

Measures for Encouraging Publicly or Privately Owned Organizations to Construct and Operate Incinerators

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Environmental Protection Administration of the Republic of China on Taiwan

English Translation¹

by

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Chapter 1: General Provisions

Article 1

These Measures are promulgated by the Environmental Protection Administration of the Republic of China on Taiwan ("TEPA") under the Executive Yuan in order to provide operating criteria for the Lead Agency to implement the Promotion Plan to Encourage Publicly or Privately Owned Organizations to Construct and Operate Incinerators ("Promotion Plan").

¹ Translators' note: This translation is for informational purposes only and does not represent the binding law of the Republic of China. The binding law appears only in the national language--Chinese. Therefore, for purposes other than acquiring information, reference must be made to the original Chinese version of these Measures.

In translating these Measures, the translators did not depart from the original Chinese text. Accordingly, ambiguities present in the translation are also present in the original.

In the Chinese version of these Measures, each paragraph is referred to as a "section" (*hsiang*). Bracketed text indicates translator additions for purpose of increasing clarity.

Article 2

The definitions of terms used in these Measures are as follows:

1. "Lead Agency" means the Municipal Government, or County (or City) Government;
2. "Publicly or Privately Owned Organization" means a publicly or privately owned enterprise or a domestic or foreign corporation established under the Company Law of the Republic of China;²
3. "Bidder" means a consortium of publicly or privately owned organizations for bidding purposes that meet the qualifications stipulated in these Measures in which each member of the consortium is a shareholder of the anticipated construction/operation company (that results from a successful bid); and
4. "Construction/Operation Company" means a limited company established in Taiwan in accordance with the Company Law of the Republic of China by the successful bidder in order to implement the construction and operation of an incinerator in accordance with government solicitation provisions.

Article 3

In submitting bids, Bidders shall submit the name of the primary contractor for construction, and the name of the contractor for operation, of the proposed incinerator. The primary contractor for construction and the contractor for operation of the incinerator must meet the qualifications stipulated in these Measures and shall become shareholders in the anticipated Construction/Operation Company (resulting from a successful bid).

Article 4

The Lead Agency may adopt one of the following models for the

² Translators' note: Originally promulgated and effective on December 26, 1929.

construction/operation of incinerators:

1. a "Build-Operate-Transfer" ("BOT") model, in which the Lead Agency provides the necessary lands and acquires an easement for use of the land; or
2. a "Build-Operate-Own" ("BOO") model, in which the Publicly or Privately Owned Organization acquires the land or an easement for use of the land.

Chapter 2: Application and Review

Article 5

The Lead Agency, after planning waste collection, cleanup and transfer districts, inspecting and selecting the site for the proposed incinerator and selecting one of the models described in Article 4 of these Measures, shall submit applications to TEPA for a central government grant to build the proposed incinerator, along with an Incineration Authorization Agreement granted by the government offices of the relevant town (or district), in accordance with the procedures prescribed in Article 6 of these Measures.

Article 6

The Incineration Authorization Agreement shall be sent to the council of the relevant town (or district) for approval after TEPA approves the application for grants to build the proposed incinerator submitted by the Lead Agency. At the same time, the Lead Agency shall propose an Incineration Plan for those wastes provided for in the Incineration Authorization Agreement for preliminary approval by TEPA. After preliminary approval of the Incineration Plan, the Incineration Plan shall be submitted to the council of the municipality (or county) for approval and then remitted to TEPA for final approval.

TEPA may delegate authority to review and grant preliminary approval of the Incineration Plan to the Environmental Protection Department of the Taiwan Provincial Government.

Article 7

The Lead Agency, when applying for the central government grant in accordance with Item 5 of the Promotion Plan and Item 14 of the Implementation Measures, shall:

1. provide documentary proof (to TEPA) that the proposed construction site complies with zoning regulations for incinerators, and acquire an easement certificate for use of the land;
2. demonstrate that the proposed incinerator is a mid- to large-sized incinerator fitted with pollution control equipment, heat and electricity co-generation facilities and electricity transfer and distribution facilities and is capable of treating general wastes; and
3. demonstrate that the proposed incinerator project is supported by a reasonable financial plan that can achieve a balance between capital receipts and expenditures.

If the Lead Agency violates one of the preceding subsections, TEPA may suspend the grant and may request the return of that portion of the grant that has already been distributed.

Article 8

The Incineration Plan shall include the following information:

1. (for the BOT model only) a description of land acquisition status and land use conditions;
2. a feasibility analysis of the Incineration Plan;
3. a description of the associated financial plan;
4. (if applicable) a description of the plan for incinerator feedback (services) provided to the local community; and
5. other information specified by TEPA.

Chapter 3: Selection of Technical Consulting Organizations

Article 9

TEPA may select a professional consulting organization to conduct the following:

1. assist and review application documents submitted by the Lead Agency;
2. propose norms for the incinerator facility construction;
3. propose solicitation provisions and draft contracts;
4. assist TEPA with explanation of issues related to the privatization of incinerators; and
5. other consulting matters.

Article 10

After approval of the Incineration Plan by TEPA, the Lead Agency shall submit a technical consultant selection plan to TEPA for approval.

Consultant selection may proceed only after TEPA approval. The Lead Agency shall also promulgate provisions to avoid conflicts of interest between the personnel of consulting organizations and the employees of the Lead Agency.

Article 11

The qualifications of technical consulting organizations candidates shall be as follows:

1. Domestic Engineering Technical Consulting Organizations.

These organizations must have been involved in leading the planning, design and construction, or the relevant works, of an incinerator with a

capacity of more than three hundred (300) metric tons of waste per day, and in leading the design and construction of a factory, similar in size and nature, with a construction cost of more than one (1) billion New Taiwan Dollars ("NTD"), or planning and designing waste treatment facilities.

2. Financial Consulting Organizations.

(1) Domestic financial consulting organizations.

These organizations include accounting, financing or related firms, corporations, organizations, or foundations established in accordance with the law to engage in investment banking, or the consulting, evaluation, or analysis related to a financial plan. (The business of accounting firms is not subject to the limitations set out herein.)

(2) Foreign financial consulting organizations.

These organizations must have been involved in financial consulting related to a BOO or BOT project for the construction of an incinerator or privately managed power plant in which the related loan totaled more than two (2) billionNTD.

3. Legal Consulting Organizations.

(1) Domestic legal consulting organization.

These organizations include lawyers registered in Taiwan who have chaired a law firm constituting either a partnership or solo-investment.³

(2) Foreign legal consulting organization.

³ Translators' note: A "solo-investment" law firm under Taiwan law is a law firm in which one attorney is responsible for generation of business and payment of salaries, etc., (*i.e.* a "single partner" firm).

These organizations must have been involved in legal consulting related to a BOO or BOT project for the construction of an incinerator or privately managed power plant in which the related loan totaled more than two billion (2,000,000,000) NTD.

Article 12

The services provided by the consulting organizations selected by the Lead Agency are as follows:

1. With regard to Engineering Technical Consulting Organizations:
 - (1) construction planning services;
 - (2) geological investigation and survey services;
 - (3) environmental impact assessment ("EIA") services;
 - (4) solicitation notices and contract services;
 - (5) bidding review services;
 - (6) construction-phase consultation services provide to the Lead Agency;
 - (7) post-construction inspection services; and
 - (8) other technical consulting services.

The services provided by the Engineering Technical Consulting Organizations shall not include (1) to (3) of the preceding Subsection if a BOO model is adopted.

2. With regard to Financial Consulting Organizations:
 - (1) propose financial plans and financial clauses in the solicitation notice;

- (2) assist with the financial portion of the solicitation and bidding review process;
 - (3) provide construction-phase consultation services to the Lead Agency; and
 - (4) provide other financial consulting services.
3. With regard to Financial Consulting Organizations:
- (1) review solicitation notices and contract provisions;
 - (2) assist with legal matters related to the solicitation and bidding review process;
 - (3) provide construction-phase consultation services to the Lead Agency; and
 - (4) provide other legal consulting services.

Article 13

In order to select consulting organizations and review the solicitation notices and bids, the Lead Agency shall establish a Review Committee consisting of more than seventeen (17) members. Of the seventeen (17) members, at least half shall possess a background in engineering, finance or law and the remaining members shall be appointed by TEPA, provincial (or municipal) governments and representatives of the Lead Agency.

Article 14

The technical consulting fees incurred by the county (or city) government in accordance with the Promotion Plan shall be paid in full by TEPA. The rates for engineering technical consulting fees shall be set according to the Fundamentals for Payment for Services of Technical Consulting Organizations Hired by Government Agencies promulgated by the Executive Yuan. Rates for financial and legal consulting organizations shall correspond to the rates set for engineering technical consulting fees.

The technical consulting fees incurred after the construction of the incinerator and during the incinerator operation period shall be provided by the Lead Agency as necessary.

Article 15

The agency which shall review the EIA for the incineration construction project under Promotion Plan shall correspond with the level of the Responsible Agency for the Enterprise Associated with the Project⁴ which has jurisdiction over the review of the proposed development activities

Chapter 4: Selection of Publicly or Privately Owned Organizations

Article 16

The Lead Agency shall, based on the Incinerator Construction Technical and Operational Notes promulgated by TEPA, the model (government procurement) contract and related provisions concerning construction and operation of incinerators, produce solicitation notices and commence soliciting public bidding when the solicitation notices have been approved by the Review Committee.

Article 17

The primary contractor for construction shall have constructed more than one (1) incinerator with the following characteristics:

1. pollution control, heat recovery and steam or electricity generation facilities;
2. incinerator oven beds with capacities of more than one hundred and fifty (150) metric tons per day and not less than sixty (60) percent of the capacity of the oven for the proposed incinerator project;

⁴ Translators' note: At the time of this translation, the Responsible Agency for the enterprise associated with the project is TEPA.

3. combined ash ignition loss of not more than five (5) percent; and
4. good performance record for more than two (2) years.

Article 18

The stoking technique associated with the anticipated incinerator shall be the same as, or better than, those demonstrated for compliance with the preceding Article.

Article 19

The contractor for operation of the incinerator must have operated an incinerator or a similar factory for more than one (1) year, or must have participated in the operation of an incinerator through technical cooperation with any organization having the abovementioned operation experience.

Article 20

A Bidder shall include the following information in a bid:

1. proof of the Bidder's technical and financial qualifications;
2. business records for each organization comprising the Bidder;
3. (under the BOO model), the following information related to the proposed construction site:
 - (1) a photocopy of the plat map, a photocopy of the land registration records and a photocopy of the ownership records or proof of authorization by the landlord to use the land;
 - (2) a description of the boundaries, area and present use of the proposed construction site (with supporting photographs);
 - (3) a land-use plan for the proposed construction site;

- (4) off-site infrastructure development plans;
 - (5) a description of the topography and geology of the proposed construction site; and
 - (6) the completed checklist of environmentally sensitive areas and related explanations;
4. the following information related to Construction/Operation Company plans:
- (1) a land-use plan for the proposed construction site;
 - (2) a development plan;
 - (3) an operation plan;
 - (4) a financial plan (including the bidding price);
 - (5) the construction/operation company start-up plan, capitalization amount, percentage of stock to be held by the company initiator, shareholder agreement and proof of payment for the construction/operation company shares issued;
 - (6) the comments of the bank providing the loan; and
5. other documents.

Article 21

The Lead Agency shall determine the minimum bidding price based on the size of the proposed incinerator and the unit price-per-metric-ton of capacity prescribed by TEPA.

TEPA shall issue grants in accordance with the construction cost reflected in the awarded bid. If actual construction costs are higher than those reflected in the awarded bid, the portion of the construction costs exceeding those reflected in the awarded bid shall be paid by the Lead Agency.

Article 22

If, after review of the bids, no more than three (3) Bidders remain in the bidding process, the Lead Agency may follow the procedures set forth in Article 7 of the Inspection Act for Agencies Concerning Procurement of Construction and the Procurement, Ordering, and Sale of Property.

Chapter 5: Construction, Operation and Supervision

Article 23

Except where the successful Bidder is publicly owned organization, the successful Bidder shall establish a Construction/Operation company in accordance the provisions in the solicitation notice and complete registration of the company.

A Publicly Owned Organization or Construction/Operation company must sign an Incineration Contract with the Lead Agency.

After execution, the Lead Agency shall submit Incineration Contract to TEPA for reference.

Article 24

The Incineration Contract shall provide for the quantity of general waste to be supplied by the Lead Agency and fees for incineration. If, however, the general waste supplied by the Lead Agency is more than the quantity agreed to in the Incineration Contract, the fees for incineration [(Incineration Fees)] shall be calculated based upon the actual amount of general waste incinerated.

If the quantity of general waste incinerated by the Construction/Operation Company falls below the quantity agreed upon in the Incineration Contract, incineration fees cannot be collected for the quantity of wastes that have not been incinerated. The Construction/Operation Company shall be responsible for compensation for the failure to provide incineration services and for the arrangement of alternative disposal services.

Article 25

Under the BOT model, the Lead Agency shall enter into an easement agreement with the Construction/Operation Company upon the execution of an Incineration Contract. The duration of the easement shall not be shorter than the sum of the construction and operation periods.

The Construction/Operation Company shall, within six (6) months of acquiring an operating permit, complete the first ownership registration for the constructed facility and, in conjunction with the Lead Agency, advance-notice registration.

Article 26

Under the BOO model, the Construction/Operation Company shall, after the award of the bid and in accordance with relevant laws and regulations, make the necessary land-use changes with the assistance of the Lead Agency.

Article 27

During the construction and operation period of an incinerator, the Construction/Operation Company shall apply for the necessary permits or licenses in accordance with the Measures for Management of Environmental Inspection and Testing Institutions and relevant laws and regulations. The Lead Agency shall provide necessary application assistance.

Article 28

During the construction and operation period of an incinerator, the Lead Agency shall mediate disputes between affected citizens and the Construction/Operation Company.

Article 29

Management of delays and damages unattributable to the Construction/Operation Company shall be provided for in the Incineration Contract.

Article 30

During the construction and operation period, the Lead Agency shall provide compensation for damages incurred or facility changes imposed as the result of the revision of relevant laws and regulations, relevant permits, or requirements of the Responsible Agency, which are unattributable to the Construction/Operation Company.

Article 31

A Construction/Operation Company that is unable to perform its obligations under the Incineration Contract, may select, upon the approval of the financial organization providing the primary loan and the Lead Agency, within a specified time period, another company that is approved by the Lead Agency and that can fulfill the requirements set out under the Incineration Contract to continue the construction and operation of the incinerator.

Article 32

Appropriation and adjustment of tipping fees shall be conducted as follows:

1. reimbursement of the apportioned construction cost per metric ton included in tipping fees and derived from foreign loans shall be adjusted based upon the difference in the United States dollar exchange rate between the reimbursement date and the contract award date;
2. reimbursement of the operation cost per metric ton included in tipping fees shall be reviewed and adjusted annually according to the related salary and price index based upon the contract award date and formula indicated in the Request for Proposal.

Article 33

The Construction/Operation Company may only commence operation after acquiring an operation permit, submitting the permit to TEPA through the Lead Agency, and receiving TEPA approval of the permit.

The Lead Agency shall apply quarterly for TEPA grants in amounts calculated in accordance with the actual quantity of wastes disposed [(incinerated)] and the amount of yearly reimbursement in installments adjusted in accordance with the preceding Article, deducting the amount of construction fees collected in accordance with the Measures for Collecting General Waste Clean-Up and Disposal Fees.

Article 34

An incinerator constructed in accordance with these Measures, when commencing operation, shall give priority to the disposal [(incineration)] of general solid wastes supplied by the Lead Agency in accordance with the Incineration Contract. The Lead Agency may supplement this waste supply with general industrial wastes when the amounts of general solid wastes supplied by the Lead Agency fall short of the amount stipulated in the Incineration Contract.

The incineration fees charged for general industrial wastes shall recover in full the costs for incineration of the wastes and shall be collected in full by the Lead Agency. The Fundamentals for Collecting and Managing the Incineration Fees shall be proposed by the Lead Agency and approved by the immediately superior agency.

Article 35

The Construction/Operation Company shall sign an electricity procurement contract with Tai Power [(Taiwan Power)] before commencing operation of the incinerator and submit a copy of the contract to the Lead Agency for reference.

The revenues incurred from selling electricity shall belong to the Construction/Operation Company. During the operation period, the Lead Agency shall compensate for variations in the price of electricity between the time the Construction/Operation Company submitted the bid for construction and operation of the incinerator and the time when the Construction/Operation Company signed the contract with Tai Power.

Article 36

Bottom ash and treated fly ash shall be shipped by the Construction/Operation Company to landfills provided by the Lead Agency. The Lead Agency shall be responsible for the disposal of the ash.

The Construction/Operation Company shall actively recycle and reuse bottom ash from the incinerator. Revenues from these recycling and reuse activities shall belong to the Construction/Operation Company.

Article 37

A Construction/Operation Company shall soundly manage and maintain the incinerator in good condition. If, after twenty (20) years of operation, the incinerator continues to be maintained in good condition, priority should be given to the Construction/Operation Company to continue operation of the incinerator.

Article 38

These Measures shall come into force upon the date of promulgation.