

thought and conscience, which is the most important and essential one for the democratic state. The hand of evil might reach for the next target. The Constitution might be the last fortress for the people who want a free and democratic society.

2. Administrative Law

The Act on the Reform of public service by introduction of competition

Law No.51, June 2, 2006 (Effective on July 7, 2006) . 56provisions.

Background:

In each developed country, society is becoming increasing aged and fiscal conditions are severe. Thus small government is being aimed at worldwide, and grater efficiency and improvement in public services by introducing the energy of the private sector are planned for. The policy which reconsiders the monopolistic supply by the government of public services for the realization of efficiency and improvement of public services is being adopted widely, and the marketing test is regarded as an important policy which embodies this.

In Japan, after the collapse of the bubble economy, the finances of the country and of local public entities are still in a severe situation, so simplification and efficiency in the offer of public services are indispensable. And with recent years' social maturity, the national sense of values was diversified, and this has also had an influence on public services. That is to say, public services need to convert into a service more responds to the needs of individual citizens from a uniform service.

To answer such requests with limited funds, it is necessary that the simplification and efficiency of administrative mechanisms are carried out, the national burden reduced, the state of conventional regulations reconsidered, so that the regulation reforms which allow the private sector to take part in the field of the administrative service being advanced.

This act was concluded in the 164th Diet in 2006 as a part of such a series of regulation reforms.

Though, even now, in order to make the public service agree with limited national tax resources, privatization, the foundation of an independent administrative agency, PFI and a designation administrator system have been introduced, it can not be said that it was possible to achieve sufficient results because of the target's being limited.

So this act considered what was necessary in the administrative service in general, and was established to introduce a competitive tendering system for officials and the people, a so-called marketing test system by which if a service becomes more efficient when entrusted to the private sector, the service will be entrusted to the private sector, in our country.

Main Provisions:

Article 3 Basic idea

In the reform of public services by the introduction of a competitive tendering system, the central government and local public entities shall reconsider constantly their public services in general from the standpoint of the people who receive the public service, and shall have private ingenuity reflected appropriately under the transparency and just competition in its implementation. And public services and something which it is not necessary for the state or a local public entity to private shall be abolished.

Article 4 and Article 5 Obligation of the state and local public entities

The state and local public entities shall reconsider public services, and shall select appropriately which public services should be made the subject of private competitive tendering or abolition. And by reducing national participation and other regulations to the necessary minimum, the state and local public entities shall take measures so that the creating and ingenuity of people in private enterprise may be reflected in enforcing the public service appropriately. And the state and local public entities shall supervise appropriately in order to secure the certain implementation of the public services concerned (Article 4 and Article 5).

The state shall respect the autonomy and independence of local public entities, and shall endeavor to maintain an environment where programs of the local public organization which tries to reform public services by the introduction of competition (Article 4).

Article 6 Obligation of a private enterprise person

Private enterprises who want to take part in public service implementation, along the basic idea of this act, show put the business into effect properly and surely utilizing creating and ingenuity and taking the public nature of the service into consideration. And a public service private enterprises who want to take part in public service implementation shall endeavor to gain the trust of citizens in the public service concerned.

Article 7 and Article 8 Basic policy concerning public service reform

The Prime Minister shall make a plan of basic policy and shall ask for a cabinet decision about the plan, via Conferences with the chiefs of the national administrative agencies and via discussion in a supervision committee of competitive tendering made up of officials and citizens.

Before the plan of basic policy is made, the Prime Minister shall publish information about public services, and opinions from a private enterprise and local public entities will be heard.

The plan of “basic policy” will have the following contents.

- (a) A plan concerning the measures which the government should take for reform of public services by introduction of competition.
- (b) A plan concerning the measures which the government should take for the maintenance of the environment in which programs of the local public organization which tries to have reform public services by the introduction of competition are maintained.
- (c) The contents of the public service selected as a target of competitive tendering of officials and citizens and the measure which should be taken with this.
- (d) The contents of the target public services for abolition and the measures which should be taken with this. (Article 7)

When putting the competitive tendering of officials and citizens into effect, a chief of a local public entity shall create an “implementation policy” which makes the contents of the specific public service which was selected as the target for competitive tendering of officials and citizens the main contents (Article 8).

Article 9 to Article 19 Competitive tendering of officials and citizens

First, about the public service selected as the target of competitive tendering of officials and citizens in the basic policy which the Prime Minister made and which passed through cabinet decision, the chiefs of national administrative agencies will decide “the implementation essential guideline” via a discussion by a supervision committee of competitive tendering of officials and citizens. “The implementation essential guideline” contains ...

- (a) The detailed contents of the target public service for competitive tendering and information concerning the quality which should be secured
- (b) Information about the person’s qualification to participate in the competitive tendering of officials and citizens
- (c) Information about the standard of the evaluation to decide on the person who will put the target public service of a competitive tendering into effect. (Article 9 paragraph 1)

Secondly, the chiefs of national administrative agencies and citizens who participate in the competitive tendering of officials and citizens shall apply to the chief of a national administrative agency for participating in the tender, by submitting a form in which the Implementation method in detail for the public service, and the tender price is indicated including measures concerning the maintenance and improvement of the quality of the public service (Article 11).

Receiving this application, the chiefs of national administrative agencies will estimate the above-mentioned form with the evaluation standard of “the implementation essential guidelines”, and via a discussion by the supervision committee of competitive tendering of officials and citizens will decide on the person who submitted or made the most profitable proposal regarding the maintenance improvement of the quality of the target public service and reduction in expenses as the person who will put the target public service concerned into effect (Article 13).

Article 20 to Article 28 Implementation of the public service in the case when a person from private enterprise is the person who wins the tender

About the contract: The chief of national administrative agencies con-

cludes a contract with the person from private enterprise who wins the tender and entrusts implementation of the target public service to the person (Article 20). But the chiefs of national administrative agencies may change and release the contract when the target public service can not be put into effect by the private enterprise who made the contract and so on (Article 21, Article 22).

Concerning the implementation of a public service: A private enterprise puts the target public service into effect in line with the contract. Officials of a private enterprise have a secrecy obligation and officials of a private enterprise are regarded as official servants with regard to the application of a criminal law penalty and the like (Article 25).

Concerning supervision: The chiefs of national administrative agencies may ask for a report, enter the office of a private enterprise or take the necessary measures against a private enterprise, when it is admitted to be necessary for the securing of the proper implementation of the target public service (Article 26, Article 27).

Article 29 to Article 34 Special case of enactments

About the public service which the private enterprise who won the tender in a competitive bid of officials and citizens puts into effect, a special case of enactments is applied. For example, special cases of finance law, special cases of an act concerning the government officer retirement allowance, and so on.

Article 35 Implementation of a public service in the case where national administrative agencies are going to put into effect personally

National administrative agencies shall put a target public service into effect in line with the contents in the form of article 11 mentioned above.

Article 35 Implementation of competitive tendering of officials and citizens in a local public entity

The competitive tendering of officials and citizens put into effect in a local public entity is also put into effect in the same way as this law (Article 9 to Article 35).

Article 37 to Article 47 The supervision committee of competitive tendering of officials and citizens

In the case of the state, the supervision committee for the competitive tendering of officials and citizens is established in the Cabinet Office (Article 37). And this committee supervises the just implementation of a competitive tendering of officials and citizens.

In the case of a local public entity, the council or the organization of other council systems which supervises the just implementation of a competitive bid of officials and citizens shall be established by ordinance (Article 47).

Editorial Note:

When the real introduction of a marketing test system was carried out, the “civil service reform basic policy”, which set guidelines for the behavior of the government and set a target business, was endorsed by the Cabinet on September 5th. Specifically, as the specific public service which a private enterprise person puts into effect by the competitive tendering of officials and citizens, at present, there are 9 jobs of 5 fields, for example, public employment security office related business, national pension premium store business, business registration related business related to a statistical survey, business concerned with the Employment and Human Resources Development Organization of Japan, and the desk business of local public entities, and so on. Further advice and request are wanted from private enterprises and local public entities, etc. about target businesses. As a result there were requests which reach 193 cases from 57 subjects, and through the hearing in each ministry, the appropriate business for the request has become expected to be added to the target businesses as the need arises.

On the one hand, a marketing test system is useful for human resources' effective use and official servant's reform of sense as well as cost reduction. Furthermore, in the management and the operation of a park, a marketing test system is expected to prevent 'free rides' by asking for a cost burden appropriate to the user.

But on the other hand, infrastructure business, like waterworks, is facing serious problems worldwide. For example, on water supply projects

a low-income person can't pay the charge, and he can't use the water-works, or the management is neglected, and the equipment is wasted and so on.

In a tender system, to decide on the winner of the tender only by price is apt to cause the deterioration of the working conditions of the laborer who offers a public service and a decline in the quality of the public service, so the problem that a tender system may damage the public interest as a result arises. For example the approval of lake earth quake resistance figures by the designate verification engine which has become a problem in recent years could be evidence of this.

Therefore there is a need to advance efficiency of public services while planning for the "quality" of the service. Now, to offer a proper administrative service, maintaining a balance between the quality of the service and its cost, a "comprehensive assessment" system in which the cost and the other aspect are estimated overall and the most-balanced plan is adopted is being introduced. Kyoto city, Osaka prefecture and Osaka city had already introduced a comprehensive assessment system into general public tendering in construction contracts from fiscal year 2004, and they are also taking electronic tenders already. Because of the tightness of state finance and the decrease in the ability to pay tax because of population decrease, the former irresponsible welfare state idea that a state carries all increases in national welfare is failing. So it should not be denied that people participate in the role which the public sector has carried up to now. This act suggests a basic plan to enable implementation of a new welfare policy in which private energy is used.

But there are still a lot of unclear points as to whether a service that can satisfy citizens can be offered by this technique for new public service. From the above, above all concerning details of implementation, we can see there are a lot of problems that need more consideration in order to make move mature from now on.

3. Law of Property and Obligations

The Act concerning General Corporations and General Foundations

Law No. 48, June 2, 2006 (Not yet effective)

Background:

This year, many acts concerning civil law have been passed. Picking out the important ones, there are the amendment act of the lender act (Law No. 115, 2006), the amendment act of the consumer contract act (Law No. 56, 2006), the trust act (Law No. 108, 2006), and the lost article act (Law No. 73, 2006). Especially, the act concerning General Corporations and General Foundations (following: the act), the act concerning qualification of Public Corporations and Public Foundations (following: the qualification act) and the act concerning the improvement of the related act with the enactment of the act concerning General Corporations and General Foundations and the act concerning qualification of Public Corporations and Public Foundations (following: the improvement act) (these 3 acts, following: the 3 acts) exclude most provisions concerning the Juridical Person from the Civil Code, and have a great influence. Here we shall mainly explain the act.

The present Juridical Person system, which is based on the Civil Code of 1898, distinguishes between a company corporation which seeks a profit and a Juridical Person in the Civil Code which seeks a public interest (*kôeki*), and with regard to the latter adopts the system of the competent government agent (*syumu-kancho*) and the concession system, and places the establishment of a Juridical Person under the control and discretion of the government. On the one side, the present system is criticized because of the monopoly of *kôeki* by the government, and the necessity of encouraging civilians to participate in activities for the public interest is emphasized. On the other hand, the above necessity is related to the streamlining of administration in administrative reform.

In this context, the act for encouraging in the certain non-profit activi-