

This is an unofficial translation. Only the original Japanese text of Rules for Tendering and Contracting has effect, and this translation is to be used solely as reference material to aid in the understanding of EPCO procurement.

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For your reference material for application for qualification, Please see the Q&A No.5 on next website(<http://www.mofa.go.jp/policy/economy/procurement/q-a.pdf>).

Rules for Tendering and Contracting

Chapter 1 General Provisions

1.1 (Purpose)

The purpose of these rules is to set forth matters that shall be known and followed by each person or entity participating in tendering procedures for a contract, sales or other agreement with, each person or entity entering into an agreement with, or each person or entity that has entered into an agreement with the Equipment Procurement and Construction Office of the Ministry of Defense (hereinafter referred to as “EPCO”) (such person or entity is hereinafter referred to as the “Counterparty”).

1.2 (Basic Rules)

The Counterparty shall be fully aware of these rules when submitting an application form for the application for qualification for general competitive tendering (designated competitive tendering), submitting a tender for a general competitive tender contract or designated competitive tender contract, making an estimate for and entering into a negotiated contract, and performing obligations and exercising rights thereunder.

1.3 (Submission and Presentation of Documents)

When submitting or presenting documents to EPCO, the Counterparty shall not submit or present any false document.

Chapter 2 Application for Qualification (omitted)

Chapter 3 Public Notice and Competitive Tendering, etc.

3.1 (Public Notice, etc.)

3.1.1 When holding a general competitive tender, EPCO shall post a public notice containing the following information (Appended Form 3-1-1) on the bulletin board of EPCO at least ten (10) days prior to the day before the date of tendering; provided, however, in case of urgent necessity, such period may be shortened to at least five (5) days prior to the said day.

- (1) Subject matter of competitive tendering
- (2) Matters concerning qualifications required for participants of competitive tendering
- (3) Contractual provisions to be applied
- (4) Place, time and date of tendering
- (5) Matters concerning the tender security deposit
- (6) Matters concerning the tender briefing session
- (7) Other necessary matters

3.1.2 In the case of designated competitive tendering or a negotiated contract, the Counterparties shall be notified of the information specified in 3.1.1 (excluding (2)) in lieu of a public notice.

3.1.3 If no tender is submitted or successful, or the successful tenderer does not execute a contract, the public notice or notification may be made again. In this case, the period of public notice or notification may be shortened.

3.1.4 In a public notice, certain conditions (such as having specific technology, equipment, etc., being able to deliver a brand-name product, etc.) may be required as qualifications for participating in the tendering procedures. In this case, any person or entity not satisfying such qualification shall not be a Counterparty in such tender even though such person or entity is included on the list of qualified tenderers.

3.2 (Tender Briefing Session)

3.2.1 A tender briefing session shall be held in the event that misunderstanding is likely to occur for the future regarding ambiguous contents of the public notice or notification, including any matter which is difficult to describe in writing or which is highly likely to cause misunderstanding.

3.2.2 The Counterparty shall take minutes of the briefing at the tender briefing session which is held as notified in a public notice or notification. In this case, any damage suffered by the Counterparty as a result of the Counterparty's omitting to record any words in the minutes shall be borne by the Counterparty.

3.3 (Tender Security Deposit)

3.3.1 The Counterparty shall, unless the tender security deposit is waived in the public notice or notification, pay the tender security deposit as prescribed in 3.3.4. to the Financial Division (Revenue Unit) no later than the day before the date of tendering (or, if there is a special reason, the date of tendering) and shall submit the Receipt of Deposit (Appended Form 3-3-1) or the Receipt of Insurance Policy (Appended Form 3-3-2) when submitting a tender.

3.3.2 Amount of tender security deposit

The amount of tender security deposit shall be the amount equivalent to five-hundredths (5/100) or over of the contract amount quoted by the Counterparty, as specified in the public

notice or notification. A tender security deposit of less than one thousand yen shall be deemed to be one thousand yen and any fraction less than one thousand yen shall be rounded up.

3.3.3 Handling of tender security deposit

If the successful tenderer does not execute a contract, the tender security deposit shall be transferred to the national treasury.

3.3.4 Types of tender security deposit

From the standpoint of simplifying paperwork, the tender security deposit shall usually be paid by a “bank check” or a “tender security insurance policy”.

3.3.5 Payment procedures of tender security deposit

(1) Bank check

The Counterparty shall submit a check crossed generally which has been issued by a bank having its head office or branch office in Tokyo and is payable to order of the officer in charge of the receipts and disbursements of cash other than annual revenue and expenditure of EPCO (hereinafter referred to as the “Cash Officer”) along with a Deposit Submission Form (Appended Form 3-3-3) to the Cash Officer (Revenue Unit, Financial Division) and receive a Receipt of Deposit (Appended Form 3-3-1).

(2) Tender security insurance policy

In the case where the Counterparty has effected a tender security insurance contract by an insurance company with the government as the insured party, the Counterparty shall submit the insurance policy for such tender security insurance contract along with an Insurance Policy Submission Form (Appended Form 3-3-4) to the chief officer in charge of handling government securities in custody (hereinafter referred to as the “Chief Handling Officer” (Revenue Unit, Financial Division) and receive a Receipt of Insurance Policy (Appended Form 3-3-2). In this case, the insurance policy must be the one issued by an insurance company which has notified the name of its representative and the seal to be used, etc. to the Chief Handling Officer in advance.

3.3.6 Refund procedures of tender security deposit

Following the completion of tendering, upon delivery of the award decision notice by the article-specific division (office) in charge of the contract (hereinafter referred to as the “Specific Division (Office)”) to the Financial Division (Revenue Unit), each Counterparty of the tender in question other than the successful tenderer shall receive refund of its tender security deposit from the Cash Officer pursuant to the provisions of the following paragraphs. If the Counterparty sends its employee, etc. for such purpose, the Counterparty shall have such employee submit a Request for Check (Appended Form 3-3-5) and carry an identification card issued by the company which such employee belongs to, which is to be displayed at all times.

The successful tenderer shall receive refund of its security deposit pursuant to the prescribed procedures upon presentation of the contract to the Cash Officer after the execution of the contract.

(1) Bank check

The Counterparty shall submit the Receipt of Deposit to the Cash Officer and shall have the check to order returned with endorsement by the Cash Officer in exchange therefore.

(2) Tender security insurance policy

The Chief Handling Officer shall carry out the cancellation procedures.

(The Specific Division (Office) refers to the Radar, Sonar and Computer Systems Division, Communications and Electric Machinery Division, Guided Weapons Division, Supplies Division, Arms Division, Machinery and Vehicles Division, Ships Division, 1st Aircraft Division, 2nd Aircraft Division, Import Division, Computer Systems Office of Radar, Sonar and Computer Systems Division, Procurement Cooperation Office of Supplies Division, Munitions Office of Arms Division, Special Vessels Office of Ships Division, or Helicopters Office of 2nd Aircraft Division.)

3.3.7 Days and hours for handling of the tender security deposit, etc.

(1) The tender security deposit shall be handled from 09:00 to 15:00 on weekdays; provided, however, that such days and hours may be specified otherwise when there is an overwhelming amount of paperwork.

(2) The Counterparty shall not sell, transfer or pledge the Receipt of Deposit, etc.

(3) The Counterparty shall inquire with the Financial Division (Revenue Unit) about further details concerning the handling of the tender security deposit.

3.4 (Tender Submission, etc.)

3.4.1 General rules

The Counterparty participating in tendering procedures or responding to a call for negotiations for a negotiated contract shall submit a Tender Form or Quotation (Appended Form 3-4-1) as directed by the officer in charge of tendering.

Participants in tendering procedures shall observe the following provisions.

(1) The submitted Tender Form shall not be replaced, modified, or withdrawn.

(2) The Counterparty or its agent or employee, etc. shall not act as an agent for any other Counterparty of the same tendering procedure (double agent).

(3) The Counterparty shall bring necessary copies of necessary documents when submitting a tender in preparation for retendering.

(4) In the case where payment of the tender security deposit is required in the public notice or notification, the Counterparty shall submit a Receipt of Deposit, etc. certifying such payment prior to submitting a tender.

(5) In the case where the brands, etc. are designated for all or some items to be procured through competitive tendering, the Counterparty shall submit a Form for Undertaking Shipment or Manufacturing (Appended Form 3-4-2) of such brand items, etc. prior to submitting a tender.

(6) The Counterparty participating in tendering procedures through an agent shall submit a Letter of Proxy (Appended Form 3-4-3) and a seal registration certificate prior to submitting a tender; provided, however, that the Counterparty may not be required to submit a Letter of Proxy for each tender submission during the same fiscal year as long as

the issuer of the Letter of Proxy and the person appointed and the matters entrusted thereunder are the same and that a Letter of Proxy for tendering, etc. (Appended Form 3-4-3) and a seal registration certificate have been submitted to each Specific Division (Office) in advance. In the case described in the provisory clause above, such Counterparty shall not be allowed to appoint a different agent for a specific tender.

- (7) The Counterparty who is late for the time and date of tendering shall not participate in tendering procedures; provided, however, that such Counterparty may be allowed to participate in tendering procedures if such delay is due to unavoidable circumstance and also if approval has been obtained from all participants prior to the tender.

3.4.2 Checking prior to tendering

In order to prevent a tender from being declared invalid, the Counterparty shall, after examining the information written on the Tender Form, undergo a checking process to see whether the Counterparty is going to participate in competitive tendering, whether any document is required to be submitted, etc. as directed by the officer in charge of tendering.

3.4.3 Invalid tender

Any tender which falls under any of the following paragraphs (or a related tender in the case of (6)) shall be declared invalid.

- (1) The tender is one that is declared invalid under the provisions of the Civil Code.
- (2) The tender is submitted by any person or entity not qualified.
- (3) The paid amount of the tender security deposit for the tender is less than the prescribed amount.
- (4) The Tender Form is missing the tenderer's signature and seal, or the name, quantity, amount, or other information is unclear, or the amount stated on the Tender Form (hereinafter referred to as "Tender Amount") has been corrected.
- (5) The tender is submitted by a tenderer who submitted more than one Tender Form for the same tender.
- (6) The tender is submitted through a double agent.
- (7) The tender does not comply with other conditions required for tender submission.

3.4.4 Tender submission and tender opening

- (1) Tenders shall be submitted by dropping such into the tender box.
- (2) Tenders shall be opened immediately after the completion of tender submission in the presence of tenderers. At this point the officer in charge of tendering shall announce whether there is any invalid tender and take one the following procedures.
 - (a) If the successful tenderer is determined pursuant to the provisions of 3.5.1, the officer in charge shall announce the name and the tender amount of the successful tenderer.
 - (b) If investigation is needed for the decision not to declare the lowest tenderer the successful tenderer pursuant to the provisions of 3.5.2, the officer in charge shall, after announcing the lowest tender amount, announce that the successful tenderer will be decided after investigation and that the successful tenderer will be announced separately when decided.

(c) If there is no successful tenderer, the officer in charge shall, after announcing the lowest tender amount, announce that retendering will be carried out and, after having the withdrawn tenderers and invalid tenderers leave the room, proceed with retendering procedures.

3.5 (Method of Deciding Successful Tenderer)

3.5.1 The successful tenderer who is to be the Counterparty of a contract shall be decided as provided below.

(1) The successful tenderer shall be the Counterparty who submitted a tenderer of the lowest price among all tenderers within the limit of the amount equivalent to 100/105 of the target price. However, in the case of the overall evaluation tendering method, tenderers shall submit tenders including the price, performance, capability, technology, etc., and the successful tenderer shall be the tenderer with the highest score under the “overall evaluation method” among the tenderers whose tender prices are within the limit of the target price and whose performance, capability, technology, etc. (hereinafter referred to as “performance, etc.”) stated in the tenders satisfy the minimum requirements for all requisite items among the requirements for performance, etc. set forth in the public notice or announcement of tendering (including the relevant tender explanation document). If more than one Counterparty submitted tenders with the same price or the same score that should be the successful tender, the successful tenderer shall be immediately decided by drawing lots.

If any of such Counterparties does not draw lots, an officer of EPCO who is not related to tendering shall draw lots to decide the successful tenderer.

(2) In the case where it is stated in the public notice or notice of multiple tendering system, the following provisions shall apply.

(a) The successful tenderers shall be selected from among the Counterparties who submitted tenders with the unit price not exceeding the amount equivalent to 100/105 of the target price in order from the lowest to highest price until the required quantity specified in the public notice or notification is reached.

(b) In the procedures described in (a), if the quantity offered in the successful tender of the lowest order exceeds the required quantity as specified in the public notice or notification in total with the quantity offered in other successful tenders, the exceeding portion shall be deemed not included in the successful tenders.

(c) In deciding the successful tenderers pursuant to the provision of (a), if two tenderers or more submitted tenders with the same price, the tenderer who submitted the tender with the largest quantity shall be given the highest priority and if the quantity is the same for these tenderers, the successful tenderers shall be decided pursuant to the provision of (1).

(d) After the successful tenderers have been decided pursuant to the provision of (a), if any of the Counterparties who won the tender does not execute a contract, the portion which has been excluded from the successful tenders under the provision of (b) shall be included in the successful tenders, and then the quantity offered by the tenderer(b) who failed to win the tender under the provision of (c) shall be included in the successful

tenders, both within the extent of the quantity that has been won by such Counterparty.

3.5.2 Cases where the lowest tenderer is not declared the successful tenderer

In tendering for a manufacturing or other contract whose target price exceeds 10 million yen, the tenderer who submitted the tender with the lowest price may not be the successful tenderer in a case which falls under any of the following items.

- (a) The tender price is so unreasonably low in comparison to the target price it is considered that the subject contract may not be performed properly as contemplated therein.
- (b) It is considered that awarding the contract to the lowest tenderer would be extremely inappropriate because doing so may disrupt the principle of fair transaction.

3.6 (Failure of Tendering)

If no tenderer is declared the successful tenderer in the tendering procedures or in the retendering procedures, the officer in charge of tendering shall announce that any of the steps described in the following paragraphs and take such step. In this case, if a recess is taken, the Counterparties shall act as directed by the officer in charge of tendering. Any Counterparty who fails to follow such directions may be excluded from tendering procedures.

- (1) Continuing tendering procedures
- (2) Holding negotiations with the tenderers in order from the lowest tenderer upward assuming such tenderer as the Counterparty of a negotiated contract
- (3) Carrying out tendering procedures again by issuing a public notice or notification

3.7 (Successful Tenderer Not Executing a Contract)

If the successful tenderer does not execute the contract, any of the steps described in the following paragraphs shall be taken.

In this case, if the tender security deposit has been paid by the successful tenderer who does not execute the contract shall be transferred to the national treasury and if the tender security deposit is waived, such tenderer shall be held liable for compensation for damages and, in addition, may be subject to restrictions on nomination as a designated contractor or restrictions on renewal of application for qualification examination, etc.

- (1) Carrying out re-tendering procedures by issuing a public notice or notification
- (2) Holding negotiations with the tenderers in order from the lowest tenderer upward assuming such tenderer as the Counterparty of a negotiated contract

3.8 (Negotiations for Negotiated Contract)

- (1) Negotiations for a negotiated contract shall be opened upon submission of a Quotation.
- (2) The Counterparty of a negotiated contract shall be the Counterparty with whom negotiations come to an agreement within the limit of the target price.

3.8.1 General Rules

The provisions of 3.4.1 to 3.4.3 shall apply mutatis mutandis to the extent possible in the nature of such provisions.

3.9 (Conclusion of Contract)

When the successful tenderer is declared or, in the case of a negotiated contract, when negotiations are concluded successfully, the subject contract shall be deemed concluded upon

signing and sealing by the official in charge of disbursement of the procuring entity (including the deputy official in charge of disbursement of the procuring entity, the same shall apply hereinafter) and the Counterparty after the submission of the contract in accordance with the procedures prescribed in Chapter 4 “Execution of Contract” and payment of the contract security deposit (unless waived) by the Counterparty and certification by the official in charge of the review for disbursement of the procuring entity thereof.

3.10 (Electronic Tender)

The procedures for submitting the Tender Form, Quotation and other required certificates, etc. (only those are available) (hereinafter referred to as “Tender Form, etc.”) via the EPCO Electronic Tender Submission and Opening System (hereinafter referred to as “Electronic Tender Submission and Opening System”) shall be carried out as follows in addition to what is provided for in the Terms of Use of the EPCO Electronic Tender System (Separate Volume 3).

3.10.1 The participants of the tender shall fill out the Tender Form, etc. of the Electronic Tender Submission and Opening System and submit such by the deadline for tender submission set forth in the public notice or notification

3.10.2 The tenderer who is to register its agent as an annual agent (including annual sub-agent, hereinafter in this section the same shall apply) shall submit a Letter of Proxy valid for one year pursuant to the provision of 3.4.1(6) and shall appoint such registered agent (including sub-agent, hereinafter in this section the same shall apply) as its agent in the electronic tendering procedures. The tenderer who has its annual agent registered shall not be permitted to register a one-time agent (including one-time sub-agent); provided, however, that the preceding provision shall not apply to the tenderer who has cancelled its registration of an annual agent.

3.10.3 If more than one tenderer submitted tenders with the same price or the same score that should be the successful tender and it is decided that the successful tenderer shall be decided by drawing lots, a notice of the tie price shall be issued to tenderers and the tenderers who are to draw lots shall be notified of the decision to decide the successful tenderer by drawing lots and of the date and place of lot drawing. If all such tenderers who submitted tenders with the same price that should be the successful tender participate in the tender by paper documents, the successful tenderer shall be immediately decided by drawing lots without issuance of the notice of the tie price and an award notice shall be issued.

3.10.4 Any tender which falls under any of the following paragraphs in addition to those described in 3.4.3 shall be declared invalid.

- (1) The Tender Form fails to reach the server of the EPCO Electronic Tender Submission and Opening System by the deadline for tender submission.
- (2) The Tender Form or Quotation is not accompanied by a valid electronic certificate of the user or its agent.
- (3) Any of the requirements of font or number of letters, the requirements shown in the sample form, or other requirements displayed on the screen of the Electronic Tender Submission and Opening System is not satisfied in any item to be entered.

- (4) Any of the items required to be entered is not entered or any unnecessary item is entered on the Electronic Tender Submission and Opening System.
- (5) The tender is submitted with wrongful use of the Electronic Tender Submission and Opening System or misuse of the electronic certificate.
- (6) In addition to the foregoing paragraphs, any of the prohibition terms set forth in the Terms of Use is not observed.

3.10.5 General Rules

The provisions of 3.1 to 3.8 shall apply mutatis mutandis to the extent possible in the nature of such provisions.

Chapter 4 Execution of Contract

4.1 (Receipt of Directions, Specifications, etc. concerning the Execution of Contract)

The Counterparty shall, promptly after successful tendering or successful conclusion of the negotiation, receive five (5) sets (or other specifically designated number of sets) of specifications, etc. (including the specifications, drawings, samples and books attached to the specifications for reference, and the procurement procedure designation statement, the same shall apply hereinafter) as directed by the officer in charge of the contract.

4.2 (Contract)

4.2.1 The contract shall be composed as follows and shall be executed in two (2) originals, two (2) counterparts, and two (2) copies; provided, however, that if otherwise designated, the contract shall be executed in such designated number.

(1) The cover of the contract (Appended Form 4-2-1) and the contents of the contract (Appended Form 4-2-2)

(2) Provisions of the contract

(a) Basic provisions

Basic provisions shall in principle apply to the contracts for the procurement of equipment or services that are classified as follows:

i) sales; ii) contract manufacturing; and iii) contract services.

(b) Supplementary provisions

Supplementary provisions shall apply when the basic provisions or special provisions need to be supplemented. These provisions are mainly classified as follows:

i) provisions concerning the payment of the price; ii) provisions concerning determination or settlement of the price; iii) provisions concerning confidentiality, etc.; and iv) provisions for ensuring of reliability of material.

(c) Specific provisions

Specific provisions shall apply when there is a need to establish provisions different from the basic provisions or supplementary provisions. These provisions are mainly classified as follows:

i) provisions concerning determination of the price; and ii) provisions concerning defects

(d) Special provisions

Special provisions shall apply to a contract which in its nature the basic provisions cannot apply or a contract pertaining to equipment or services whose nature is considered not appropriate to be covered by the basic provisions supplemented by the supplementary provisions. These provisions shall mainly apply to the following types of contract:

i) lease contract; ii) contract concerning prototypes; and iii) transport service contract

(3) Letter of Proxy (Appended Form 3-4-3)

(4) Seal registration certificate

(5) Specifications, etc.

(6) Other necessary documents

4.2.2 Originals of the contract shall be prepared by binding all relevant documents listed in 4.2.1(1) to (6) in “*fukurotoji*” style (a traditional Japanese style in which two leaves of paper are folded and bound at the open side) and affixing a seal at the joining of the spine, and signatures and seals shall be affixed in the appropriate space. On one of the originals, a revenue stamp shall be affixed and cancelled as provided for in the Stamp Tax Law.

4.2.3 Counterparts of the contract shall be prepared by binding all relevant documents listed in 4.2.1(1) to (6) excluding (2)(a) and affixing signatures in the appropriate space; provided, however, that for a contract for which the budget is scheduled to be expended as a continued expense or in an act incurring a liability on the treasury, an additional counterpart including all relevant documents bound together shall be prepared.

4.2.4 Copies of the contract shall consist of the cover of the contract and annexes referred to on the cover; provided, however, that the specific provisions among the documents listed in 4.2.1 and schedules or other documents designated by the officer in charge of the contract shall be attached to one of these copies.

4.2.5 The contract shall be submitted within five (5) days after successful tendering or successful conclusion of the negotiation.

4.2.6 All the expenses required for the execution of the contract shall be borne by the Counterparty.

4.3 (Contract Security Deposit)

4.3.1 The Counterparty shall, unless the contract security deposit is waived in the public notice or notification, pay the contract security deposit as prescribed in 4.3.4. promptly after successful tendering or successful conclusion of the negotiation and shall present the Receipt of Deposit, the Receipt of Insurance Policy or the Receipt of Letter of Guarantee to the Specific Division (Office) when submitting the contract.

4.3.2 Amount of contract security deposit

The amount of the contract security deposit shall be the amount equivalent to ten-hundredth (10/100) or over of the contract amount, as specified in the public notice or notification. The contract security deposit of less than one thousand yen shall be deemed to be one thousand yen and any fraction less than one thousand yen shall be rounded up.

4.3.3 Handling of the contract security deposit

If the Counterparty fails to perform its obligations under the contract, the contract security deposit shall be transferred to the national treasury.

4.3.4 Kinds of contract security deposit

From the standpoint of simplifying paperwork, the tender security deposit shall usually be paid by “cash”, a “performance guarantee insurance policy”, or a “letter of bank guarantee”.

4.3.5 Payment procedures for the contract security deposit

(1) Cash

The Counterparty shall pay the cash into the Cash Officer’s deposit account at the Hibiya Agency of the Bank of Japan (Customer Department No. 3 of Mizuho Bank Head Office) along with the submission of a Deposit Paying-In Form (Appended Form 4-3-1) and receive a Receipt of Deposit. Then the Counterparty shall submit the Receipt of Deposit along with the Deposit Submission Form (Appended Form 3-3-3) to the Cash Officer (Revenue Unit, Financial Division) and receive a Receipt of Deposit (Appended Form 3-3-1).

(2) Performance guarantee insurance policy

The provision of 3.3.5(2) concerning the tender security insurance policy shall apply *mutatis mutandis*.

(3) Letter of bank guarantee

The Counterparty shall submit a Letter of Guarantee (Appended Form 4-3-2) addressed to the official in charge of disbursement of the procuring entity to the Specific Division (Office) and shall have the seal of the Director of the division (office) affixed for confirmation. Then the Counterparty shall submit the Letter of Guarantee along with the Letter of Guarantee Submission Form (Appended Form 4-3-3) to the Financial Division (Revenue Unit) and receive a Receipt of Letter of Guarantee (Appended Form 4-3-4). The name of the representative of the bank as the issuer of the Letter of Guarantee and the seal affixed on the same (Appended Form 4-3-5) shall be same as those that have been notified in advance.

4.3.6 Refund procedures for the contract security deposit

Upon completion of the performance of the contract and following confirmation by the Financial Division (1st or 2nd Unit for Confirmation of Payment Obligation), the contract security deposit shall be returned by the Cash Officer or the Chief Handling Officer pursuant to the provisions of the following paragraphs. If the Counterparty sends an employee, etc. for such purpose, the provision of 3.3.6 concerning the return of the tender security deposit shall apply *mutatis mutandis*.

(1) Cash

(a) The Counterparty who prefers return by check shall submit the Receipt of Deposit with its signature and seal affixed in the claim column and receipt column to the Financial Division (Revenue Unit) and receive a check to order issued by the Cash Officer.

(b) The Counterparty who prefers return by bank transfer shall enter the bank account to receive the return and affix its signature and seal in the claim column of the Receipt of Deposit and submit it to the Financial Division (Revenue Unit).

(2) Performance guarantee insurance policy

The provision of 3.3.6 (2) concerning the return of the tender security deposit shall apply mutatis mutandis.

(3) Letter of bank guarantee

The Counterparty shall submit the Receipt of Letter of Guarantee with its signature and seal affixed in the claim column and receipt column to the Financial Division (Revenue Unit) and shall have the letter of bank guarantee returned.

4.3.7 Days and hours for handling the contract security deposit, etc.

The provisions of 3.3.7 concerning the tender security deposit shall apply mutatis mutandis.

Chapter 5 Performance of Contract

5.1 (Submission of Delivery Plan)

5.1.1 The Counterparty shall, immediately upon request of the Specific Division (Office), Procurement Departments of Regional Defense Bureaus (excluding Procurement Department of Tohoku Defense Bureau and Procurement Department of Kyushu Defense Bureau), Koriyama Defense Office of Tohoku Defense Bureau, Utsunomiya Defense Office of North Kanto Defense Bureau, Kinki-Chubu Defense Bureau Tokai Defense Branch, Maizuru Defense Office of Kinki-Chubu Defense Bureau, Gifu Defense Office of Kinki-Chubu Defense Bureau Tokai Defense Branch, or Kyushu Defense Bureau Nagasaki Defense Branch (hereinafter collectively referred to as “Procurement Department, etc.”), prepare and submit two (2) copies of the Delivery Plan (including the progress schedule, Appended Form 5-1-1) for the executed contract (if other Procurement Department(s), etc. has (have) jurisdiction over the supervision, inspection, audit, etc. of the subject contract, the additional copies of the number equivalent to the number of such Procurement Department(s) shall be prepared and submitted).

In addition, seven (7) copies of the Main Construction Schedule (Appended Form 5-1-2) shall be submitted in the case of a contract for the procurement of vessels, etc., and five (5) copies of the (Keel Laying, Launching, and Delivery) Schedule Notification (Appended Form 5-1-3) shall be submitted in the case of a contract for which advance payment is required.

5.1.2 For a contract for the procurement of aircrafts, etc. the Counterparty shall promptly prepare six (6) copies of the Monthly Delivery Plan (Appended Form 5-1-4) as directed by the Procurement Department, etc. and, unless otherwise specifically directed, shall submit the same to the Procurement Department, etc.

5.1.3 In addition to the provision in 5.1.2, when requested to submit the Monthly Delivery Plan, the Counterparty shall promptly prepare six (6) copies thereof and, unless otherwise specifically directed, shall submit the same to the Procurement Department, etc.

5.2 (Assignment of Claims) (omitted)

5.3 (Creation of Security Rights) (omitted)

5.4 (Subcontract) (omitted)

5.5 (Questions over Specifications, etc.) (omitted)

5.6 (Drawings, etc. for Approval) (omitted)

5.7 (Notification of Additionally Found Services) (omitted)

5.8 (Delivery of Subject Goods of Services, or Supply or Lease of Government Furnished Equipment, etc.) (omitted)

5.9 (Supervising Officer, etc.)

If the Counterparty is notified of the affairs under the jurisdiction of the supervising officer, inspection officer, cost audit officer, etc. to be dispatched from EPCO or the Procurement Department, etc. and the period of such dispatch as provided for in the contract, the Counterparty shall discuss details concerning the execution of such duties; provided, however, that the above provision shall not apply to the case where such details are specified under the provisions of the contract, etc.

5.10 (Supervision and Inspection)

5.10.1 General rules for supervision and inspection

(1) The Counterparty shall present itself at the Specific Division (Office) promptly after successful tendering or successful conclusion of the negotiation to be informed of the designation of EPCO or the Procurement Department, etc. that has jurisdiction over the supervision or inspection and to receive necessary directions regarding preparation for the supervision or inspection.

(2) When undergoing supervision or inspection, the Counterparty shall receive directions from the Procurement Department, etc. (or the Specific Division (Office) in charge for the prototypes which supervision or inspection is to be conducted by an officer of the Technical Research & Development Institute) regarding the timing of request therefore and other matters concerning the supervision or inspection, and shall then follow the procedures for requesting supervision or inspection as provided for in 5.10.2.

(3) If the Counterparty receives a notice of quality audit (which means an audit of the activities to ensure quality of the Counterparty, etc. (including subcontractors) basically conducted by an officer belonging to the Specific Division (Office) at the direction of the Director of Quality Control Division as part of supervision, the same shall apply hereinafter), the Counterparty shall seek directions regarding preparation for the audit.

5.10.2 Procedures for requesting supervision and inspection

(1) When undergoing supervision (including the supervision of subcontractors) pursuant to the provisions of the contract, the Counterparty shall, unless otherwise specifically directed, submit a Supervision Request Form (Appended form 5-10-1) (or two (2) original copies in the case of the supervision of contractors) (or such other number of copies as specifically directed) to the Procurement Department, etc. (or the Specific Division (Office) in charge for the prototypes which supervision or inspection is to be conducted by an officer of the Technical Research & Development Institute) prior to starting manufacturing or otherwise performing the contract. If the procurement goods, etc. are to be delivered in installments over a long period of time, the Counterparty may submit one Supervision Request Form each fiscal year for all of the contracted quantity for such fiscal year.

(2) When undergoing a completion inspection (which means verification of quality to be conducted prior to sending contract goods to the unit, etc. to which such goods shall be delivered) pursuant to the provisions of the contract, the Counterparty shall consult the Procurement Department, etc. (or the Specific Division (Office) in charge of the prototypes for which supervision or inspection is to be conducted by an officer of Technical Research & Development Institute about the date and place of the completion inspection and other necessary matters and shall submit a Completion Inspection Request Form (Appended Form 5-10-1) (or two (2) original copies in the case of partial completion inspection).

The Completion Inspection Request Form shall be submitted in principle on the day on which the Supervision Request Form is submitted in the case where the supervision and the completion inspection are to be conducted, and at least seven (7) days prior to the intended date of the completion inspection in the case where only the completion inspection is to be conducted. If the procurement goods, etc. are to be delivered in installments over a long period of time, the Counterparty may submit one Completion Inspection Request Form each fiscal year for all of the contracted quantity for such fiscal year.

(3) When undergoing an acceptance inspection (which means, for the goods for which completion inspection has not been conducted, verification of quality and quantity and, for the goods for which completion inspection has been conducted, verification of quantity and whether any accident occurred during transport) pursuant to the provisions of the contract, the Counterparty shall consult the Specific Division (Office) or the Procurement Department, etc. (or the Specific Division (Office) in charge for the prototypes for which supervision or inspection is to be conducted by an officer of the Technical Research & Development Institute) about the date and place of the acceptance inspection and other necessary matters in advance and shall submit a Notification of Delivery Schedule (Appended Form 5-10-2) and an Acceptance Inspection Request Form (Appended Form 5-10-2) in two (2) original copies for each contract and one original copy for each place of delivery. These forms shall be submitted in principle at the same time with the submission of the first Completion Inspection Request Form for the goods for which completion inspection is conducted and, for the goods for which the completion inspection is not conducted, at least seven (7) days prior to the intended date of the acceptance inspection.

(4) Upon occurrence of any of the events of the following paragraphs after the submission of a Supervision Request Form or Inspection Request Form, the Counterparty shall promptly submit a Change Request Form (Appended Form 5-10-3) (in the number of copies as prescribed in (1) to (3) above) to the Procurement Department, etc. (or the Specific Division (Office) in charge for the prototypes for which supervision or inspection is to be conducted by an officer of the Technical Research & Development Institute):

- (a) If the contents of the Supervision or Inspection Request Form are changed in accordance with an amendment agreement;
- (b) If the contents of the Supervision or Inspection Request Form are changed in accordance with a Change Notice (Appended form 6-3-2) in terms of the name, part number, etc. of the

components, etc. of the contract goods or the unit which is to receive delivery in the case of ex-factory delivery;

(c) If the quantity or the place of implementation stated on the Supervision or Inspection Request Form is changed; or

(d) If deemed necessary by the officer in charge of the expenditure of the procuring entity.

5.10.3 Implementation of Supervision and Completion Inspection

(1) The Counterparty shall undergo the supervision or inspection by the supervising officer or the inspection officer in accordance with the provisions of the contract, specifications, etc., and the supervision implementation procedures or the inspection implementation procedures. In such occasion, the Counterparty shall present or submit the record of in-house tests or in-house inspections and other data at the request of the supervising officer or the inspection officer.

If requested by EPCO or the Procurement Department, etc. to store the submitted data, the Counterparty shall comply with such request as long as it causes no problem.

(2) If required by the specifications, the Counterparty shall attach or insert a packing slip showing the content quantity of the package (interior and exterior packages) signed (along with the company name) and sealed by the person responsible for packing who checked the interior content of each package on the outside or into the inside of the packages as directed by the inspection officer.

(3) The Counterparty may request the supervising officer to affix the seal of the supervising officer or attach a quality certificate, or otherwise indicate conformity of the materials, parts, or half-finished products that have been determined to be conforming to requirements.

(4) Upon passage of the completion inspection, the Counterparty shall have the completion inspection officer affix a seal of approval, certificate or other indication of passage of the inspection (in the case of data inspection, an indication of completion of the test, examination, etc. by the Government agency, etc.) and shall receive a Completion Inspection Pass Certificate (Appended Form 5-10-4), one for each place of delivery and one for each contract, and return one copy for each contract to the completion inspection officer with its signature and seal affixed to indicate receipt thereof.

5.10.4 When manufacturing, converting or repairing exclusive tools for the performance of a procurement goods, etc. service contract, the Counterparty shall submit an Application for Handling of Exclusive Tools for Procurement Goods, etc. Services (Appended Form 5-10-5) to the Procurement Department, etc.

5.11 (Delivery)

5.11.1 The Counterparty shall not be allowed to bring the contract goods for which the completion inspection has been conducted into the place of delivery until the Completion Inspection Pass Certificate (or, for the goods for which discounted acceptance of rejected goods has been approved under 7.2, the certificate of discounted acceptance of rejected goods) has been issued; provided, however, that the contract goods may be brought in the place of delivery without undergoing supervision or completion inspection if the official in charge of disbursement of the procuring entity specifically approves, in which case the Counterparty

shall submit a document stating the reason why inspection must be conducted after the goods have been brought in and the preferred date of inspection as well as other matters that are deemed necessary to the Specific Division (Office).

5.11.2 When bringing in the contract goods, the Counterparty shall send a Delivery Schedule Notification to reach the officer in charge of the management of goods at the unit, etc. to which such goods shall be delivered and the acceptance inspection officer no later than seven (7) days prior to the scheduled date of bringing in, one original for each, and shall submit one copy of the same to the Specific Division (Office). If there is a substantial period between the Counterparty's scheduled date of bringing in and the appointed date of delivery, the Counterparty shall consult the officer in charge of the management of goods, the receipt inspection officer and the Specific Division (Office) in advance.

5.11.3 When delivering contract goods, the Counterparty shall notify the completion of supply by submitting eight (8) original copies of the Statement of Delivery (Appended Form 5-11-1) accompanied by one original copy of the Completion Inspection Pass Certificate (only when completion inspections has been conducted) and the List of the Goods to be Delivered (Appended Form 5-11-2) (only for the designated goods such as the goods to be equipped onboard) to the acceptance inspection officer via the officer in charge of the management of goods at the unit, etc. to which such goods shall be delivered (or, in the case of ex-factory delivery, to the acceptance inspection officer after notifying the officer in charge of the management of goods at the unit, etc. to which such goods shall be delivered). If sent by mail, the Statement of Delivery and the Completion Inspection Pass Certificate shall be sent by "registered mail" and shall not be inserted into the package of the contract goods.

An envelope, stamps, etc. that are needed for returning the receipt shall also be enclosed.

5.11.4 The supply by the Counterparty shall be deemed completed upon receipt of the contract goods, the Statement of Delivery and the Completion Inspection Pass Certificate by the acceptance inspection officer at the place of delivery; provided, however, that in the case where quality verification is conducted at the place of delivery, the supply shall be deemed completed upon receipt of the contract goods and the Statement of Delivery.

5.11.5 Upon completion of the supply, acceptance inspection shall be conducted for the contract goods.

5.11.6 Upon passage of the acceptance inspection of the contract goods, the Counterparty may receive a receipt signed and sealed by the acceptance inspection officer, the officer in charge of the management of goods, etc.

5.11.7 Upon failure in passing the acceptance inspection of the contract goods, the Counterparty shall, following the provisions of the contract or the directions by the acceptance inspection officer, promptly retrieve or improve such contract goods, shall undergo supervision and inspection (including the completion inspection) again, and shall then notify the completion of supply in accordance with the procedures prescribed in 5.11.3.

5.12 (Confirmation or Approval of Cost Accounting Rules) (omitted)

5.13 (Cost Audit) (omitted)

5.14 (Security of Secrecy)

5.14.1 The Counterparty shall ensure the security of secrecy, in addition to what is provided for in the contract, pursuant to the supplementary provisions listed below and other supplementary provisions concerning the security of secrecy if such provisions are added.

- (1) Supplementary provisions concerning the protection of “TOKUBETSU BOUEI HIMITSU”
- (2) Supplementary provisions concerning the security of secrecy
- (3) Supplementary provisions concerning the protection of “BOUEI HIMITSU”

5.14.2 The procedures to obtain permission for reproduction, etc. of classified documents and subcontracting of the services, etc. concerning classified matters shall be taken as directed by the officer in charge at the Specific Division (Office) or the Procurement Department, etc.

5.14.3 The procedures to obtain permission for the quality system examination concerning a security-classified contract shall be taken as directed by the officer in charge at the Specific Division (Office) or the Procurement Department, etc.

5.14.4 The Counterparty shall inquire with the Administration Division (Contract Information Security Office) for instructions on general matters concerning the security of secrecy, in addition to the provisions of the preceding paragraphs.

5.15 (Handling of Industrial Property Rights) (omitted)

5.16 (Issuance of Certificates)

The Counterparty shall submit a Request for Certificate (Appended Form 5-16-1, or other form designated by the law, regulation, etc., if any) to the Specific Division (Office) in order to have certificates that are directly necessary for the performance of the contract issued.

5.17 (Notification of Third Party Engagement)

The Counterparty shall, if necessary for the performance of the contract, submit the following documents pursuant to the supplementary provisions concerning the notification of third party engagement.

- (1) If there is a need to engage a third party, a Notification of Third Party Engagement (Appended Form 5-17-1) shall be submitted to the Procurement Department, etc. (or, if specifically directed, to the Specific Division (Office) in charge).
- (2) If there is a need to work at the unit, etc. to which contract goods shall be delivered, a Submission Form for the List of Workers Engaged to Work at the Delivery Receiving Unit, etc. (Appended Form 5-17-2) shall be submitted to the acceptance inspection officer, the officer responsible for use, or the work confirmation officer.

Chapter 6 Modification of Contract (omitted)

Chapter 7 Accident in Contract (omitted)

Chapter 8 Payment

8.1 (Submission of Schedule of Request for Payment)

When requesting payment, the Counterparty shall submit a Schedule of Request for Payment (Appended Form 8-1-1) to the Financial Division (1st or 2nd Unit for Confirmation of Payment Obligation) at least fifteen (15) days prior to the scheduled date of request for such payment.

8.2 (Payment Request Procedures)

When requesting payment pursuant to the provisions of the contract, the Counterparty shall, after confirming that all (or, if partial payment is accepted, the subject portion) of the inspection statements for the delivered goods are completed, make a request to the disbursing officer (Financial Division) by submitting the documents listed in the attached Tables 1 and 2.

For a request for advance payment, the documents required under the provisions of 8.4.2 shall be attached.

8.3 (Payment of the Contract)

Payment of the contract shall be made pursuant to the provisions of the contract within thirty (30) days after the acceptance of a lawful written request as provided for in 8.2 (or, for advance payment, the target date specified by the provisions of the contract).

8.4 (Advance Payment)

8.4.1 Documents to be submitted to Specific Division (Office)

The Counterparty shall, immediately upon execution of a contract with supplementary provisions concerning advance payment, take procedures for offering security (unless waived) pursuant to the provision of 8.4.2. and shall submit three (3) original copies of the Advance Money Spending Schedule (Appended Form 8-4-1); provided, however, that for import goods, a certificate issued by a bank, etc. stating that foreign payment has been made via T/T or B/L shall be submitted.

8.4.2 Documents to be submitted to Financial Division

If the security for advance payment is a Letter of Joint Guarantee (Appended Form 8-4-2), one original and two (2) counterparts of the Letter of Joint Guarantee shall be submitted and if the security is a time deposit certificate, the time deposit certificate shall be submitted. In the case of submitting a Letter of Guarantee, impressions of the bank seal for guarantee affixed to all letters to be submitted shall be checked against the one which has been notified in advance in the Notification of Guarantee Matters (Appended Form 4-3-5) and one counterpart shall be certified as the original copy, both by the Financial Division (Revenue Unit).

8.4.3 Security for Advance Payment

(1) Kinds of Security for Advance Payment

The types of security for advance payment shall be the Letter of Joint Guarantee, time deposit certificate, etc.; provided, however, that from the standpoint of simplifying paperwork, the security shall usually be a Letter of Joint Guarantee.

(2) Procedures for Offering Security for Advance Payment

(a) Letter of Joint Guarantee

The Counterparty shall submit a Letter of Joint Guarantee (original) along with a Submission Form of Letter of Guarantee for Advance Payment (Appended Form 8-4-3) to the

Chief Handling Officer and shall receive a Receipt of Letter of Guarantee for Advance Payment (Appended Form 8-4-4).

(b) Time deposit certificate

The Counterparty shall, after submitting a Request for Consent to Pledge (Appended Form 8-4-5) to the bank and obtaining the bank's consent to establish the right of pledge on the claim in the time deposit account opened in the name of the Counterparty, submit such written consent to a notary public's office to make the same a deed bearing a certified date. Then the Counterparty shall submit a time deposit certificate with its signature and seal affixed in the "d" receipt column on the back along with such written consent and a Submission Form of Time Deposit Certificate for Advance Payment (Appended Form 8-4-3) to the Chief Handling Officer and shall receive a Receipt of Time Deposit Certificate for Advance Payment (Appended Form 8-4-4).

8.4.4 Procedures for Returning Security for Advance Payment

Upon completion of the performance of the contract and settlement of the advance payment, the Counterparty shall, after the confirmation of the Letter of Guarantee for Advance Payment or the Receipt of Time Deposit Certificate for Advance Payment by the Financial Division (1st or 2nd Unit for Confirmation of Payment Obligation), have the Letter of Joint Guarantee, etc., returned.

(a) Letter of Joint Guarantee

The Counterparty shall submit the Receipt of Letter of Guarantee for Advance Payment with its signature and seal affixed in the claim column and receipt column to the Chief Handling Officer and shall have the Letter of Join Guarantee returned.

(b) Time deposit certificate

The Counterparty shall submit the Receipt of Time Deposit Certificate for Advance Payment with its signature and seal affixed in the claim column and receipt column to the Chief Handling Officer and shall have the time deposit certificate and the written consent to establish the right of pledge returned.

8.5 (Production Specifications) (omitted)

Chapter 9 Miscellaneous Provisions

9.1(Handling of the claim)(omitted)

9.2(System survey)(omitted)

9.3(Man-Hour audit)(omitted)

9.4(Submission of Expense Rate data)(omitted)

9.5(Examination of inspection system)(omitted)

9.6(Cooperation of technical inspection)(omitted)

9.7(Payment of penalty)(omitted)

9.8(Application of credit sale security financing system)(omitted)

9.9(Special Instruction)(omitted)

9.10(Handling of ordinance revision)(omitted)

9.11(Form specification)(omitted)

9.12(Electromagnetic record of contract document) (omitted)

9.13 (Documents Certifying Prices, etc. for Contracts for Imported Goods)

9.13.1 For a contract for import goods etc. (which means the equipment, etc. to be procured from foreign countries directly or through an import trader by the Defense Ministry (as defined in Article 4 Item 13 of the Defense Ministry Establishment Law (Law No. 164 of 1954), the same shall apply hereinafter) and services (excluding the equipment and services to be procured by Foreign Military Sale under the Mutual Defense Assistance Agreement between Japan and the United States, the same shall apply hereinafter), the documents certifying prices, etc. shall mean the originals of the quotation, quality certificate, and invoice.

9.13.2 For a service contract concerning import goods, etc. the documents certifying prices, etc. shall be limited to those issued by foreign service providers.

9.13.3 For a contract other than a service contract concerning import goods, etc., the documents certifying prices, etc. shall in principle be those issued by foreign manufacturers; provided, however, that if no document certifying prices, etc. issued by a foreign manufacturer exists, it shall be substituted with a document whereby such foreign manufacture certifies the reason for nonexistence of the documents certifying prices, etc. issued by the foreign manufacturer and the validity of contents of the Counterparty's documents certifying prices, etc.

9.13.4 In a contract other than a service contract concerning import goods, etc., if the goods to be procured are the surplus/used goods owned by a distributor and no document certifying prices, etc. issued by a foreign manufacturer exists, and also if such foreign manufacturer cannot certify the reason for nonexistence of the documents certifying prices, etc. issued by the foreign manufacturer and the validity of contents of the Counterparty's documents certifying prices, etc., such documents shall be substituted with a statement of the reasons why the foreign manufacturer cannot certify the reason for nonexistence of the documents certifying prices, etc. issued by the foreign manufacturer and the validity of contents of the Counterparty's documents certifying prices, etc. and a document certifying the validity of contents of the Counterparty's documents certifying prices, etc. by any other means. In this case, a document whereby a distributor certifies the validity of the contents of the documents certifying prices, etc. only shall not be accepted as the substitute document.

9.13.5 The Counterparty of a contract for import goods, etc. shall submit, among the documents certifying prices, etc., the original quotation or the substitute documents thereof (meaning the documents to be submitted in lieu of the quotation under the provisions of 9.13.3 or 9.13.4) to the official in charge of disbursement of the procuring entity upon execution of the contract, and shall submit the originals of the quality certificate and the invoice or the substitute documents thereof (meaning the documents to be submitted in lieu of the quality certificate or the invoice under the provisions of 9.13.3 or 9.13.4) immediately after obtaining the same.

9.13.6 The Counterparty of a contract for import goods, etc. shall obtain prior consent from the issuers of documents certifying prices, etc. to submit such documents to the official in charge of disbursement of the procuring entity.

Chapter 10 Special procedures for Contracts Subject to Cabinet Order for the Agreement on Government Procurement (omitted)