted by the Consultative Committee in advance.
3. The Manager of Administrative Information System Planning Section of the Administrative Management Bureau of the Ministry of Internal Affairs and Communication will convene and host the Consultative Committee.
4. The Administrative Management Bureau of the Ministry of Internal Affairs and Communication, the Commerce and Information Policy Bureau of the Ministry of Economy, Trade and Industry and the Budget Bureau of the Ministry of Finance will serve as the secretariat for the Consultative Committee.
5. Study groups will be established to study certain matters that require special expertise. The study groups will be composed of staff of each ministry and agency.
6. Other items required or items related to the operation of the Consultative Committee will be decided by the Consultative Committee.

**Membership of the Inter-Ministry/Cabinet Consultative Committee on  
Information Technology System Procurement**

[The list includes a representative of an “accounting division” and an “information technology systems division” from each of the following entities (comprising the entire central government) – the specific representatives are omitted from the following translation]

Cabinet Office  
Imperial Household Agency  
Fair Trade Commission  
National Police Agency  
Defense Agency  
Financial Services Agency  
Ministry of Internal Affairs and Communications  
Environmental Dispute Coordination Commission  
Ministry of Justice  
Ministry of Foreign Affairs  
Ministry of Finance  
Ministry of Education, Culture, Sports, Science and Technology  
Ministry of Health, Labour and Welfare  
Ministry of Agriculture, Forestry and Fisheries  
Ministry of Economy, Trade and Industry  
Ministry of Land, Infrastructure and Transport  
Ministry of the Environment

**Observers**

Cabinet Secretary  
Cabinet Legislation Bureau  
[Personnel Agency]  
House of Representatives  
House of Councilors  
National Diet Library  
Supreme Court  
Board of Audit