

9th Contract Review Committee - Outline of Proceedings

Okinawa Institute of Science and Technology Graduate University

1. Date/Time January 22, 2016 (Friday) 09:30 to 11:00
2. Venue Middle 1, Conference Square M+ (Tokyo)
3. Committee members present Takao Kashitani, Shin Katada, Hidemitsu Sakihama, Hideaki Tanaka, Toshiaki Tada, Makoto Miyagi

4. Summary of Proceedings

- Outline of OIST

- The secretariat gave an outline explanation of OIST.

- Topics

- (1) Selection of items for deliberation

- Mr. Tada sampled six contracts out of the 225 contracts up for the review, selected based on contract types.

- (Goods and Services: 6 items)

Reasons for selection of items for deliberation

Committee member responsible: Mr. Tada

[1] Purchase of LSM 780 Upgrade and Airyscan Upgrade

Although the method used was open competitive bidding and there were two or more participants in the bidding, the winning contract price was 100%. Why was this?

Did both companies believe that there were no competitors in the bidding? Or else, even if there were competitors, did they predict that the competitor would bid at the planned price? Or, is there a possibility that there was bid rigging?

No. 39 was the same situation as this, but No. 15 is a larger amount of money at approx. 33.5 million yen, so No. 15 was selected.

[2] Environmental Assessment for New Lab of OIST

This was selected because the successful bid rate was the highest out of all the public recruitment type items, which are a slightly special type of ordering. Also, we want to check why the “Joint Venture” (JV) format has been selected, which is also something common to the other public recruitment type items.

[3] OIST Building 4 Design Service

This was not only selected because it was the only case using the proposal competition method, but also because there were three companies participating, but the successful bid rate was high at 99.3%.

[4] Purchase of Circuit Board Plotter

Of the items that were special negotiated contracts, this was selected due to the high value, which is over 30 million yen. It was also selected because the reason for the negotiated contract was that “the partner in the contract is the only party that can supply the equipment concerned” and we want to check the method used to determine this.

[5] Purchase of Soft Lithography System

This was selected because we want to check the reason why there was a planned price even though it was a negotiated contract and to check the possibility of making the “specifications required by the University” more generalized in order to use competitive bidding.

[6] Purchase of Laminar Flow Hood with Base Plate and Feet

Of the cases of the comparison of competitive estimates, this one was selected because we want to check the (presumed) reason why the amounts quoted by two businesses were the same. (Did both

companies know that quotations were being compared when they made their quotations? If they did know but quoted the same price anyway, then is there a resale price restriction by the business above the two companies in the supply chain?)

(2) Deliberations on individual items

1. Competitive bidding item

[1] Purchase of LSM 780 Upgrade and Airyscan Upgrade

Opinions and comments of committee	Explanation from secretariat, etc.
Have past winning contract prices been published?	Yes they have.
The public price would make the agencies, etc., to look at the past contract prices and make a prediction before making their bids. Is this why one of the two parties bid an amount equal to the estimated price?	There are cases when the amount becomes the same as the estimated price.
Did an agency which had not won the contract exceed the estimated price?	<p>It was more than the estimated price. At first, we only intended to make announcement of tender to the agency which delivered the microscope. However, reference quotation was submitted by a different agency, and we realized that the purchase of this item was not limited to the agency which delivered the main body of the equipment. We therefore had other parties participated in the bid.</p> <p>When we interviewed the participants after the winning bidder had decided, we confirmed that they still wanted to participate in bid whenever possible while they had not won the bidding.</p>
When you received the quotation, and if some agencies supposed that participation in the bidding would be meaningless, was there possibility of making negotiated contract?	<p>It was possible to have a contract by negotiated contract, but it was not the case that the agency was the only one could perform the upgrade.</p> <p>Therefore, we decided to invite tenders for the upgrade as competitive bidding. We considered that having price competition would have an effect on the bids, and decided to use competitive bidding.</p>

<p>There were only two participants for the bidding. Are there many other agencies which supplies same service?</p>	<p>In the interviews we performed this time, we found that these two companies had agreed agency contracts with Carl Zeiss AG. However, it is simply an agency contract with Carl Zeiss AG, with no other manufacturers in the agency contract and no contracts with other manufacturers or between agencies.</p>
<p>Are there only two suppliers in Japan?</p>	<p>No. There are many suppliers around the country.</p>
<p>As long as suppliers are all around the country, and if OIST uses competitive bidding, would some of the suppliers which are interested in the bidding respond to it?</p>	<p>Yes.</p>
<p>About how much was the price of the main body of the equipment?</p>	<p>Looking at past cases, it is around 47 million yen.</p>
<p>Are there cases that the agency contract had the suppliers had a monopoly on sales route?</p>	<p>No. Of course, there are manufacturers who create a monopoly on the sales route by having a sole agent.</p>
<p>Can this equipment only be upgraded with the cooperation of the Carl Zeiss headquarters?</p>	<p>The actual work is performed by an engineer from the manufacturer, not by the agency. Therefore, cooperation from the headquarters is essential.</p>
<p>OIST has confirmed that there are currently two suppliers in Okinawa and multiple around the country. However, the only two companies in Okinawa participated in the bidding. Was there a condition that there must be a sales office in Okinawa? Or, the competitive bidding was performed widely with the whole country as the target, but did only suppliers which have their office in Okinawa participate in the bidding in the end?</p>	<p>The bidding was for the whole of the country, but the suppliers in Okinawa participated in it in the end.</p>

<p>Have you checked past delivery record of other universities?</p>	<p>If there are universities that have installed the same model, we could know the contract price by referring to past results. There are other universities which publish the results of successful bids in the same way as OIST.</p>
<p>Would it be possible to use a microscope other than a Carl Zeiss one?</p>	<p>Another one might be possible. However, it was an order for upgrade the microscope, and the manufacturer was limited.</p>
<p>Are there microscopes from other manufacturers which have the same functions?</p>	<p>The specifications are not completely identical, but there are similar products from other manufacturers.</p>
<p>The premise would be that at least two parties participated in the bidding, but when it is predicted that equipment needed to be an upgrade, would it possible to perform the bidding with the future upgrades included?</p>	<p>The release an upgrade for function is not periodic, and it depends on the technological development by the manufacturer. Therefore, it is hard to bid for the upgrade at the time because the timing, contents and price are unknown. However, if there are similar cases of bidding in the future, it might be possible to negotiate for conditions that are slightly more advantageous for OIST.</p> <p>We think it might become quite abstract because neither of us, suppliers and OIST, will know what conditions are possible at that time.</p>
<p>It seems that there are quite a lot of agencies in Japan. Did all of them know the details of the bidding announcement?</p>	<p>OIST takes the method of having the bidders check the details of the public notice on a website. We did not go as far as to announce the information to each bidders directly, such as by telephone.</p>

<p>There may be issues of fairness, but is it possible to consider a method of notification such as putting an advertisement in a trade paper?</p>	<p>OIST occasionally participates in science and technology shows (expos) and publicizes the activities of OIST to the vendors.</p> <p>Apparently the government offices use a mailing list to send a list of public notice data to the manufacturers whom they would like to trade with. It may or not be possible to actually do, but it would be possible to consider taking some measures similar to this.</p>
<p>Is it possible to look at past performance of other universities before the bidding?</p>	<p>We are currently considering that we could set enough time to look at the performance of other universities preliminary and could leave enough time in the schedule for the bidding. If these could be realized, it might be possible to conduct effective approaches for examination.</p>
<p>The manufacturer is determined to a certain extent as it is upgrades for existing equipment. Is it possible to ask the manufacturer which companies have agreed agency contracts with them?</p>	<p>Yes, it is possible.</p>
<p>If it had been possible to check which companies agreed agency contracts, was it possible to make an announcement of the bidding with understanding the situation of agency contracts in Okinawa and the rest of Japan?</p>	<p>It is not sure whether or not this applies in this case, but there are some manufacturers that specify the agencies for the Kyushu and Okinawa area or particular areas. In those cases, they might not introduce the trade to an agency in the Kanto region.</p>
<p>One of the important missions of OIST is the sustainable development of Okinawa. From this point of view, did you add conditions that give preferential treatment to local agencies?</p>	<p>From the point of openness and fairness to bidding, we usually do not add conditions related to regions. It was not a necessary condition that the company had an office in Okinawa for this case. However, there are some cases when we add a condition that there must be an office in Okinawa, such as infrastructure facilities that may need an emergency response immediately if trouble occurs.</p>

<p>Is there a lot of equipment which will require upgrades in the same way in future?</p> <p>If there would be a lot of equipment that require upgrades in future, wouldn't it necessary to consider some steps such as to make contracts which upgrades included?</p>	<p>We assume that there is a lot of such equipment. One of our concepts is to use state-of-the-art devices to perform research. As the manufacturers make progress on technological development, we believe that upgrades will be frequently released in the future.</p>
<p>-</p>	<p>We once asked an agency outside of Okinawa that whether they could participate in the bidding. They answered that it is hard for companies outside of Okinawa to respond successfully by all the way coming to the island every time because it is clearly written in the specifications that the maintenance system must be provided quickly when equipment has a trouble. We would make an announcement of bidding, but companies sometime would not participated in it due to the specification conditions and geographical factors.</p>
<p>If the agencies made an active movement like forming partnerships with businesses in Okinawa, it could be expected improvement of the issues. . However, it is not known whether the agencies outside of Okinawa are willing to take the action.</p>	<p>-</p>
<p>If other universities have similar products from same company, you could make educated guess at delivery record, and it would be conceivable to make a reference about the record to them in, which have the similar academic field. Do you take similar measure on procurement?</p>	<p>We make reference about delivery record to other universities, research institutions and others.</p>

<p>The records, which made educated guess at, should be difference between branches.</p> <p>Therefore, most effective price should be set as an estimated price among them. There is an idea that making negotiated contract is more advantageous. However, it is hard to prove that whether the contract price was cheaper or not without making competitive bidding. It is generally considered that setting an estimated price based on past delivery record would be appropriate.</p>	<p>If we were to make negotiated contract, there would be a problem that how to prove the price was pull out advantageously. However, we would like to work actively to find a solution to it.</p>
<p>You might give advance notice of the continuing contracts for future upgrades. For example, you explain in advance a plan for 5 billion-project, but actual budget for the year is only 1billion yen. Therefore, each agency realizes that they need to do something advantageous for the rest of the 4 billion-project, and they make bids. Agencies would expect profit from the continuing contracts and decide to make a bid.</p>	<p>We work similar method for bidding of manufactured items. When we negotiate about contracts, we add conditions in accord with the whole situation, and explain that the next order will also be the same agency, at the time of the first selection.</p> <p>Both the contents and the timing are difficult to predict regarding an upgrade such as this case. Therefore, it is expected that it would be hard to include the conditions in the contract at the time of the purchase of the main body of the equipment.</p>
<p>The bidders would not be controlled by information because they would not know the price under the method of bidding-down. If the amount is large, competitive bidding may be more effective.</p>	<p>We are considering a trial for the method of bidding-down or reverse auction to see what effects they might have. It will be important points that whether or not it would be applied to expensive items, and there is actually competitive effect resulting from the characteristics of the region.</p>

2. Negotiated contract

[2] Environmental Assessment for New Lab of OIST

Opinions and comments of committee	Explanation from secretariat, etc.
<p>This is a contract of the public participation-type with confirmation of participation. How do you check whether or not there are participants?</p>	<p>While we open an opportunity to candidates for the negotiated contract to conduct environmental assessment, we keep particular business names off from public, and look for any other business companies/ persons to participate in the assessment on a website or industry paper of construction. We open it for about 2-3 weeks, and we request proposal documents to them and conduct interview according to the simplified public call for proposals if there were competitive participants.</p>
<p>Is it necessary to have certain knowledge about the community since ‘environmental impact’ sounds community related in general?</p>	<p>It has been 10 years since first environmental monitoring was conducted. We have advertised a bid as proposal method. Joint venture between Nippon Koei and E.A.C has accepted the monitoring for this fiscal year. There were about 3 applicants for the bid from Okinawa. However, after several years, only the JV has applied to the bid. The service of Nippon Koei is rolled out based in mainland and has experience in the industry. On the other hands, the E.A.C mainly provides their service based in Okinawa and has known circumstances of the community well. Therefore, we might get a good service from these two companies as the joint venture.</p>

<p>If a company, which has advantages on both local and nationwide, got the contract, would it make others discouraged to participate in the bid?</p>	<p>This work is not conducted nationwide. There are consultants performing environmental investigations such as this monitoring in Okinawa. However, if these local companies would cooperate with the company in mainland in the end, it would be hard to come up with advantages for the E.A.C to cooperate with different ones. There has been only one applicant, the Joint Venture between Nippon Koei and E.A.C, since 3-4th year of this bidding. Since 5-6th year of this bidding, only one applicant every year.</p>
<p>If there are past results like this contract, it might be adequate to make a contract by negotiated contract. It might be an idea to change the flow by the result of actual contract in this way.</p>	<p>-</p>
<p>It seemed that OIST had similar contracts in the past. Is there a big difference in the amount to those past examples, and is it the market price?</p>	<p>We had comparisons of quotations and we negotiated discounts since our budget is limited. We always consider the future budget and regard them as reference quotations. However, we work hard on negotiating.</p>
<p>I have heard that it is the custom in the construction industry that a company cooperated to give reference quotations takes the contract.</p>	<p>On the reference quotations, man hour and the level of engineers of the contractor, which has performed the assessment, are the key points of evaluation for making contract. We negotiate with the contractor from our experience and knowledge of past cases.</p>
<p>When you established the estimated price, did you make it based on only the quotation from one company? on the quotation from one party?</p>	<p>Yes.</p>
<p>How do you establish the estimated price in cases when there is no standard of productivity? When the contract is approaching a negotiated contract, wouldn't it difficult to judge the appropriateness of the conditions, which the contractor offers, to avoid being a compliant?</p>	<p>When it is design related to construction work, there are standards in the guidelines form the Ministry of Land, Infrastructure, Transport and Tourism. However, there were no standards at all. Therefore, we consider the figures and periods in our own voluntary assessment.</p>

<p>The same company has received the contracts for the assessment for the labs so far. If there is no standard of productivity, would it, like the number of people, decided by only one company?</p>	<p>We are aware of how many people are required for each types of work and, we use the standard unit costs for engineers that are published by the prefecture and the MLIT.</p> <p>In the work this year, we have been asked by the Environmental Policy Division of Okinawa Prefecture to submit the deliverables. Therefore, we are now negotiating the number of people necessary to produce the deliverables.</p>
<p>It is approaching a negotiated contract, but you are performing it with some extra m.</p>	<p>It is hard to prove the adequacy of the contract compared with the open competitive bidding</p> <p>We believe that the use of a negotiated contract makes it possible to greatly lower the costs.</p>

[3] OIST Building 4 Design Service

Opinions and comments of committee	Explanation from secretariat, etc.
<p>OIST got multiple quotations three times for the contract. Did you receive them from two parties?</p>	<p>They were submitted from one company after proposals and negotiations.</p>
<p>Could you not leave two out of the three parties and have them compete by obtaining competitive estimates, and performing negotiations?</p>	<p>As far as we are aware, the schedule for the planned competition means identifying a proposal from one party and proceeding with negotiations/ There have only been examples of this same method in the past. We were, therefore, not able to consider as far as the way you pointed out.</p>
<p>Although the system is to prioritize the plan over the amount, it was possible to negotiate or take multiple quotations with the principle of competition remained in order to keep some competition in the price if we simply consider the contract to be decided by multiplying the plan by the amount.</p>	<p>The contract is a service, but it is actually for making decision of the designer for the Lab.4.</p> <p>It is hard to make the price a primary consideration.</p> <p>The design plans from company A and company B for the lab were very different. The one that was rejected in the selection had a different concept.</p>

<p>In the case of PFI projects which cost billions or tens of billions, the providers are narrowed down to a certain extent from the many candidates, and a client negotiates the specification. Once the specification is more or less decided, the client negotiates the price and then finally evaluations and judgments are made by comparing the different concepts. If it is a good design, it is a good purchase even if it would be expensive.</p>	<p>When something is built by PFI project, the contract might be integrated the design and the execution. It would depend on the amount, but for design and execution in general cases, we can think that the best investment overall will be possible by combining the design expenses and construction expenses. It is therefore possible that the idea of design and construction may be incorporated.</p>
<p>There was consideration of proposals from three parties. In the end, what specifically were the points that were decidedly superior in the proposal that you selected from company A?</p>	<p>Company A has a great amount of both past results and experience and the proposal was also very good. It was superior to the other two companies in the fact that the concept has been inherited in the design. Regarding company B, they have a great amount of both past results and experience, but the design did not fit into the natural environment or harmonize with the climate of Okinawa. (For example, there were a lot of windows.) Regarding company C, they obviously had inferior past results and experience.</p>
<p>Could you have presented the concept in detail and had the participants understand it first so that they could have competed on a level playing field?</p>	<p>We did present it in quite a lot of detail. When construction companies participate in competitions, their strategy is either to compete with something new, or else to compete with something that is the same as what has been in the past. Company B took the first approach and proposed a design that had a lot of glass. However, if we think of the effects of typhoons, this would make it more expensive, which is one point why the evaluation was poor.</p>
<p>When the prefecture agrees contracts through the method of plan proposals, in addition to the proposal and the evaluation items, they also indicate the upper limit for the cost of the design. Did you indicate that in this case?</p>	<p>When we publicized the public call for proposals, we did indicate the budget to a certain extent.</p>

<p>Of the entire volume of the design, did the other party submit proposals produced after gaining an understanding of the demands (limits) of OIST?</p>	<p>Yes, that was so.</p>
<p>If they submitted the proposals after gaining an understanding of the demands, then if the partner to the contract is identified, then I think it becomes a negotiated contract. In that case, it is conceivable that the amount the party proposes is like the amount in a negotiated contract. In this case, why did you compare quotations three times?</p>	<p>The writing in the official announcement indicated that the party winning the contract for the basic design work would have the right to go on and agree a contract for the detailed design. (The reason for the submission of quotations on numerous occasions was because) at the time of the first quotation, there was some work included that was not part of the basic design work, possibly because there was insufficient mutual understanding.</p>
<p>At the stage of the plan proposal, does the other party submit quotations that include the amounts for both the basic design and the detailed design? Normally, if you indicate an upper limit when requesting plan proposals, then the parties will submit quotations (a rough quotation) for reference that takes that upper limit into consideration.</p>	<p>In this case, we did not request the submission of a quotation amount at the proposal stage.</p>
<p>Is it that, as a result, when you identified the business party first and then performed the negotiated contract, they then proposed an amount that was more expensive than that first indicated?</p>	<p>Yes, that is right.</p>

[4] Purchase of Circuit Board Plotter

Due to time restrictions, priority was given to the discussion of items [5] and [6].

[5] Purchase of Soft Lithography System

Opinions and comments of committee	Explanation from secretariat, etc.
<p>Why was an estimated price established although it was a negotiated contract? (Reason for selection of item.)</p>	<p>Even in the example of the budgets, accounts settlements and accounting of the national government, there is a regulation that an estimated price must be established even if the contract is a negotiated contract. The regulations at OIST were produced with reference to the regulation. However, if it is a general unit price market, we calculate and establish the estimated price especially for the case of negotiated contract, and perform the negotiations until the price falls within that range.</p>
<p>The specification is quite a unique. Was it the only one manufacturer could respond to the specification?</p>	<p>The research field is new, and the specification is unique as well. Therefore, we couldn't make it as open competitive bidding.</p>
<p>The reason given for the negotiated contract here was "specifications required by the University". The reason is the same situation as a reason for the (negotiated) contract for [4] Purchase of Circuit Board Plotter, which was "the partner in the contract is the only party that can supply the equipment concerned."</p>	<p>If they were to be categorized, they would be the same.</p>
<p>Did you deal with the French company directly?</p>	<p>Yes, we did. It is a start-up company which was only established recently, and it had no agency in Japan. We negotiated with them directly. The contract was concluded in English.</p>
<p>I think that it is important to examine reasons why this particular research by a professor requires this particular equipment to make establishment by research. If the reasons are strong, clear and appropriate, then it will be considered the starting point for the contract was correct.</p>	<p>The item was purchased as equipment for educational purposes and it is mostly used in the professor's classes. Also, regarding the functions, etc., we received an explanation beforehand that this was the equipment that satisfied all the requirements.</p>

<p>If equipment is seemed to have too many functions, how do you control the researchers?</p>	<p>In the organization, we are currently considering standards for what viewpoint should be taken for identifying types. At present, at the stage of the budget requests in the year before, we gather the requests for equipment from the researchers and discuss them at faculty meetings, etc.</p>
<p>Do you ask experts or a third party such as someone from another university to review the purchase?</p>	<p>When purchases are 50 million yen or above, we ask external experts as well as the internal to review the required specifications to check if they are appropriate. If something is less than 50 million yen, we judge whether the review is needed or not at an organization similar to the faculty meeting on consideration of the efficiency of the work.</p> <p>We are considering how we should build up the specialization of the procurement department as an organization.</p>
<p>It is important that the ability of the Procurement Section to obtain information and the experience of procurement-related matter. In general, the number of personnel in administrative departments has been reduced, but the volume of work is not decreased. The administrative departments are departments that can make money, especially the procurement department. Have you had any discussion about the point?</p>	<p>Since OIST is still in the phase of expansion at present, the expenses for labor costs have been secured to a certain extent. (In order to be able to take an innovative approach to this in the future) we are searching for personnel who have rich experience. However, we have not yet found anybody suitable and still keep searching for the people.</p>

<p>Regarding the research expenses that you allocate as a university, is the amount already fixed to a certain extent for each unit?</p>	<p>The allotment is decided based on the requests from the units and according to the judgment of an organization based around the President. For expensive equipment, we have had a forum for asset purchases to set its priority since last fiscal year, and we have a procedure that purchase should be done by necessity, holding the high priority in it within the limits of the budget. We have established a Resource Allocation Committee in FY2016, which deliberates on matters such as the overall budget, labor costs and space allotment.</p>
<p>As the research fields become more and more specific, it must be difficult to respond to the purchases by developing expertise in procurement. It is important to prepare documents proving why items are to be purchased.</p> <p>In the next stage of budget restrictions, it is important to prepare the document to prove the reason for the purchase. However, it might be an excessive burden on the staff to make too detailed document, which would contradict work efficiency. It is therefore necessary to consider the extent of what preparation should be done.</p>	<p>Just as you pointed out, the balance between necessity why we are unsure about how detailed the documents proving the reason for the purchase should be and where we should draw the line.</p> <p>As you pointed out, the balance between necessity and work burden are the causes which make us unsure about how much the documents should be detailed to prove the reason of the necessity of purchase.</p>
<p>If the purchases were t educational devices, the results and performance would be also important.</p>	<p>We would like to consider not only the process of contract but also the management of installed devices in the consideration of procurement.</p>

<p>Regarding whether equipment has excessive or insufficient specifications, if there was an “excessive” part, would you be able to get the manufacturer to deal with the excessive parts (specifications) that have already been incorporated a device or equipment?</p>	<p>We ask the manufacturer to deal with an excessive part of item. Sometimes it costs too much to remove the excessive part because it would be more likely a modification of the item. We therefore check every time when a specification needed to be changed. At that time, we get a quotation as a rough estimate and check whether it is not in excess of the budget or not.</p>
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[6] Purchase of Laminar Flow Hood with Base Plate and Feet

Opinions and comments of committee	Explanation from secretariat, etc.
<p>Regarding the fact that prices are same, we had the image that company A was an agency. However, if company A is the manufacturer and company T is an agency, then it might be understandable for the contract. In this case, the price from company A takes into consideration the follow-up work after the sale. For company T, there is a part included for the profit of the agency (which is not necessary for the manufacturer company A). If we consider the follow-up after the sale, will it generate additional cost?</p>	<p>The quotation from company T includes the follow-up expenses in the amount as well. From the point of view of securing competition, we inform companies that the bidder would be selected by competitive quotes before the submission of the quotations from them.</p>
<p>If there are prices that are the same, how do you decide which to select?</p>	<p>If it is bidding, then it is decided by a lottery. However, in this case, it was ordering to add something on to existing equipment, so we selected the agency we had ordered from before on consideration of the allotment of responsibility.</p>

- (3) Regarding the “rationalization of the procurement method” that was debated at the 8th committee meeting, the secretariat reported the specific examples that are recognized to be possible as negotiated contracts (to be decided from now onwards after deliberation within the University), and also about other items that require continued consideration.

(4) Schedule for next meeting and committee member responsible for selection of items

The secretariat explained the following schedule and it was approved.

July 2016 Planned to be held in Okinawa

The committee member responsible for the selection for the next meeting is planned as Mr. Tanaka.

(Sakihama → Katada → Tada → Tanaka → Namerikawa → Miyagi)