

The Minutes of the 17th Contract Review Committee

Okinawa Institute of Science and Technology School Corporation

1. Date: Friday, January 31, 2020 14:15 – 16:15
2. Venue: Seminar Room C700, Lab3, OIST
3. Participants (members): Mr. Manabu Ofuchi, Mr. Hidemitsu Sakihama, Mr. Tonio Shimabukuro,
Mr. Itaru Shimizu, Dr. Hideaki Tanaka, Mr. Toshiaki Tada and
Dr. Susumu Namerikawa

4. Summary of proceedings
 - OIST overview
 - An overview of OIST was given by the secretariat.

 - Agenda
 - (1) Selection of projects for deliberation
 - Dr. Namerikawa reported that two projects had been selected from among 150 candidates.
(Public construction work contract: 1 item, Goods and service contract: 1 item)

Reasons for selecting the agenda items

Committee member in charge: Dr. Namerikawa

[Contract for Public construction]

General competitive bidding

No. 83: Site preparation work for S2 construction site and other construction work for Okinawa Institute of Science and Technology Graduate University

Reason for the selection:

The winning bid rate is as low as 47.4% and accordingly we have judged it is necessary to confirm the possibility that it constitutes a dumping is extremely low (to confirm the validity of the contract based on the current rules). Both the Contract No. 81 “Site preparation work for No. 7 retention basin and other construction work for Okinawa Institute of Science and Technology Graduate University” and the Contract No. 83 are the preparation work and the successful bidder of these two projects are the same and the winning bid rate of the Contract No. 81 is 53%. Accordingly, we have become strongly aware of the necessity to confirm the above-mentioned matter regarding this project.

【Contract for Goods and services】

General competitive bidding

No. 32: Purchase of Illumina’s next generation sequencing reagents

Reason for the selection:

Because we consider it is desirable that we should confirm the rationality, efficiency and validity of the contractor selection (unit price determination) process in the unit price contract project whose actual amount is expected to be high.

(2) Deliberation regarding individual agenda items

① General competitive bidding

Contract No. 83: Site preparation work for S2 construction site and other construction work for Okinawa Institute of Science and Technology Graduate University

<Explanation on the summary>

1. Summary of construction work
 - a. The Contract No. 83 “Site preparation work for S2 construction site and other construction work” is a project consisting of a site preparation work mainly including an excavation work and a transportation of excavated soil to the site for the project consisting of “site preparation work for No. 7 retention basin and other construction work”.
 - b. The Contract No. 81 “Site preparation work for No. 7 retention basin and other construction work” is a site preparation work mainly including a banking work.
 - c. The both projects (No. 81 and No. 83) are closely related as described above and are conducted roughly at the same time.
 - d. Accordingly, if one contractor carries out the both projects, both the orderer and the contractor can gain considerable benefits.
2. Results of the bidding
 - a. As for the “site preparation work for S2 construction site and other construction work”, bidding prices of four out of five bidders were lower than the standard minimum price for investigation.
 - b. As for the “site preparation work for No. 7 retention basin and other construction work”, bidding prices of four out of seven bidders were lower than the standard minimum price for investigation.
3. Results achieved by the contractor
 - a. The contractor (company A) smoothly completed the “construction work including laying the infrastructure for the fourth laboratory building underground” in FY2018. The contract amount is over 0.3 billion yen.
 - b. Prior to this project (No. 83), the contractor received the order for the “site preparation work for No. 7 retention basin and other construction work”. The contract amount is a little less than 0.1 billion yen.
 - c. In addition to the above-mentioned “site preparation work for No. 7 retention basin and other construction work”, the contractor’s projects on hand include Camp Schwab related 2 projects ordered by the Okinawa Defense Bureau and these two projects are currently suspended. The contract amount is over 0.5 billion yen.
 - d. The contractor well understands the construction work for OIST. In fact, the contractor

aggressively tried to receive the order as the above-mentioned two projects are currently suspended.

4. Determination of target price

- a. The target price is determined based on the cost estimation standards for civil engineering work (for FY2019) specified by the Ministry of Land, Infrastructure, Transport and Tourism (MLIT).
- b. The above-mentioned cost estimation standards have been publicly disclosed and the standards provide the contractor with information useful for accurate quotation and the standards have been shared between the public and private sectors to enhance the quality of estimation and social fairness.
- c. Moreover, the itemized statement (amounts are omitted) has also been disclosed as a reference to reduce inconsistencies etc. in the estimation.

Comments from the committee members	Explanation from OIST
<p>Can you expect that the price becomes lower than the standard minimum price for investigation? If you can expect that, is it possible to reduce the target price?</p> <p>Is it possible to determine the target price based on standards other than the one specified by the MLIT?</p>	<p>We can expect low bidding prices for the simple site preparation work project.</p> <p>As mentioned earlier, the cost estimation standards (specified by the MLIT) have been disclosed for the purpose of promoting the sharing of the information between the public and private sectors. Accordingly, OIST cannot judge as to whether it is appropriate to determine the target price without complying with the said standards.</p>
<p>Was it impossible for us to give a tender notice on this project as a set with the “site preparation work for No. 7 retention basin and other construction work”?</p>	<p>The designing for the “site preparation work for S2 construction site and other construction work” delayed and accordingly we missed the deadline by which we can give a tender notice on this project as a set with the “site preparation work for No. 7 retention basin and other construction work”.</p> <p>Accordingly, we had no choice but to give tender notices on these projects separately.</p>

② General competitive bidding

Purchase of Illumina’s next generation sequencing reagents

<Explanation on the summary>

- The unit price contract regarding the purchase of reagents used for a sequencer (which is a device to read DNA and RNA sequences) owned by OIST for the purpose of analyzing genomes and genes in biological and life science researches.
- Required types and estimated annual quantities were calculated in consideration of those used in the past and the unit price contract in bulk has been executed based on the calculation. We have executed the unit price contract for 38 types of reagents we may purchase.
- Types of reagents to be used, ordering timings and quantities differ depending on research units and expiration dates differ depending on reagents and accordingly orders have to be placed on an as-needed basis. Therefore, we have selected the unit price contract based on the estimated annual quantities.
- We consider executing the unit price contract by taking work and economic efficiencies into consideration if reagents are frequently used throughout the year and orders are frequently placed, or it is possible to set fixed unit prices for a certain period and accordingly we can obtain favorable conditions through the contract based on the estimated annual purchasing quantities.

Comments from the committee members	Explanation from OIST
Is it possible for us to negotiate the price even after the execution of the contract?	It is possible (through mutual discussion).
Do the terms and conditions include the change in prices if estimated quantities change?	At the time of the tender, we included reagents that are highly likely to be purchased this year in the unit price contract. Under the unit price contract, prices are not affected by the quantities actually ordered and accordingly the contents of the contract are not amended even if there is any changes in quantities.
Has the investigation been conducted on similar contracts executed by other universities?	We have not conducted the investigation on other universities. It is not the latest information; however, there was an actual case regarding a public research institution. As for contracts to be executed in the future, we will consider conducting the investigation on other institutions.

Do we really have to use the reagents manufactured by Illumina?	We currently use sequencers manufactured in Illumina and accordingly, as a prerequisite, it is necessary for us to use reagents manufactured by Illumina (genuine products).
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(3) Report and request for advice by OIST

- ① Interim report regarding the limitations on sales channels that are hidden from purchasers

<Explanation on the summary>

- There is a possibility that a sales channel is determined in a way that is hidden from purchasers and accordingly we have confirmed the opinions of the Japan Fair Trade Commission.
- Opinions of the Japan Fair Trade Commission
 - ① Under applicable laws and regulations such as the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade, it constitutes the selection and designation of wholesale customers which fall within the scope of the authority and discretion exercised by business operators and accordingly there is no problem in general terms; however, as for a framework of the limitation on sales channels, we cannot say that there is no possibility that it may constitute a violation, depending on the background and specific circumstances.
 - ② We cannot judge whether there were meetings and intentions that constitute a trading where a wholesaler is obliged to specify a retailer and the retailer can only have transactions with the said wholesaler until we actually conduct the investigation. Just like the above ①, we cannot say at present that there is no possibility.
- In the Budget Execution Examination conducted by the Ministry of Finance last year, the following opinions were expressed. “Competitive bidding should be conducted after also giving consideration to similar or same equipment and devices without excessively limiting specifications.” “There are some 100% winning bid rate contracts and thus the bidding procedure does not work properly and accordingly a drastic review of the procedure is required through the verification of matters including the legality and fairness of the procedure.” This indicates that a tender with only one bidder is viewed as a problem; however, as mentioned above, there are some cases where it is impossible to judge whether or not there is competition only from the viewpoint of purchasers.

- However, there is also a following opinion. “A tender with only one bidder itself does not necessarily mean the absence of competition and fraud. The question is whether or not unduly harsh competitive conditions attracted only one bidder. (Agora: Do tenders with only one bidder constitute fraud? -It is a difficult question in public contracts” Mr. Kusunoki, Professor, Faculty of Law, Sophia University, June 3, 2019)
- Moreover, according to the Federal Acquisition Regulation, even if there is only one bidder in the tender, if the tender is conducted on the premise that efforts are made to ensure the competition, it is not generally considered that the tender with only one bidder itself results in impeding competition and a surge in procurement prices.
- OIST is concerned that there may be limitations on sales channels that are hidden from purchasers; however, we consider that we should continue giving public notices on procurement projects by taking fairness into consideration if we cannot deny the possible existence of other participants in the competition as a purchaser.
- We wonder if we are considered to have imposed unduly harsh competitive conditions if it becomes a tender with only one bidder due to the fact that candidate manufactures (candidate equipment that satisfies the requirements specification) are narrowed down to one as a result of giving public notice on requirements specification required by researchers and it is combined with the “limitation on sales channels that is hidden from the purchaser” on the ultimate sales channel. In addition, we also wonder how we could fulfill the accountability in order to answer such question.

Comments from the committee members	Explanation from OIST
There is only one exclusive distributor. Accordingly, it is unclear whether or not the act of narrowing down to one company constitutes the resale price restriction because it does not mean that the price competition between Japanese distributors is suspended or avoided due to the restriction.	—
I can imagine that there is no competition even if there are multiple distributors if the exclusive distributor can freely set the price in Japan.	—
If there are multiple agency under the sole distributor, there must be competition among distributors. If the sole distributor put pressure on distributors so that only one company tender	—

<p>a bid, it may pose legal problems under the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.</p>	
<p>I consider it is important to explain the fact that we need this equipment from among multiple options when purchasing research equipment; however, there is no point in arguing the fact that we have to use genuine products (reagents) once we have purchased the equipment.</p>	<p>If we do not use reagents designated by equipment manufacturers, we cannot receive the maintenance support. Accordingly, we have no choice.</p>
<p>We should be able to describe the necessity of and the reason for purchasing research equipment and explain that we have no choice but to use genuine products (reagents) once we have purchased the equipment.</p>	<p>—</p>

② Introduction to the actual example of the management process after procurement

Introduction to the management of the stock and storage of consumables etc. and efforts to enhance cost consciousness among laboratory staff through the attachment of labels to materials purchased at a research unit.

Comments from the committee members	Explanation from OIST
<p>As to how much management cost we should spend in materials like consumables that can be obtained at a low cost, it seems that there is room for further verification. We should rather spend more effort on grasping the usage status of expensive equipment and the actual situation as to whether specifications are met.</p>	<p>As you pointed out, we are aware that a higher priority should be placed on research and other equipment in terms of cost saving as they require higher costs. This theme is related to a small amount of money; however, we have introduced this case example as a possible routine that can lead to the cost saving by enhancing staff's awareness toward the management after procurement.</p>
<p>Although we need the idea of cost-effectiveness as a matter of course, I can understand the background and mind that can lead to the efforts made in this case.</p>	<p>What impressed me most about this case example was the following comment. It is a part of the education provided to researchers regarding not only the management of (consumables) itself but also the cost-consciousness.</p>

<p>The criteria and data are required to assess something. Such prerequisites and data have not been presented to explain the effects of these efforts.</p>	<p>Based on the contents of consultations we have had so far, we keep the setting of baseline and the assessment process in mind. This is a case example of only one laboratory unit and accordingly, we have not considered the assessment as the organization as a whole.</p>
<p>—</p>	<p>There are some issues to be considered, which include the absence of unique solution as we cannot generalize the management process due to the difference in fields covered and systems adopted by each laboratory and cost-effectiveness regarding the management costs and priorities placed on our efforts; however, I would like to pay particular attention to the fact that a cost-conscious culture developed voluntarily by an individual laboratory unit rather than the one developed based on the one-sided rules stipulated by the centralized organization can have an effect on the quality of procurement in the future.</p>

③ In response to Budget Execution Examination by the Ministry of Finance (MOF)

- We launched a working group on the procurement (January 16, 2020).
- Background

In the Budget Execution Examination conducted by the MOF last year, there was a comment to recommend us that we should reduce the criteria for negotiated contracts from our current criteria (5 million yen).

At the previous Contract Review Committee, we received a comment that we do not need to reduce the criteria and accordingly we provided the MOF through the Cabinet Office (CAO) with our response to notify them of our intention of not reducing the criteria.

However, it seems that we could not gain the understanding of the MOF even through the discussion between the CAO and the MOF. Accordingly, it became necessary for us to verify the criteria for negotiated contracts.

- Purpose of the working group
 - a. To streamline the procurement procedure.
 - b. To examine the appropriate threshold for tender.
 - ✓ Does lower threshold really contribute to cost-saving?
 - ✓ Does lower threshold increase workload in procurement procedure significantly?
- We will draw a conclusion around April or May this year.

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