

# A Review of the Legal Framework Governing Human Rights and Public Procurement in Japan

September 27, 2024

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## 1. Executive Summary

On 3 April 2023, the Government of Japan announced they would clarify that corporations bidding in public procurement exercises initiated by the central government should respect human rights (Chapter 3.4). This review presents the international and national legal frameworks regarding human rights, responsible business conduct, sustainable development, and public procurement to support those involved in the clarification process (governmental and non-governmental) ensure vertical and horizontal policy coherence.

There is no central procurement body in Japan. According to OECD, only Japan and the Netherlands do not have central procurement body among its member states. The public procurement system of Japanese central government is primarily regulated under the Public Accounting Act and the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting as one of the procedures for implementing the national budget. The Ministry of Finance is responsible for the implementation of the Public Accounting Law, a key piece of legislation governing public procurement. However other ministries are responsible for the implementation of pieces of legislation which address the role of public procurement (Chapter 4). Each Ministry in Japan is responsible for establishing their own rules and regulations on how their public procurement activities are conducted, within the overarching legal framework. This means, for example, there are no standard tender documents (Chapter 4 and 3.4) across all public procurement.

The Public Accounting Act and the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting, which primarily set out the rules for the public procurement system, do not provide explicit objectives for public procurement nor explicitly recognise the use of public procurement for ‘accessory policy’ objectives. Furthermore, the Ministry of Finance, which is in charge of implementation of the Public Accounting Act, and certain academics interpreting the law, have been critical of the use of public procurement for ‘accessory policy’ objectives. However, a range of other pieces of legislation explicitly address the use of public procurement to realise human rights (Chapter 3.4).

The Act Concerning the Promotion of Procurement of Goods and Services from Facilities where Persons with Disabilities Work by the State and Other Entities, The Law on the Promotion of Women’s Active Engagement in Professional Life (and the Guidelines for Public Procurement and Governmental Grants to Promote Women’s Active Engagement), and “Economic Measures to Overcome COVID-19 and Pioneer a New Era” and “Emergency Proposal Toward the Launch of a "New Form of Capitalism" that Carves Out the Future”, contain provisions to utilise public procurement to realise human rights (Chapter 3.4). These include obligations on the State to implement necessary measures to promote employment of persons with disabilities by utilising public contracts, including eligibility criteria based on suppliers’ compliance status with the Act as well as whether the tenderers procure substantial number of items from the Facilities where Persons with Disabilities Work (Chapter 3.4). It also includes obligations on the State to “increase opportunities and implement other necessary measures for certified general employers, specially certified general employers, and other general employers which have favorable conditions for women's active engagement in professional life or have implemented favorable initiatives for the promotion of women's active engagement in professional life ... to receive orders for procurement of services or goods from the national government or public finance corporations”, and measures which allow ministries to prioritise corporations which have increased wages for their employees in open tender processes (Chapter 3.4). The aforementioned laws also contain provisions for policies, implementation systems, and accountability systems to be established. However, the provisions contained within these laws which relate to human rights differ considerably, and it is unclear how they relate to each other, or the Public Accounting Act.

There are a limited number of protections which can be implemented to respond to risks of human rights abuses in public procurement activities through standard tender procedures, as laid out in the Public Accounting Act. For example, Ministries and agencies can introduce specific countermeasures for issues such as workplace accidents resulting from inappropriate health and safety measures (Chapter 3.4).

Overall, the provisions related to human rights and public procurement contained within the aforementioned legislation are largely designed to 'empower' certain rightsholder groups. There is no systemic approach under the aforementioned legislation to address risks of potential human rights abuses occurring in state value chains or to end-users, or mandate that supplier conduct human rights due diligence (Chapter 3.2).

Each ministry/ agency can establish their own approach to dealing with complaints. While some of these systems could receive complaints related to human rights abuses in State supply chains, they are often not specifically designed to receive complaints related to public procurement and/or human rights (Chapter 5).

There is limited guidance and support for public buyers and suppliers on how to ensure public procurement exercises initiated by the central government can be utilised to ensure business respect for human rights (Chapter 6).

## 2. Background

This review has been prepared by the CSO Network Japan, with the support of Daniel Morris and Jumpei Nagaoka.<sup>1</sup> It has been prepared in the context of the announcement by the Government of Japan on 3 April 2023 that they would clarify that corporations bidding in public procurement exercises initiated by the central government should respect human rights.<sup>2</sup> It has also been prepared in the context of the National Action Plan on Business and Human Rights (NAP), which contains a policy action stating that the Government will, *inter alia*:

*“Thoroughly implement procurement rules relevant to business and human rights, including grievance procedures (initiatives based on Act on Priority Procurement Promotion for Persons with Disabilities, initiatives related to public procurement based on Article 24 of the Women’s Participation Act, and initiatives concerning exclusion of organized crime groups)”<sup>3</sup>*

This review presents the international and national legal frameworks regarding human rights, responsible business conduct, sustainable development, and public procurement to support those involved in the process to clarify that corporations bidding in public procurement exercises initiated by the central government should respect human rights (governmental and non-governmental) ensure vertical and horizontal policy coherence.<sup>4</sup>

This review highlights relevant elements in Japan’s Constitution, laws, regulations, and other publicly available documents and guidance published by ministries and agencies relevant to public procurement, human rights, and responsible business conduct in Japan. Further research and stakeholder consultation would be required to review the full impact of these on the human rights of Japanese people and those working in Japanese value chains. It further provides an overview of relevant Japanese public procurement policies, procedures and organisations.

Public procurement is the process by which public authorities source goods, services and works from the private sector. Public procurement is a substantial component of the overall economy and gives the Japanese state a significant opportunity to influence global value chains. In Japan, the central government is a very large buyer, purchasing goods and service worth 10,185.9 billion Japanese Yen (approximately \$69.3 billion USD) in the period 1 April 2021 - 31 March 2022.<sup>5</sup>

Public procurement is increasingly recognised as a means for states to fulfil their human rights obligations and to realise sustainable development. Including requirements within public procurements that suppliers respect human rights can help prevent human rights abuses from occurring within value chains. In addition to preventing human rights abuses from occurring within value chains, public procurement systems and exercises can also promote the rights of vulnerable and at-risks groups by favouring them, or businesses

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<sup>1</sup> This review draws from the Danish Institute for Human Rights, [Driving change through public procurement, A toolkit on human rights for policy makers and public buyers](#), March 2020 and Office of the Attorney General and Department of Justice, Kenya National Commission on Human Rights, and the Danish Institute for Human Rights, [A review of the legal framework governing human rights and public procurement in Kenya](#), February 2023.

<sup>2</sup> “About consideration for human rights in public procurement” (Decision by the Inter-Ministerial Committee on the Implementation of Japan’s National Action Plan on Business and Human Rights on 3 April 2023).

<sup>3</sup> Inter-Ministerial Committee on Japan’s National Action Plan on Business and Human Rights, [National Action Plan on Business and Human Rights \(2020-2025\)](#), October 2020.

<sup>4</sup> In other words, between international and national standards (vertical) and between national standards (e.g. public procurement, human rights, responsible business conduct, the sustainable development agenda) (horizontal)

<sup>5</sup> The Ministry of Finance, Statistics on Contract in FY2021.

which support them, in public procurement exercises. Hence public procurement that integrates the goal of empowering certain rightsholder groups has the potential to foster economic and social inclusion, accelerate local businesses, including small and medium enterprises (SMEs), as well as create employment. Equally, inefficient public procurement can be a risk to the procuring entity, environment, end-user individuals or groups and could also result in loss of public resources (and tax-payers' money) through corruption, substandard performance that does not yield value for money in terms of quality and cost works and services.

In Japan, laws and regulations have been introduced to utilise public procurement of the central government not only to achieve the primary goal of the public procurement system, which is an appropriate implementation of the national budget, but also to simultaneously achieve accessory policies. Some of the accessory policies can contribute to fulfillment of human rights of certain groups. These are highlighted in the chapters below.

***Joint research project by CSO Network Japan and ILO Office for Japan "Towards a sustainable society through promoting business respect for human rights in governmental public procurement"***

A joint research project conducted by CSO Network Japan and ILO Office for Japan "[t]owards a sustainable society through promoting business respect for human rights in governmental public procurement" is currently being undertaken. As part of this, a paper entitled "公共調達を通じた人権の保護・尊重と持続可能な社会づくり ～バリューチェーンにおける責任ある企業行動・労働慣行に向けた提言～" was published in August 2024.<sup>6</sup> A number of findings in this review correspond to elements highlighted in this review, including:

"There is a lack of consistency and coherency as a means of implementing policies" (Section 2.2.1.1 of the paper)

- ➔ The Public Accounting Act and the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting do not provide explicit objectives for public procurement nor explicitly recognise the use of public procurement for 'accessory policy' objectives. Furthermore, the Ministry of Finance, which is in charge of implementation of the Public Accounting Act, and certain academics interpreting the law, have been critical of the use of public procurement for 'accessory policy' objectives. However, a range of other pieces of legislation explicitly address the use of public procurement to realise human rights. Furthermore, the provisions contained within these laws which relate to human rights differ considerably, and it is unclear how they relate to each other, or the Public Accounting Act (Chapter 3.4 of this review).

"There are little standards to identify, prevent, mitigate, correct and remediate adverse human rights impacts (Section 2.2.2.1 of the paper) / Vulnerable groups who should be given priority in terms of protection by the laws are limited (Section 2.2.2.2 of the paper)"

- ➔ The Act Concerning the Promotion of Procurement of Goods and Services from Facilities where Persons with Disabilities Work by the State and Other Entities, The Law on the Promotion of Women's Active Engagement in Professional Life (and the Guidelines for Public Procurement and Governmental Grants to Promote Women's Active Engagement), and "Economic Measures to Overcome COVID-19 and Pioneer a New Era" and "Emergency Proposal Toward the Launch of a "New Form of Capitalism" that Carves Out the Future", contain provisions to utilise public procurement to realise human rights. However, many of the provision contained within the aforementioned legislation are designed to 'empower' certain rightsholder groups and are not

<sup>6</sup> [ILO and CSO Network Japan](#), August 31, 2024 (in Japanese)

strictly focused on addressing the risks that these rightsholder groups faced, or mandate that supplier conduct human rights due diligence (Chapter 3.4).

### 3. Frameworks concerning public procurement and human rights

#### 3.1 Human Rights Legal Framework

##### 3.1.1 International Human Rights Framework

International human rights are articulated in international conventions, treaties and declarations, as well as customary international law. International human rights treaties become binding on states through ratification. By ratifying an international human rights convention, a state commits itself to implementing the international convention into domestic laws and policies. The primary method for human rights enforcement is therefore the ability of individuals to make administrative or legal claims against a state for breaches of the state to respect, protect and fulfil human rights. With regard to human rights, states have the duties to:

- (1) **Respect:** refrain from interfering with the enjoyment of the right
- (2) **Protect:** prevent others, including third parties such as businesses, from interfering with the enjoyment of the right through appropriate legislation, policies, regulation and adjudication; and
- (3) **Fulfil:** to take steps to facilitate the enjoyment of human rights.

Japan has ratified, *inter alia*, the nine core international conventions on human rights, including the International Covenant for Civil and Political Rights, and the International Covenant for Economic, Social and Cultural Rights.<sup>7</sup>

The core conventions establish treaty bodies, which are committees of independent experts that monitor implementation of the core international human rights treaties.<sup>8</sup> The treaty bodies can, *inter alia*, adopt general comments to interpret the provisions of their treaty. The Committee on Economic, Social and Cultural Rights, for example, has adopted General Comment 24 in 2017 which notes that states “in their public procurement regimes, States could deny the awarding of public contracts to companies that have not provided information on the social or environmental impacts of their activities or that have not put in place measures to ensure that they act with due diligence to avoid or mitigate any negative impacts on the rights under the Covenant.”<sup>9</sup>

In addition to the treaty bodies are Special Procedures of the Human Rights Council. These are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social.<sup>10</sup> The Working Group on the issue of human rights and transnational corporations and other business enterprises, for example, provided a report to the UN Human Rights Council in 2018 which recommended that states,

<sup>7</sup> [tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx](http://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx)

<sup>8</sup> [Treaty Bodies | OHCHR](#)

<sup>9</sup> [General comment No. 24 \(2017\) on State obligations in the context of business activities | OHCHR](#), para 50

<sup>10</sup> [Special Procedures of the Human Rights Council | OHCHR](#)

“[u]sing their role as economic actors to advance human rights due diligence, including by integrating human rights due diligence into... public procurement”.<sup>11</sup>

States have a legal obligation to protect human rights when they purchase goods, which includes the human rights of individuals in the value chains of businesses supplying goods and services to the state, who are in its territory/ jurisdiction, as articulated in the UN Guiding Principles on Business and Human Rights.<sup>12</sup> In addition, the state should support suppliers in meeting the business responsibility to respect human rights. Introducing requirements within public procurement that suppliers respect human rights is increasingly being recognised as a means of meeting these obligations.<sup>13</sup>

### 3.1.2 Japanese Human Rights Framework

#### 3.1.2.1 Overview

Japan’s Constitution stipulates that “*the people shall not be prevented from enjoying any of the fundamental human rights*” and “*these fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.*”<sup>14</sup> The fundamental human rights stipulated in the Constitution are often grouped by scholars into the following three categories: (1) civil rights (i.e., equality under laws; freedom of thought and conscience; freedom of religion; freedom of expression; freedom to choose and change residence and to choose occupation; academic freedom; and freedom of marriage); (2) political rights (i.e., right to vote); and (3) social rights (i.e., right to living; right to education; right to work; and right to organize and collective bargaining). However, those rights are interpreted as examples of the “*fundamental human rights guaranteed to the people by this Constitution.*” In other words, the Constitution provides a non-exhaustive list of the “*fundamental human rights guaranteed to the people by this Constitution.*” In fact, the people’s rights to life, liberty, and the pursuit of happiness, which are recognized under Article 13 of the Constitution, have been interpreted by courts as a basis for other types of human rights (e.g., right to privacy) which are not explicitly mentioned in the Constitution.<sup>15</sup>

The Constitution stipulates that it “*shall be the supreme law of the nation.*”<sup>16</sup> Therefore, no law, ordinance, imperial rescript or other act of government which violates the fundamental human rights above shall be legally valid. However, the relationship between the Constitution and international treaties, and between international treaties and domestic laws, is not entirely clear from the text of the Constitution alone. However, a commonly accepted interpretation by scholars is that international treaties are inferior

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<sup>11</sup> [Human Rights Documents \(ohchr.org\)](https://www.ohchr.org/)

<sup>12</sup> See Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, Annex, U.N. Doc. A/ HRC/17/31 (Mar. 21, 2011) (by John Ruggie) [hereinafter UN Guiding Principles], Commentary to Guiding Principle 6, and in Commentary to Guiding Principle 2 in relation to extraterritorial jurisdiction

<sup>13</sup> See G-7 Leaders’ Declaration, Schloss Elmau, Germany (June 8, 2015); OECD, OECD Guidelines for Multinational Enterprises (2011); OECD, Responsible business conduct in government procurement practices, June 2017; OECD, Ministerial Communiqué on Responsible Business Conduct, (June 26, 2014); OECD, Public Procurement For Sustainable And Inclusive Growth: Enabling Reform Through Evidence And Peer Reviews (2012); ILO, Agenda of the 105th Session of the International Labour Conference, (April 22, 2016).

<sup>14</sup> Article 11 of [the Constitution](#).

<sup>15</sup> [Judgment concerning the constitutionality of Kyoto City Ordinance No. 10 of 1954 on Assembly, Marching, and Demonstration](#) (Judgment of the Grand Bench of the Supreme Court of Japan on 24 December 1969, Keishu Vol. 23, No. 12, at 162)

<sup>16</sup> Article 98 of the Constitution.

to the Constitution, while they are superior to domestic laws, based on the understandings of the Constitutional provisions such as: “(t)he treaties concluded by Japan and established laws of nations shall be faithfully observed” under Article 98. Therefore, international treaties become legally valid in Japan when they are concluded by the government, to the extent that they are not contrary to the provisions of the Constitution. So, the contents of the international human rights treaties ratified by Japan, including the two Covenants, are also parts of Japanese human rights framework.

Further, the Constitution states that “Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.” Therefore, public servants in Japan, including the relevant officials in charge of developing and implementing public procurement policies and practices, have constitutional obligations to respect and uphold fundamental human rights.

### 3.1.2.2 Rights of specific groups

Japan has additional legal protections for specific rightsholder groups. For example, regarding women's rights, in 2015 Japan enacted the Act on the Promotion of Female Participation and Career Advancement in the Workplace. This Act aims to, among other objectives, “expeditiously and intensively promote female participation and career advancement in the workplace, leading to an affluent and dynamic society in which the rights of both men and women are respected.”<sup>17</sup> Under the Act, the national and local governments are obliged to formulate and implement necessary measures for the promotion of female participation and career advancement in the workplace.<sup>18</sup> Furthermore, a 2022 amendment of a Ministry of Health, Labor and Welfare Ordinance includes a mandatory requirement for employers with over than 300 full-time employees to disclose the difference between wage payment for male and female employees.<sup>19</sup>

As to the rights of persons with disabilities, Japan enacted in 2013 the Act for Eliminating Discrimination against Persons with Disabilities. This Act makes it clear that “all persons with disabilities are equal to persons without disabilities and are entitled to dignity as individuals to enjoy fundamental human rights, and to possess the right to be guaranteed a life befitting of the dignity” and imposes obligations on the national and local governments to formulate necessary measures relating to the elimination of discrimination on the basis of disability and must implement them.<sup>20</sup> In particular, the Act required that the State introduce a basic policy to eliminate discrimination on the basis of disability, and address the role of business entities.<sup>21</sup> Furthermore, ministers are obliged to provide guidelines to enable business entities to appropriately take the aforementioned measures, within their relevant administrative jurisdictions.<sup>22</sup> As a results of this, Minister of Land, Infrastructure, Transport and Tourism issued guidelines in March 2017, which includes, guidance for taxi operators explaining under what circumstances their refusals to take passengers with wheelchairs can be wrongful discrimination.<sup>23</sup>

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<sup>17</sup> Article 1 of [the Act on the Promotion of Female Participation and Career Advancement in the Workplace](#).

<sup>18</sup> Article 3 of [the Act on the Promotion of Female Participation and Career Advancement in the Workplace](#).

<sup>19</sup> Article 20, Paragraph 1 of [the Act on the Promotion of Female Participation and Career Advancement in the Workplace](#) and Article 19, Paragraph 1, Item 9 of the Ordinance regarding Action Plan of General Employer, etc. based on the Act.

<sup>20</sup> Articles 1 and 3 of [the Act for Eliminating Discrimination against Persons with Disabilities](#).

<sup>21</sup> Article 6, Paragraph 1 and 2(iii) of [the Act for Eliminating Discrimination against Persons with Disabilities](#).

<sup>22</sup> Article 11, Paragraph 1 of [the Act for Eliminating Discrimination against Persons with Disabilities](#).

<sup>23</sup> Page 15 of the Guidelines for measures regarding promotion of eliminating discrimination based on disabilities within the administrative jurisdiction of the Ministry of Land, Infrastructure, Transport and Tourism.



## 3.2 Business and Human Rights/ Responsible Business Conduct Framework

### 3.2.1 International Business and Human Rights/ Responsible Business Conduct Framework

Based on the pre-existing international human rights laws, the United Nations Guiding Principles on Business and Human Rights (UNGPs) detail the state duty to protect human rights in the context of business activities.<sup>24</sup> The UNGPs highlight that: “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication”.<sup>25</sup>

The UNGPs affirm that the state duty to protect human rights extends to situations where a commercial “nexus” exists between public actors and businesses.<sup>26</sup> They note that states should require, where appropriate, state-owned or controlled enterprises to exercise human rights due diligence.<sup>27</sup> They clarify that this duty extends to situations where states enter into commercial relationships, including through public procurement.<sup>28</sup> Where states engage in privatisation or “contracting out” services that may impact on human rights, they must “exercise adequate oversight”, including by ensuring that contracts or enabling legislation communicate the state’s expectation that service providers will respect the human rights of service-users, i.e. their citizens. The UNGPs provide that “States should promote awareness of and respect for human rights by business enterprises with which they conduct commercial transactions”. The UNGPs also highlight that states must ensure ‘policy coherence’, in other words, alignment with human rights obligations of standards and policies across all state departments, agencies, and other state-based institutions that shape business practices,<sup>29</sup> which includes public procurement bodies.

The OECD Guidelines for Multinational Enterprises address ‘responsible business conduct’ (RBC) in a range of areas including human rights, employment and industrial relations, environment, combating bribery, and science and technology.<sup>30</sup> Japan joined the OECD in 1964, and approved an update to the Guidelines as part of a Ministerial Council Meeting in 2023. The OECD adopted the Recommendation on the Role of Government in Promoting Responsible Business Conduct in December 2022. The document recommends that “Adherents lead by example and take measures to promote and exemplify RBC in their role as economic actors and in their commercial activities, particularly by,” among others, “using public procurement as a strategic tool for RBC and including RBC in procurement policies (regulatory and strategic frameworks), as well as promoting due diligence for RBC in public procurement.”<sup>31</sup>

Building on the OECD Guidelines for Multinational Enterprises, a 2017 OECD concept note articulates the rationale for using public procurement to encourage responsible business conduct and respect human rights:

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<sup>24</sup> UN Guiding Principles 4 and 6

<sup>25</sup> UN Guiding Principle 1

<sup>26</sup> Claire Methven O’Brien, Nicole Vander Muelen, and Amol Mehra, *Public Procurement and Human Rights: A Survey of Twenty Jurisdictions*, International Learning Lab on Public Procurement and Human Rights, July 2016.

<sup>27</sup> UN Guiding Principle 3

<sup>28</sup> UN Guiding Principle 8. Guiding Principle 6 also provides that “States should promote respect for human rights by business enterprises with which they conduct commercial transactions,” and indicates this can be done “including through the terms of contracts.”

<sup>29</sup> UN Guiding Principle 10

<sup>30</sup> The Guidelines are a set of recommendations addressed by states adhering to the OECD Declaration on International Investment and Multinational Enterprises to multinational enterprises operating in or from these states.

<sup>31</sup> Item IV.1 of the Recommendation

- Public funds should not contribute to adverse environmental or social impacts of business operations;
- States expect business to behave responsibly. So states should lead by example, for instance, by requiring suppliers to perform human rights due diligence;
- A growing body of evidence indicates that RBC pays off for business. The potential benefits of behaving and procuring responsibly, such as reduced lifecycle costs, higher quality products, less disrupted and more efficient supply chains, also apply to governments;
- States have a national interest to encourage other countries to integrate RBC considerations into their public procurement processes to promote a level playing field for their own companies when operating abroad.<sup>32</sup>

### 3.2.2 Japanese Business and Human Rights/ Responsible Business Conduct Framework

On 16 October 2020, the Inter-Ministerial Committee for Japan's National Action Plan (NAP) on Business and Human Rights launched the NAP. The period of the action plan is five years, from FY2020 to FY2025. The NAP comprises of the action plans in the following five areas:

- (1) cross-cutting areas,
- (2) measures of the Government as an actor regarding State duty to protect human rights,
- (3) measures of the Government promoting corporate responsibility to respect human rights,
- (4) measures regarding access to remedy, and
- (5) other measures.

In the second area, the NAP sets out the specific action plans regarding public procurement as follows:

Japanese NAP, Chapter 2, Section 2, Item (2), Sub-item A (Public Procurement):

***Thoroughly implement procurement rules relevant to business and human rights, including grievance procedures (initiatives based on Act on Priority Procurement Promotion for Persons with Disabilities, initiatives related to public procurement based on Article 24 of the Women's Participation Act, and initiatives concerning exclusion of organized crime groups)***

- *Continue to promote the self-reliance of persons with disabilities working at the facilities for persons with disabilities and of those working at home through steady implementation of the Act on Priority Procurement Promotion for Persons with Disabilities. [All Ministries]*
- *Continue to promote measures to exclude organized crime groups from public works, etc in accordance with the Initiative on Exclusion of Organized Crime Groups from Public Works, etc. (Agreement by the Working Team on Comprehensive Measures, Including the Control of Organized Crime Groups dated December 4, 2009). [All Ministries]*
- *Continue to award additional points to business enterprises with certification under the Women's Participation Act and other laws, when the Government and incorporated administrative agencies use criteria other than price (in the procurement procedures applying to the overall - greatest - value evaluation method and the competitive proposal evaluation method). The aforementioned certification is provided to business enterprises promoting measures, such as work-life balance. This scheme is being implemented in accordance with the Guidelines for Utilization of Public Procurement and Subsidies Towards the Promotion of Women's*

<sup>32</sup>

OECD, [Responsible business conduct in government procurement practices](#) (2017).

*Advancement (decided by the Headquarters for Creating a Society in Which All Women Shine on March 22, 2016) and other criteria. [Cabinet Office]*

- *Continue to promote work style reform in the construction industry to deepen understanding of the purpose of the Act on Promoting Quality Assurance in Public Works, Construction Business Act, the Act for Promoting Proper Tendering and Contracting for Public Works, and the guidelines for these acts. [The Ministry of Land, Infrastructure, Transport and Tourism]*

In addition, on 13 September 2022, the Government of Japan released Guidelines on Respecting Human Rights in Responsible Supply Chains. The Guidelines were established “to help deepen business enterprises’ understanding and promote their efforts by explaining the activities that business enterprises are requested to undertake to respect human rights, in a concrete and easy-to-understand manner, which is tailored to the actual situation of business enterprises engaging in business activities in Japan.”<sup>33</sup> The Guidelines are based on the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises, and the ILO MNE Declaration, and provide Japanese companies with guidance on how to implement human rights due diligence in accordance with the international standards. However, the Guidelines make no mention on public procurement or the role of businesses as suppliers to the state.

### 3.3 Sustainable Development Framework

#### 3.3.1. International Sustainable Development Framework

In 2015, the UN General Assembly unanimously adopted the 2030 Agenda for Sustainable Development (the 2030 Agenda) as “a plan of action for people, planet and prosperity”. The potential of public procurement as a driver for human rights is highlighted in SDG 12. SDG Target 12.7 calls on all states to “[p]romote public procurement practices that are sustainable, in accordance with national policies and priorities”. This provides an opportunity for states not only to procure from suppliers which deliver the cheapest product quickest but also to prioritise procurement from suppliers which respect the three dimensions of sustainable public procurement; economic, social and environmental.

Implementing sustainable public procurement and SDG Target 12.7 is also a means of realising other SDGs, as procurements can be designed to favour suppliers which have taken steps to promote equality for women, persons with disability and other vulnerable groups within their operations or within their sub-suppliers operations, for example, and/ or favour suppliers owned, controlled, or with a large number of workers/ management from vulnerable groups. Those can contribute to achieving the targets such as: the Targets under SDG 5 – gender equality; the Target 8.5 – decent work for all people; and the Target 10.2 – empowerment and promotion of social, economic and political inclusion of all.

#### 3.3.2. Japanese Implementation of SDGs

On 20 May 2016, the Government of Japan established a Cabinet body, the SDGs Promotion Headquarters, headed by the Prime Minister and composed of all ministers, in order to ensure a whole-of-government approach to implementing the 2030 Agenda in a comprehensive and effective manner. The body set out Japan’s [SDGs Implementation Guiding Principles in 2016](#), which was revised in 2019. The revised version recognises international events to be held in Japan such as the Olympic and Paralympic Games Tokyo, the 2025 World Exposition (Osaka/ Kansai Expo), etc. as optimal occasions to disseminate to the world the philosophy of the SDGs and Japan’s initiatives. In that context, the revised SDGs Implementation Guiding Principles clearly mention that public procurement for these international events should ensure due

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<sup>33</sup> Page 4 of [the Guidelines](#).

diligence related to the environment and human rights, based on the SDGs.<sup>34</sup> Furthermore, Japan's [SDGs Action Plan for 2023](#) lists the annual Cabinet Office's actions as focusing on utilising public procurement in order to promote women's participation and work-life-balance.<sup>35</sup>

### 3.4 Public Procurement Framework

#### 3.4.1 International Public Procurement Framework

The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement (2011) is intended to serve as an outline for national legislation to improve domestic regulatory regimes for public procurement. It contains principles and procedures aimed at achieving value for money and avoiding abuses in the procurement process, for instance, corruption. In its Preamble, the Model Law sets out six main objectives: economy and efficiency; international trade; competition; fair and equitable treatment; integrity, fairness, and public confidence in the procurement process; and transparency. Although there is no specific mention of human rights in the Model Law, it does allow for the integration of social and economic criteria into procurement processes, such as promoting accessibility of procurement to SMEs or disadvantaged groups, environmental criteria, and ethical qualification requirements. The Guide to Enactment further notes that human rights can feature as social aspects of sustainable procurement and can be addressed through socio-economic evaluation criteria.<sup>36</sup>

The World Trade Organization (WTO) Agreement on Government Procurement (1994) is a plurilateral agreement within the framework of the WTO.<sup>37</sup> Japan has been bound by the Agreement since the country acceded to it on 1 January 1996.<sup>38</sup> The 1994 Agreement extends the scope of the old version (came into force in 1981, amended in 1987), which applied the principles of national treatment and non-discrimination in governmental procurements of goods, to additionally cover governmental procurements of services. The 1994 Agreement further increased opportunities for international competition in governmental procurements and established mechanisms for smoother settlement of disputes among members regarding governmental procurements by introducing effective procedures for complaint, consultation and dispute settlement. The 1994 Agreement does not explicitly mention human rights.

#### 3.4.2 Japanese Public Procurement Framework

##### 3.4.2.1 Overview

The public procurement system of Japanese central government is regulated under *the Public Accounting Act* and *the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting* as one of the procedures for implementing the national budget. In particular, the "Contracts" chapter in *the Public Accounting Act*, which stipulates the contract system (the system in which Japanese government executes contract with third parties) functions as a core mechanism of the public procurement. However, in addition to these laws, various laws are relevant to the public procurement system, including each ministry or agency's own internal rules to regulate its procurement activities. For example, according to *the Summary for Practitioners of Accounting in the Ministry of Land, Infrastructure, Transport and Tourism*, which is a

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<sup>34</sup> Page 14 of the [2019 SDGs Implementation Guiding Principles](#).

<sup>35</sup> Page 12 of the [SDGs Action Plan for 2023](#).

<sup>36</sup> Claire Methven O'Brien, Nicole Vander Muelen, and Amol Mehra, *Public Procurement and Human Rights: A Survey of Twenty Jurisdictions*, International Learning Lab on Public Procurement and Human Rights, July 2016, p15.

<sup>37</sup> A revised text was adopted in 2012 which allows for technical specifications which "promote the conservation of natural resources or protect the environment". It also highlights that evaluation criteria may include "environmental characteristics."

<sup>38</sup> WTO, *Agreement on Government Procurement, Parties and observers*.

practical guide for practitioners to deal with accounting of the Ministry, there are 25 relevant laws and regulations for general accounting matters; five relevant laws and regulations for actions authorising expenditures; and 50 relevant laws and regulations for contracts.<sup>39</sup>

Japanese laws and regulations do not provide explicit objectives for public procurement. Tsutomu Maeda, an academic, has explored that the contract system from practitioners perspective, and notes that it should be operated fairly and strictly due to its nature as a part of the accounting system but at the same time a consideration should be given to the operation of the contract system in the most efficient manner because payments by the government under the contract system is financed ultimately from precious money of the people in Japan such as tax.<sup>40</sup> Kosuke Umezawa, another academic, highlights that when the government utilises the contract system as a means for its procurement for the realisation of the certain policy objectives, it is called a “accessory policy”.<sup>41</sup> However, there is no consensus among scholars and experts whether and to what extent the use of contracts for an accessory policy is allowed under the principles of the contract systems above.<sup>42</sup> Kosuke Umezawa notes that utilisation of the contract system for accessory policies would in some cases serve as an economically-efficient measure to implement the budget comparing to other methods such as governmental grants.<sup>43</sup> On the other hand, Tsutomu Maeda consider accessory policies as contradictory to the principles of the contract system such as fairness and economic efficiency.<sup>44</sup>

The Ministry of Finance, which is the ministry in charge of *the Public Accounting Act*, presented a negative opinion on accessory policy. This is despite the fact that the Ministry acknowledges the existence of the cases (listed in the box below) where public procurement is used for an accessory policy,<sup>45</sup> and the widespread use of accessory policies (detailed below).

- **Examples of accessory policies (not necessarily relevant to human rights)**
1. Prioritised procurement from specific types of suppliers
    - SMEs (*the Act on Ensuring the Receipt of Orders from the Government and Other Public Agencies by Small and Medium-sized Enterprise*)
    - Facilities where persons with disabilities work (*the Act Concerning the Promotion of Procurement of Goods and Services from Facilities where Persons with Disabilities Work by the State and Other Entities*)
    - Suppliers who help single parents have jobs (*the Act on Special Measures to Help Single Parents Have Jobs*)
  2. Prioritised procurement of specific types of products
    - Eco-friendly goods (*the Act Concerning the Promotion of Procurement of Eco-Friendly Goods and Services by the State and Other Entities*)
    - Goods with lower greenhouse gas emissions (*the Act on Promotion of Contracts of the State and Other Entities, Which Show Consideration for Reduction of Emissions of Greenhouse Gases, etc.*)
  3. Preferred procurement in comprehensive evaluation type open tender (see 1.4.2.2.)

<sup>39</sup> Summary for Practitioners of Accounting in the Ministry of Land, Infrastructure, Transport and Tourism (the 2020 Edition)

<sup>40</sup> Tsutomu Maeda “Detailed Explanation on the Public Accounting Act” (2020), page 422.

<sup>41</sup> Kosuke Umezawa, “Current status and challenges of public procurement” (2022)

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Tsutomu Maeda, “Detailed Explanation on the Public Accounting Act” (2020), page 422.

<sup>45</sup> The Ministry of Finance, “Using public procurement for accessory policies” (12 February 2019)

- Technical capacity in a mid- and long-term (*the Act on Promoting Quality Assurance in Public Works*, Implemented by the Ministry of Agriculture, Forestry and Fisheries as well as the Ministry of Land, Infrastructure, Transport and Tourism)
- Suppliers promoting women’s active engagement (*the Law on the Promotion of Women’s Active Engagement in Professional Life*)
- Suppliers employing persons released from prisons (Implemented by the Ministry of Justice)
- Suppliers employing Reserve Self-Defence Officials (Implemented by the Ministry of Defence)

(the list is created based on the Ministry of Finance, “Using public procurement for accessory policies” (12 February 2019))

### 3.4.2.2 The contracting methods in public procurement in Japan (central government)

In Japan, suppliers are selected through a number of “contract methods” procedures. The primary contract method procedure is the use of open tender, which is most recently provided for in *the Public Accounting Act*, but has been in existence in varying forms since the *Meiji* era (1968-1912) to dates.<sup>46</sup> There are two exceptions to the use of open tender – selective tender and private contract.

**Open tender** is a contract method in which the government issues a public notice, asks for tenderers to make offers, and selects the tenderer which scores most favourably. The open tender process needs to be recorded from the perspective of appropriate management of public accounting, and therefore bidding is a general rule of the competition.<sup>47</sup>

In principle the selection of the winning tender is based on price. Minimum standard can be established around quality and in terms of meeting technical specifications which supplier must satisfy to be considered. However, once such minimum standards are met (should they be included), the tenderer which placed the bid with the cheapest price, to the extent under the “reference price,” will automatically be determined as a party to the contract (i.e. Price competition type open tender). A reference price is pre-determined by the relevant procuring body for a specific open tender opportunity as means to manage the budget.<sup>48</sup>

*The Public Accounting Act* provides for certain exceptions under which bidders can compete on elements other than price. A major example for this exceptional type of open tender is comprehensive evaluation type open tender, in which bidders for public construction projects or information systems, etc.<sup>49</sup> compete in terms of price and other elements such as quality, and the government evaluates those bidders from a comprehensive viewpoint based on price (which should be below the expected price) and pre-determined standards for other elements to select a party to the contract. A comprehensive evaluation type open tender can be chosen as a contract method when the nature and purpose of a contract make it hard to choose price competition type open tender. Before choosing a comprehensive evaluation type open tender, the Head of the relevant ministry or agency must consult with the Minister of Finance.<sup>50</sup>

<sup>46</sup> Article 29-3, Paragraph 1 of the Public Accounting Act.

<sup>47</sup> Article 29-5 of the Public Accounting Act.

<sup>48</sup> Tsutomu Maeda “Detailed Explanation on the Public Accounting Act” (2020), Page 474.

<sup>49</sup> Tsutomu Maeda “Detailed Explanation on the Public Accounting Act” (2020), Page 501.

<sup>50</sup> Article 29-6, Paragraph 2 of the Public Accounting Act and Article 91, Paragraph 2 of the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting.

In order to participate in an open tender, tenderers must meet specific eligibility criteria. The criteria includes both negative<sup>51</sup> and positive<sup>52</sup> requirements, some of which relate to human rights. The negative criteria prevent those found guilty of being involved in organised crime from bidding. The negative criteria allow a contract officer to prevent bids for a period up to three years from those who have “intentionally carried out construction, or manufacturing or any other service in a careless manner or acted fraudulently with regard to the quality or volume of an object in the course of performing a contract” or where “the person has obstructed an official from performing the official’s duties in a supervision or inspection”. The positive criteria provide that “the heads of ministries and agencies or officials delegated by them may, when necessary, determine the eligibility required of persons participating in open tenders, with regard to particulars related to performance such as construction, manufacturing and sales, etc., number of employees, amount of capital, and other particulars related to the scale of management and management circumstances, for each type of contract in terms of construction, manufacturing, the purchase of objects, and other contracts, in accordance with the price, etc. of the contract.”

**Selective tender** is a contract method by which the government designates specified number of tenderers who can participate in the competition before tender processes. The government is allowed to choose a selective tender procedure when the number of tenderers could participate is small due to the nature or purpose of the contract, or when a contract is determined would be disadvantageous to put out to open tender.<sup>53</sup>

**Private contract** is a contract method by which the government selects a specific party to the contract who can be trusted based on individual negotiations without tender, and can be chosen when the nature or purpose of the contract does not permit tender, a contract cannot be put out to tender due to urgent circumstances, or a contract would be disadvantageous to put out to tender.<sup>54</sup>

In addition, the government sometimes implement so-called “**suspending designation**” measures in practice. They are often used when responding to scandals involving suppliers. These measures are implemented by ministries and agencies within their own administrative discretions separately from the eligibility requirements above. For example, the Ministry of Environment established the following rules for suspending designation with regard to contracts for construction projects within their administrative jurisdiction. The list of companies being subject to “**suspending designation**” are publicly disclosed by the relevant ministries and agencies, and they may not participate in open tender for the specified periods of time.

**Ministry of Environment - Rules for measures including suspending designation regarding construction contracts, etc.**

(Suspending designation)

Article 1. (1) If the relevant eligible persons (persons who are listed in the list of eligible persons for construction works competition, etc.) fall within any of the items set out in the Annex 1 and 2, heads of relevant departments ... may, depending on specific situations, suspend designations of the relevant eligible persons for a specific period of time set out in the Annexes.

(2) When heads of relevant departments suspend designations, .... relevant Contract Officers, etc. ... shall not designate such eligible persons subject to the suspension as a contractor in construction contracts. If

<sup>51</sup> Article 70 and 71 of the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting, which applied similarly to selective tender.

<sup>52</sup> Article 72 and 73 of the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting.

<sup>53</sup> Article 29-3, Paragraphs 3 and 5 of the Public Accounting Act.

<sup>54</sup> Article 29-3, Paragraphs 4 and 5 of the Public Accounting Act.

such eligible persons subject to the suspension has already been designated, such designation must be cancelled.

(...)

Annex 1. Standards for suspending designation due to accidents, etc.

*(Note: Criteria for various items including false statement in inspection documents at pre-bidding phase, poor construction works as a result of negligence, breach of contract, accidents damaging the general public as a result of inappropriate safety management measures, and accidents damaging relevant construction workers as a result of inappropriate safety management measures are listed together with relevant periods for suspension.)*

(...)

Annex 2. Standards for suspending designation due to bribery and unjust behaviours

*(Note: Criteria for various items including bribery, violations of antitrust law, interference of bidding, etc. regarding public contracts or bid-rigging, material breach of antitrust law, violations of construction laws, activities falling within Article 71 of the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting, and activities which are unjust or dishonest are listed together with relevant periods for suspension.)*

### 3.4.2.3. Existing accessory policies in relation to human rights

#### 3.4.2.3.1. Use of human rights eligibility criteria in open tenders

Article 10, Paragraph 1 of *the Act Concerning the Promotion of Procurement of Goods and Services from Facilities where Persons with Disabilities Work by the State and Other Entities* sets out effort-based obligations on the central government, etc. to implement necessary measures to promote employment of persons with disabilities by utilising public contracts. The same paragraph provides examples of the measures by stating that, when ministries and agencies establish eligibility criteria for participating in open tender, it should give consideration to the participants' compliance status with Article 43, Paragraph 1 of *the Act to Facilitate the Employment of Persons with Disabilities*,<sup>55</sup> as well as whether the tenderers procure substantial number of items from the Facilities where Persons with Disabilities Work.

#### 3.4.2.3.2. The use of comprehensive evaluation procedures and human rights criteria in open tender procedures

Article 24, Paragraph 1 of *the Law on the Promotion of Women's Active Engagement in Professional Life* imposes an obligation on the State to "increase opportunities and implement other necessary measures for certified general employers, specially certified general employers, and other general employers which have favorable conditions for women's active engagement in professional life or have implemented favorable initiatives for the promotion of women's active engagement in professional life ... to receive orders for procurement of services or goods from the national government or public finance corporations". The government subsequently published *Guidelines for Public Procurement and Governmental Grants to Promote Women's Active Engagement*, which requires introducing an item which positively evaluates corporations which promote work-life-balance, etc. when the government implements procurement processes under which non-price elements are evaluated. For example, companies which are awarded "Platinum ERUBOSHI" or "ERUBOSHI" to certify their performance regarding their measures to promote women's active engagement in professional life in the evaluation items in relation to recruitment,

<sup>55</sup> The Article says "the employer ... must ensure that the number of qualifying disabled workers they employ is at least the number arrived at when the number of workers they employ is multiplied by the mandatory proportion of disabled workers."



continuous employment, work style, gender ratio in management and diverse career courses, can get additional points in public procurement depending on the rules set by each ministries.<sup>56</sup> The Guidelines describe the relationship between the promotion of work-life-balance and empowerment of women in the following manner: “realisation of work-life-balance by reducing long working hours, increasing productivity and effectiveness, and promoting diverse and flexible work style depending on life events are required because changing people’s work style is extremely important in order for women to maximize their work performance as well as to manage both their works and childcare/homecare.”

In 2021, Japan published “[Economic Measures to Overcome COVID-19 and Pioneer a New Era](#)”<sup>57</sup> and “[Emergency Proposal Toward the Launch of a "New Form of Capitalism" that Carves Out the Future](#).”<sup>58</sup> These allow each ministry or agency to prioritise corporations which have increased wages for their employees. These measures apply to all procurements conducted through a comprehensive evaluation type open tender on and after 1 April 2022. They provide that corporations which declare increase of wages for their employees at the higher rate than a certain percentage set by the government (as a matter of procedure, participants of bidding who submit its “declaration of wage increase plan for employees”) may receive additional points in the evaluation process. This measure is designed to create a “society where all citizens can participate and actively engage by leaving no one behind” by supporting wage increase by businesses under the government’s broader goal to lead international movement of sustainability and structuring the new capitalism.

#### 3.4.2.3.3. Use of selective tender procedures to favour businesses that respect human rights

The *Guidelines for Public Procurement and Governmental Grants to Promote Women’s Active Engagement* provide that the relevant ministries and agencies may include corporations which promote work-life-balance, etc. in selective tender processes to the extent that those companies satisfy mandatory eligibility criteria.<sup>59</sup>

#### 3.4.2.3.4. Use of private contract procedures to favour businesses that respect human rights

The *Guidelines for Public Procurement and Governmental Grants to Promote Women’s Active Engagement* provides that procurers may consider involving corporations which promote work-life-balance, etc. in the process of soliciting quotations before making private contracts.<sup>60</sup>

Article 10, Paragraph 1 of *the Act Concerning the Promotion of Procurement of Goods and Services from Facilities where Persons with Disabilities Work by the State and Other Entities*, effective from 2013, imposes effort-based obligations (as opposed to results-based) on the government, etc. to implement necessary measures to promote employment of persons with disabilities by utilising public contracts. According to *the Policies Concerning Promotion of Procurement of Goods and Services from Facilities where Persons with Disabilities Work*,<sup>61</sup> examples for the measures in the case of private contract are:

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<sup>56</sup> Gender Equality Bureau Cabinet Office, “[Overview] Use of public procurement to achieve promotion of women’s active engagement in professional life”

<sup>57</sup> Decision of the Cabinet on 19 November 2021.

<sup>58</sup> Decision of the Meeting to Realise the New Capitalism on 8 November 2021.

<sup>59</sup> Section 2, Item 2(2) of the Guidelines for Public Procurement and Governmental Grants to Promote Women’s Active Engagement.

<sup>60</sup> Section 2, Item 2(3) of the Guidelines for Public Procurement and Governmental Grants to Promote Women’s Active Engagement.

<sup>61</sup> Cabinet Decision on 23 April 2013.

(1) if the procurer collects quotations from two or more persons, it shall make an effort to include one or more business operators whose number of employees with disabilities is equal to or larger than statutory requirement, the Facilities where Persons with Disabilities Work or business operators who procure substantial amount of items from the Facilities where Persons with Disabilities Work; or

(2) if the procurer does not collect quotations, it shall make an effort to contract with these business operators. The Act aims to contribute to promotion of self-reliance of persons with disabilities by increasing demand for goods and services supplied from the Facilities where Persons with Disabilities Work.

#### 3.4.2.3.5. *Use of suspending designation*

The “*suspending designation*” as countermeasures for scandals, etc. by suppliers can be implemented due to the issues such as workplace accidents resulting from inappropriate health and safety measures and unjust or dishonest activities by these suppliers (see, for example, the aforementioned internal rules of the Ministry of Environment). In fact, there have been some cases where designation of suppliers who violated certain health and safety laws were suspended.<sup>62</sup>

#### 3.4.2.3.6. *Short delivery times*

The *Guidelines for Public Procurement and Governmental Grants to Promote Women’s Active Engagement* highlight that requiring extremely short delivery deadlines in orders for public procurement is not desirable from the perspectives of not only work-life-balance of relevant workers but also economic efficiency, and therefore procurers should give consideration to setting reasonable deadlines based on deliberate ordering practices.<sup>63</sup>

#### 3.4.2.3.7. *Systems and accountability*

The *Act Concerning the Promotion of Procurement of Goods and Services From Facilities where Persons with Disabilities Work by the State and Other Entities* imposes on the heads of ministries and agencies the obligations to annually prepare policies to promote procurement of goods and services from the Facilities where Persons with Disabilities Work given the yearly budget and the relevant administrative and operational plans<sup>64</sup> and to prepare, disclose and submit to the Minister of Health, Labour and Welfare the summary of their actual performance of procurement from the Facilities where Persons with Disabilities Work after the end of every year without any delay.<sup>65</sup>

The *Policies Concerning Promotion of Procurement of Goods and Services from Facilities where Persons with Disabilities Work* require systems to implement these obligations such as: participation of all internal departments especially proactive participation by accounting and procurement departments in the ministries and agencies;<sup>66</sup> establishment of effective promotion of procurement of goods and services from the Facilities where Persons with Disabilities Work such as by targeting increased procurement

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<sup>62</sup> The Ministry of Environment, “List of designation suspension, etc. in FY2021”

<sup>63</sup> Section 2, Item 3 of the *Guidelines for Public Procurement and Governmental Grants to Promote Women’s Active Engagement*.

<sup>64</sup> Article 6, Paragraph 1 of the *Act Concerning the Promotion of Procurement of Goods and Services From Facilities where Persons with Disabilities Work by the State and Other Entities*.

<sup>65</sup> Article 7, Paragraph 1 of the *Act Concerning the Promotion of Procurement of Goods and Services From Facilities where Persons with Disabilities Work by the State and Other Entities*.

<sup>66</sup> Section 4, Item 1 of the *Policies Concerning Promotion of Procurement of Goods and Services from Facilities where Persons with Disabilities Work*.

performance compared to the previous year;<sup>67</sup> and disclosing their actual performance of procurement from the Facilities where Persons with Disabilities Work as easy-to-understand manner as possible.<sup>68</sup> Those systems are not directly relevant to any specific contract methods under *the Public Accounting Act*, but can be characterised as other ways to use public procurement opportunities for accessory policies.

Article 11 of *the Basic Act on Public Services* imposes an effort-based obligation on the central and local governments to take necessary measures to ensure adequate working conditions and other working environment of workers engaging in provision of public services in order to ensure appropriateness and certainty of implementation of safe and quality public services. In relation to this obligation, so-called “*Working Conditions Review*” can be implemented. The Review is a process that licensed labour and social security attorneys who are experts of labour and social security laws as well as labour management review target companies’ policies and documents required by labour laws such as labour standard law, and ensure compliance with statutory working conditions and creation of working conditions where workers can actively engage.<sup>69</sup> Target companies could be subcontractors of the governments in relation to the provision of specific public services.

#### 3.4.2.8. *The Government’s new policy on respecting human rights in public procurement*

On 3 April 2023, the Government of Japan decided to make its efforts to ensure respect for human rights by corporations participating in bidding in the public procurement implemented by the central government.<sup>70</sup> Specifically, the decision states that the government will introduce descriptions such as “*Those who want to participate in bidding / Suppliers shall their make efforts to respect human rights based on the Guidelines on Respecting Human Rights in Responsible Supply Chains (the Decision by the Inter-Ministerial Committee on the Implementation of Japan’s National Action Plan on Business and Human Rights on 13 September 2022)*” in bidding explanation documents,<sup>71</sup> procurement contracts, and so on.

## 4. Relevant Authorities and Bodies

This section describes the institutions that provide guidance, oversight and work on public procurement matters:

### 4.1 Overview

There is no central procurement body in Japan. The Ministry of Finance is responsible for the implementation of the Public Accounting Law, which is the key piece of legislation governing public procurement. However, other ministries are in charge of policies relevant to public procurement which can be applicable to all ministries and agencies. For example, the Ministry of Internal Affairs and Communications is responsible for realising quality and affordable public services through the utilisation of bidding processes involving both public and private entities. Furthermore, the Ministry of Land, Infrastructure, Transport and Tourism is responsible for policies around public constructions; and the Fair

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<sup>67</sup> Section 4, Item 2(2) of the Policies Concerning Promotion of Procurement of Goods and Services from Facilities where Persons with Disabilities Work.

<sup>68</sup> Section 4, Item 3(1) of the Policies Concerning Promotion of Procurement of Goods and Services from Facilities where Persons with Disabilities Work.

<sup>69</sup> Japan Federation of Labor and Social Security Attorney’s Associations, [Working Conditions Review in public contracts](#).

<sup>70</sup> “About consideration for human rights in public procurement” (Decision by the Inter-Ministerial Committee on the Implementation of Japan’s National Action Plan on Business and Human Rights on 3 April 2023)

<sup>71</sup> Bidding explanation documents are documents prepared in practice for the purpose of explaining procedures of specific bidding opportunities.

Trade Commission is responsible for policies around competition in public procurement processes under the Subcontract Act. The Cabinet has been working on improving reasonableness and efficiency of public procurement, under the Administrative Reform Task Force.

Each Ministry/ agency has internal rules and approaches to procurement in addition to general governance mechanisms. Under the Public Accounting Act (and other relevant laws) the head of each ministry/ agency is responsible for the management of procurement activities of that ministry/agency's administrative jurisdiction. Actual execution of the procurement function is conducted through the Contract Officers of the ministries and agencies.

Ministries and agencies have their own internal control systems and self-monitoring mechanisms, under which adequacy of the Contract Officers' procurement activities are controlled and monitored by other officers, while the laws also provide the Ministry of Finance and Board of Audit with certain (but limited) oversight powers over other ministries and agencies in order to ensure adequate budget implementation.

#### **Central Purchasing Bodies (CPBs)**

- The OECD Recommendation on Public Procurement recommends that Adherents<sup>72</sup> develop and use tools to improve procurement procedures, reduce duplication and achieve greater value for money, including centralized purchasing (Part VII, Item (iii)).
- According to OECD, centralization of procurement activities and aggregation of needs are observed across an overwhelming majority of OECD countries. Japan and Netherlands are only countries which do not have a central procurement body among the OECD countries.<sup>73</sup>

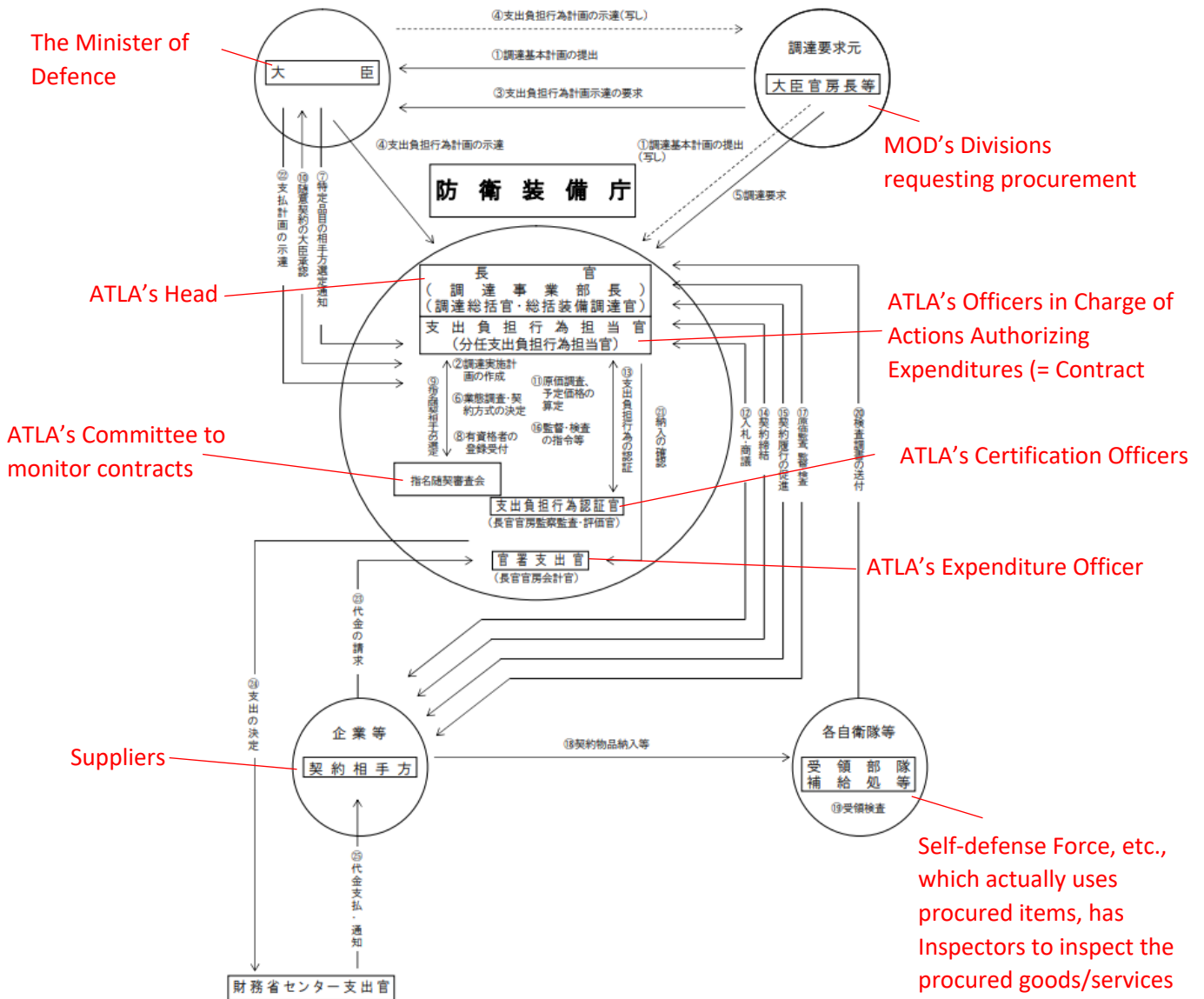
#### 4.2. Individual ministry/agency approaches

Under the Public Accounting Act, the Heads of each of the ministries and agencies are responsible for its actions authorizing expenditures to the extent that the subject matter is within the ministry/agency's administrative jurisdiction. However, actual implementation of procurement activities are conducted by the Contract Officers of the ministries and agencies. Detailed procedures necessary for the actions authorizing expenditures are set out in various laws including the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting, the Ministry of Finance's Order on Treatment of Actions Authorizing Expenditures and the Ministry of Finance's Order on Treatment of Contract Works. However, specific approaches of executing, controlling and monitoring procurement activities in each ministry or agency are regulated under the relevant internal rules of the ministry or agency. For example, in the case of Ministry of Health, Labour and Welfare, the approaches, including which positions shall be the Contract Officers, are regulated under the Rules for Treatment of Accounting Works Within Administrative Jurisdiction of Ministry of Health, Labour and Welfare. As an example of these structures, the Acquisition, Technology & Logistics Agency (the ATLA, under the Ministry of Défense) describes its approach as shown in the following flowchart.

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<sup>72</sup> Japan is an OECD Member country, and therefore one of the Adherents as defined in the Recommendation. The Recommendation is comprised of detailed recommendations based on the following 15 principles: transparency, integrity, access, balance, participation, efficiency, e-procurement, capacity, evaluation, risk management, accountability and integration. Centralized purchasing is recommended under the principle of efficiency.

<sup>73</sup> OECD, [Reforming Public Procurement : Progress in Implementing the 2015 OECD Recommendation](#).



### 2.2.1. Execution mechanism and internal control

Heads of ministries and agencies (e.g. the Ministers) in the central government are responsible for managing administration in connection with actions authorizing expenditures (e.g. contracts which result in expenditures of the central government).<sup>74</sup> The Heads may delegate the administrative affairs to the officers either in their own ministries and agencies<sup>75</sup> or in other ministries and agencies.<sup>76</sup> The Heads or the delegates are referred to as “**Officers in charge of Actions Authorizing Expenditures,**” and their works can be shared by multiple officers.<sup>77</sup> For example, in the Ministry of Health, Labour and Welfare, the works are assigned to and shared by multiple officers in the following manner.<sup>78</sup>

<sup>74</sup> Article 10 of the Public Accounting Act; Article 34-2 of the Public Finance Act.

<sup>75</sup> Article 13, Paragraph 1 of the Public Accounting Act.

<sup>76</sup> Article 13, Paragraph 2 of the Public Accounting Act.

<sup>77</sup> Article 13, Paragraph 3 of the Public Accounting Act.

<sup>78</sup> Annex 2 to the Rules for Treatment of Accounting Works Within Administrative Jurisdiction of the Ministry of Health, Labour and Welfare.

Listing out Officers in Charge of Actions Authorizing Expenditures

Listing out acting Officers in Charge of Actions Authorizing Expenditures

Listing out officers who share job with Officers in Charge of Actions Authorizing Expenditures

Listing out job descriptions

部署	支出実行行為担当官	支出実行行為担当官代理	分担支出実行行為担当官	分担支出実行行為担当官代理	責任者の範囲	
本部	大臣官房長官	官房長	大臣官房総務課長	官房長	一般計出予算及び国庫債発行行為並びに東日本大震災復興特別会計出予算及び国庫債発行行為のうち、他の支出実行行為及び分担支出実行行為の所管に属するもの以外の経費の支出実行行為に関する事務	
	大臣官房地方課長	官房長	大臣官房総務課長	官房長	一般計出予算及び東日本大震災復興特別会計出予算のうち、国庫債発行に必要となる物品の中央調達等に係る経費の支出実行行為に関する事務	
	大臣官房地方課長	官房長	大臣官房総務課長	官房長	一般計出予算のうち、国庫債発行に必要となる経費（以下「委託費等」という。）の支出実行行為に関する事務	
	大臣官房総務課長	官房長	大臣官房総務課長	官房長	一般計出予算及び東日本大震災復興特別会計出予算のうち、大臣官房関係の委託費、補助金、奨励金、交付金、補助金、特別支出金、貸付金、貸付金及び貸付金（以下「委託費等」という。）の支出実行行為に関する事務	
	大臣官房衛生科学課長	官房長	大臣官房衛生科学課長	官房長	一般計出予算のうち、東日本大震災復興特別会計出予算及び国庫債発行に用いる出予算のうち、国庫債発行に必要となる経費（以下「委託費等」という。）の支出実行行為に関する事務	
	医務局長	医務局長	医務局長	医務局長	一般計出予算及び国庫債発行行為並びに東日本大震災復興特別会計出予算及び国庫債発行行為のうち、国庫債発行に必要となる経費の支出実行行為に関する事務	
	健康局長	健康局長	健康局長	健康局長	一般計出予算及び国庫債発行行為並びに東日本大震災復興特別会計出予算及び国庫債発行行為のうち、国庫債発行に必要となる経費の支出実行行為に関する事務	
	医務・生活衛生部長	医務・生活衛生部長	医務・生活衛生部長	医務・生活衛生部長	一般計出予算及び東日本大震災復興特別会計出予算のうち、医務・生活衛生関係の委託費等（生活衛生、食品安全監視、食の安全確保、食品監視検査、食の安全確保、生活衛生課及び水産課に係るものを含む。）の支出実行行為に関する事務	
	生活衛生・食品安全監視官	生活衛生・食品安全監視官	生活衛生・食品安全監視官	生活衛生・食品安全監視官	一般計出予算及び東日本大震災復興特別会計出予算のうち、医務・生活衛生関係の委託費等に併せて、生活衛生・食品安全監視、食品監視検査、食品監視検査、食の安全確保、生活衛生課及び水産課に係るものを含む。）の支出実行行為に関する事務	
	労働基準局長	労働基準局長	労働基準局長	労働基準局長	一般計出予算及び東日本大震災復興特別会計出予算のうち、労働関係の委託費等の支出実行行為に関する事務	
	労働基準局労務管理課長	労働基準局労務管理課長	労働基準局労務管理課長	労働基準局労務管理課長	労働基準局労務管理課長	労働基準局労務管理課長
	労働基準局労働保護課長	労働基準局労働保護課長	労働基準局労働保護課長	労働基準局労働保護課長	労働基準局労働保護課長	労働基準局労働保護課長
	職業安全局長	職業安全局長	職業安全局長	職業安全局長	一般計出予算及び東日本大震災復興特別会計出予算のうち、職業安全関係の委託費等の支出実行行為に関する事務	
	職業安全局労働保護課長	職業安全局労働保護課長	職業安全局労働保護課長	職業安全局労働保護課長	職業安全局労働保護課長	職業安全局労働保護課長
	雇用環境・均等局長	雇用環境・均等局長	雇用環境・均等局長	雇用環境・均等局長	一般計出予算及び東日本大震災復興特別会計出予算のうち、雇用環境・均等関係の委託費等の支出実行行為に関する事務	
	子ども家庭局長	子ども家庭局長	子ども家庭局長	子ども家庭局長	一般計出予算及び東日本大震災復興特別会計出予算のうち、子ども家庭関係の委託費等の支出実行行為に関する事務	
	子ども家庭局長	子ども家庭局長	子ども家庭局長	子ども家庭局長	一般計出予算及び東日本大震災復興特別会計出予算のうち、子ども家庭関係の委託費等の支出実行行為に関する事務	
	社会・福祉局長	社会・福祉局長	社会・福祉局長	社会・福祉局長	一般計出予算及び東日本大震災復興特別会計出予算のうち、社会・福祉関係の委託費等の支出実行行為に関する事務	
	社会・福祉局障害保健福祉課長	社会・福祉局障害保健福祉課長	社会・福祉局障害保健福祉課長	社会・福祉局障害保健福祉課長	社会・福祉局障害保健福祉課長	社会・福祉局障害保健福祉課長
	老健局長	老健局長	老健局長	老健局長	一般計出予算及び東日本大震災復興特別会計出予算のうち、老健関係の委託費等の支出実行行為に関する事務	
	保険局長	保険局長	保険局長	保険局長	一般計出予算及び東日本大震災復興特別会計出予算のうち、保険関係の委託費等の支出実行行為に関する事務	
	保険局高齢者健康課長	保険局高齢者健康課長	保険局高齢者健康課長	保険局高齢者健康課長	保険局高齢者健康課長	保険局高齢者健康課長
	年金局長	年金局長	年金局長	年金局長	一般計出予算及び東日本大震災復興特別会計出予算のうち、年金関係の委託費等の支出実行行為に関する事務	
	年金局年金給付課長	年金局年金給付課長	年金局年金給付課長	年金局年金給付課長	年金局年金給付課長	年金局年金給付課長
	人件課長	人件課長	人件課長	人件課長	一般計出予算及び東日本大震災復興特別会計出予算のうち、人件関係の委託費等の支出実行行為に関する事務	
	医務課長(総合医務担当)	医務課長(総合医務担当)	医務課長(総合医務担当)	医務課長(総合医務担当)	一般計出予算及び東日本大震災復興特別会計出予算のうち、医務課長(総合医務担当)関係の委託費等の支出実行行為に関する事務	
	医務課長(総合医務担当)	医務課長(総合医務担当)	医務課長(総合医務担当)	医務課長(総合医務担当)	一般計出予算及び東日本大震災復興特別会計出予算のうち、医務課長(総合医務担当)関係の委託費等の支出実行行為に関する事務	

The Officers in charge of Actions Authorizing Expenditures shall obtain confirmation from the Expenditure Officer (i.e. the Heads or the officers who are delegated this particular task<sup>79</sup>) every time they take actions authorizing expenditures.<sup>80</sup> For example, in the Ministry of Health, Labour and Welfare, the following officers are delegated as the **Expenditure Officers**.<sup>81</sup>

79 Article 24 of the Public Accounting Act.  
80 Article 13-2 of the Public Accounting Act.  
81 Annex 4 to the Rules for Treatment of Accounting Works Within Administrative Jurisdiction of the Ministry of Health, Labour and Welfare.

部局	官署支出官	官署支出官代理	委任事務の範囲
本省	大臣官房会計課長	官房長	一般会計歳出予算及び日本大震災復興特別会計歳出予算のうち、他の官署支出官の所掌に属するもの以外の経費の支出の決定の事務
	労働基準局長	労働基準局総務課長	労働保険特別会計(雇用勘定を除く。)歳出予算のうち、厚生労働本省内部部局及び都道府県労働局における経費(国有資産所在市町村交付金に限る。)の支出の決定の事務
	職業安定局長	職業安定局総務課長	労働保険特別会計(雇用勘定を除く。)歳出予算のうち、厚生労働本省内部部局及び都道府県労働局における経費(国有資産所在市町村交付金に限る。)の支出の決定並びに日本大震災復興特別会計歳出予算のうち、独立行政法人高齢・障害・求職者雇用支援機構及び職業安定局雇用保険課が管理する土地におけるもの及び当該土地の除染業務に係る予算決算及び会計令(昭和三十九年政令第10号)第4条第1項第1号に規定する歳出金の支出に関する事務であって、支出の決定に関する事務及び当該歳出金の全額に亘る返済に係る債権の管理に関する事務
	子ども家庭局長	子ども家庭局総務課長	年定特別会計の子ども・子育て支援勘定(子ども・子育て支援法第9条第1項第1号に掲げる者から徴収する拠出金並びに平成22年度子ども手当支給法第20条第1項及び平成23年度子ども手当支給特別措置法第5条第1項、第3項及び第5項の規定により適用される児童手当法の一部を改正する法律の規定によりなおその効力を有するものとされた同法第5条の規定による改正前の児童手当法第20条第1項第1号に掲げる者から徴収する拠出金に係る部分を除く。)歳出予算のうち、子ども子育て期における経費の支出の決定の事務
	保険局長	保険局総務課長	年定特別会計の健康勘定歳出予算(健康保険法第5条第2項及び同法第123条第2項の規定により厚生労働大臣が行う保険料の徴収及び日雇拠出金の徴収並びにこれらに付帯する業務並びに船員保険法第4条第2項の規定により厚生労働大臣が行う保険料の徴収及びこれらに付帯する業務に係る部分を除く。)及び業務勘定歳出予算のうち、特別保健福祉事業に係る経費の支出の決定の事務
年金局事業企画課長	年金管理審議官	年定特別会計(健康勘定)においては健康保険法第5条第2項及び同法第123条第2項の規定により厚生労働大臣が行う保険料の徴収及び日雇拠出金の徴収並びにこれらに付帯する業務並びに船員保険法第4条第2項の規定により厚生労働大臣が行う保険料の徴収及びこれらに付帯する業務に係る部分に限り、子ども・子育て支援勘定においては子ども・子育て支援法第9条第1項第1号に掲げる者から徴収する拠出金並びに平成22年度子ども手当支給法第20条第1項及び平成23年度子ども手当支給特別措置法第5条第1項、第3項及び第5項の規定により適用される児童手当法の一部を改正する法律の規定によりなおその効力を有するものとされた同法第5条の規定による改正前の児童手当法第20条第1項第1号に掲げる者から徴収する拠出金に係る部分に限り、業務勘定においては特別保健福祉事業に係るものを除く。以下この表において同じ。)歳出予算のうち、年金局における経費の支出の決定の事務	

Listing out Expenditure Officers

Listing out acting Expenditure Officers

Listing out job descriptions

Additionally, the Heads may assign the officers either in their own ministries and agencies or in other ministries and agencies to certify all or a part of the actions authorizing expenditures, when they think it necessary in order to ensure adequate implementation of the national budget.<sup>82</sup> Those officers are referred to as the Certification Officers. The confirmation by the Expenditure Officers is exempted when the certification by the Certification Officers is made. For example, in the Ministry of Health, Labour and Welfare, the following officers are delegated as the **Certification Officers**.<sup>83</sup>

Listing out Certification Officers

部局	支出負担行為認証官	支出負担行為認証官代理	委任事務の範囲
本省	大臣官房会計課長	官房長	一般会計歳出予算及び国庫債務負担行為並びに日本大震災復興特別会計歳出予算及び国庫債務負担行為のうち、補助金、負担金、交付金(国有資産所在市町村交付金、独立行政法人通則法(平成11年法律第103号)第46条の規定に基づく交付金及び年金生活者支援給付金の支給に関する法律第26条第2項の規定に基づき、日本年金機構に交付する交付金を除く。)、補助金、特別交付金、貸付金、出資金、補助金等に係る予算の執行の適正化に関する法律施行令(昭和60年政令第25号)第2条に掲げる給付金及び別に定める委託費(以下「補助金等」という。)であって、他の支出負担行為認証官の所掌に属するもの以外の経費の支出負担行為の認証の事務
	労働基準局長	労働基準局総務課長	労働保険特別会計(雇用勘定を除く。)歳出予算及び国庫債務負担行為のうち、補助金等の支出負担行為の認証の事務
	職業安定局長	職業安定局総務課長	労働保険特別会計(雇用勘定を除く。)歳出予算及び国庫債務負担行為のうち、補助金等の支出負担行為の認証の事務
	子ども家庭局長	子ども家庭局総務課長	年定特別会計の子ども・子育て支援勘定歳出予算のうち、交付金の支出負担行為の認証の事務
	保険局長	保険局総務課長	年定特別会計の健康勘定歳出予算に係る経費の支出負担行為の認証の事務及び業務勘定歳出予算のうち、特別保健福祉事業補助の支出負担行為の認証の事務

Listing out acting Certification Officers

Listing out job descriptions

In addition to the management of administration in connection with actions authorizing expenditures, the Heads are responsible for managing administration in connection with contracts. The Heads may delegate the administrative affairs to the officers either in their own ministries and agencies or in other ministries and agencies.<sup>84</sup> The Heads or the delegates are referred to as **“Officers in charge of Contracts,”** and their works can be shared by multiple officers.<sup>85</sup> For example, in the Ministry of Health, Labour and Welfare, the following officers are delegated as the Officers in charge of Contracts.<sup>86</sup>

<sup>82</sup> Article 13-2 of the Public Accounting Act.

<sup>83</sup> Annex 3 to the Rules for Treatment of Accounting Works Within Administrative Jurisdiction of the Ministry of Health, Labour and Welfare.

<sup>84</sup> Article 29-2, Paragraphs 1 and 2 of the Public Accounting Act.

<sup>85</sup> Article 29-2, Paragraph 3 of the Public Accounting Act.

<sup>86</sup> Annex 6 to the Rules for Treatment of Accounting Works Within Administrative Jurisdiction of the Ministry of Health, Labour and Welfare.

部局	契約担当官	契約担当官代理	分任契約担当官	分任契約担当官代理	委任事務の範囲
本省	大臣官房会計課長	審務長			一般会計及び東日本大震災復興特別会計に係るものであって、他の契約担当官若しくは分任契約担当官の所掌するもの以外の契約（支出負担行為を除く。以下この表において同じ。）に関する事務
			健康局結核感染症課長		一般会計に係るものであって、医薬品買上費により取得した医薬品で本省内部部局に属するもの契約に関する事務
			医薬・生活衛生局監視指導・麻薬対策課長		一般会計に係るものであって、あへん購入費により取得した本省内部部局に属するあへんの契約に関する事務
			職業安定局労働市場センター業務室長	職業安定局労働市場センター業務室長補佐で職務を担当するもの	一般会計及び東日本大震災復興特別会計に係るものであって、職業安定局労働市場センター業務室における契約に関する事務
			労働基準局労働管理課長	労働基準局労働管理課長補佐で職務を担当するもの	労働保険特別会計労働勘定に係るものであって、本省内部部局における契約（分任契約担当官の所掌するものを除く。）に関する事務
	労働基準局労働保険徴収課長	労働基準局労働保険徴収課長補佐で職務を担当するもの			労働保険特別会計労働勘定に係るものであって、労働基準局労働保険業務課における契約に関する事務
			労働基準局労働保険業務課長補佐で職務を担当するもの	労働保険特別会計労働勘定に係るものであって、労働基準局労働保険業務課における契約に関する事務	
	職業安定局雇用保険課長	職業安定局雇用保険課長補佐で職務を担当するもの			労働保険特別会計徴収勘定に係るものであって、本省内部部局における契約（分任契約担当官の所掌するものを除く。）に関する事務
			労働基準局労働保険徴収課長補佐で職務を担当するもの	労働保険特別会計徴収勘定に係るものであって、労働基準局労働保険徴収課労働保険徴収業務室における契約に関する事務	
	職業安定局労働市場センター業務室長	職業安定局労働市場センター業務室長補佐で職務を担当するもの			労働保険特別会計雇用勘定に係るものであって、厚生労働本省内部部局における契約（分任契約担当官の所掌するものを除く。）に関する事務
職業安定局労働市場センター業務室長			職業安定局労働市場センター業務室長補佐で職務を担当するもの	労働保険特別会計雇用勘定に係るものであって、職業安定局労働市場センター業務室における契約に関する事務	
年金事業企画課長	年金管理審議官			年金特別会計に係るものであって、他の契約担当官の所掌するもの以外の契約に関する事務	

Listing out Officers in charge of Contract

Listing out acting Officers in charge of Contract

Listing out acting officers who share job with Officers in charge of Contract

Listing out officers who share job with Officers in charge of Contract

Listing out job descriptions

As shown in the table above, actions authorizing expenditures are excluded from contracts administrated by the Officers in charge of Contracts of the Ministry of Health, Labour and Welfare. Therefore, under this arrangement, the Officers in charge of Actions Authorizing Expenditures deal with contracts for public procurement, while the Officers in charge of Contracts deal with other type of contracts under which the central government does not incur any expenditure (such as contracts to sell or lease out goods). Having said that, under the Public Accounting Act, they are collectively referred to as “**Contract Officers**” and subject to the same procedural regulations when they execute contracts.<sup>87</sup>

Contract Officers have four options when they execute contracts:

- (i) price competition type open tender, where any businesses can participate and the bidder who offered the lowest price will win;<sup>88</sup>
- (ii) (comprehensive evaluation type open tender, where any businesses can participate and bidder who offered the most favourable terms for the government (not only price but also other conditions are evaluated comprehensively) will win;<sup>89</sup>
- (iii) selective tender, where only designated businesses can participate<sup>90</sup> and
- (iv) private contract, where no bidding process is conducted.<sup>91</sup>

Option (i) is the basic principle under the Public Accounting Act, and the other options are allowed only in the exceptional cases specified under the law respectively as described in Section 1 of this document. There are statutory procedures for each of the options, and contracts are officially executed when the Contract Officers and the other parties to the contracts affix their names and seals on the contracts.<sup>92</sup>

Inspection of the procured goods or services shall be conducted by the Contract Officers, officers who are requested by the Contract Officers to support the inspection works, or officers who are requested by the Head of the ministry or agency (or officers who are delegated by the Head) to conduct the inspection (collectively, “Inspectors”). The Inspectors shall conduct inspection to confirm the completion of the provision of the goods or services in accordance with the contents of the contracts.<sup>93</sup>

87 Article 29-3, Paragraphs 1, etc. of the Public Accounting Act.  
88 Article 29-3, Paragraph 1 and Article 29-6, Paragraph 1 of the Public Accounting Act.  
89 Article 29-3, Paragraph 1 and Article 29-6, Paragraph 2 of the Public Accounting Act.  
90 Article 29-3, Paragraph 3 and 5 of the Public Accounting Act.  
91 Article 29-3, Paragraph 4 and 5 of the Public Accounting Act.  
92 Article 29-8, Paragraph 2 of the Public Accounting Act.  
93 Article 20 of the Ministry of Finance’s Order on Treatment of Contract Works.



#### 4.2.2. Self-monitoring mechanism

In addition to the aforementioned execution and internal control mechanisms, the following self-monitoring mechanisms are in place at each ministry/agency level:<sup>94</sup>

(a) Internal Audit (Accounting Audit)

Based on the relevant internal rules, each ministry or agency conducts its internal audit (or accounting audit), the scope of which includes procurement procedures.<sup>95</sup>

(b) Contract Oversight Committee

Based on the decision of Liaison Conference of Relevant Ministries and Agencies on Rationalization of Public Procurement on 2 November 2007, each ministry or agency has established its Contract Oversight Committee, which comprises of external experts and periodically discusses contracting practices of the ministry or agency. The discussion minutes are disclosed in public, though the discussions in the Committee focus on economic aspects such as whether or not the ministry/agency procured the specific goods/services for reasonable prices, making sure there was no fraudulent accounting, etc.

(c) Administration Review

Based on the decision of the Cabinet on 5 April 2013,<sup>96</sup> each ministry or agency autonomously conducts its own Administration Review, which aims to evaluate effectiveness of its operations by checking how the allocated budgets are used in each fiscal year. Reviewers may involve external experts, and the review results are disclosed in public. As the public procurement is one of the ways to use its budget, the review scope includes procurement practices of the ministry or agency.

#### 4.3. The Ministry of Finance (and the Minister of Finance)

Although each of the ministries and agencies is responsible for managing procurement processes to the extent that the subject matter is within its administrative jurisdiction, the Ministry of Finance, or the Minister of Finance, has certain authorities to supervise the other ministries and agencies as well as to set standards from the perspective of ensuring adequate budget implementation.

##### 4.3.1. Supervision of budget implementation

In the aforementioned processes of procurement in each of the ministries and agencies, the Expenditure Officers are required to notify the Centre Expenditure Officers upon the decision of the expenditures<sup>97</sup>. The Centre Expenditure Officers are officers in the Ministry of Finance designated by the Minister of Finance, regardless of which ministry or agency is procuring the goods or services<sup>98</sup>. Upon the notification from the Expenditure Officers, the Centre Expenditure Officers shall issue a check, transfer

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<sup>94</sup> The Japanese Institute of Certified Public Accountants, *supra*, Page 13.

<sup>95</sup> For example, in the Ministry of Health, Labour and Welfare, the Minister may assign the internal audit task to officers belonging to the Ministry (Article 34 of the Rules for Treatment of Accounting Works Within Administrative Jurisdiction of the Ministry of Health, Labour and Welfare).

<sup>96</sup> Cabinet decision, [About Implementation of the Administration Review](#), 5 April 2013.

<sup>97</sup> Article 42-2 of the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting.

<sup>98</sup> Article 1, Item 3 and Article 40, Paragraph 1, Item 2 of the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting.

request or payment instruction after confirming that the decision of the payment is within the limit set by the relevant Head of the ministry or agency<sup>99</sup>.

Under the Public Accounting Act, in order to ensure adequate implementation of national budget, the Minister of Finance is entitled to: (i) request each ministry or agency that it report on actual or expected expenditures; (ii) conduct on-site audits at each ministry or agency on status of its budget implementation; and (iii) if necessary and upon the decision of the Cabinet, give each ministry or agency a necessary instruction regarding its budget implementation.<sup>100</sup> Also, in order to ensure adequate implementation of national budget, the Minister of Finance may, or may assign the Head of the relevant ministry or agency to, conduct audits on or request reports from contractors from which the central government procures goods or services.<sup>101</sup>

In addition, there are some circumstances where prior consultation with the Minister of Finance is needed. The Contract Officers of each ministry or agency needs to consult with the Minister of Finance before choosing the aforementioned contracting option of comprehensive evaluation type open tender – except for barter contracts, which can be executed by comprehensive evaluation type open tender without performing the prior consultation.<sup>102</sup> Similarly, each ministry or agency needs to provide information and consult with the Minister of Finance (and Secretariat of the Administrative Reform Task Force – to be also addressed below) before considering usage of public procurement for accessory policy, in order to ensure harmony with the principles of public procurement such as economical efficiency and fairness.<sup>103</sup>

#### 4.3.2. Standard-setting

##### (a) Standard Contract Form

The Minister of Finance may, when necessary, set out a standard contract form. Once the standard form is established, Contract Officers in each ministry or agency must follow it when they draft contracts with third parties.<sup>104</sup>

##### (b) Guidelines for Internal Audit (Accounting Audit)

Although those internal audits are conducted based on each ministry's or agency's own policy and processes, the Ministry of Finance issued the Guideline for Enhancing and Strengthening Internal Audit (Accounting Audit) in 2015, and recommends the other ministries and agencies to use the Guidelines as a reference for improving their own policies and processes of internal audits.

##### (c) Study group on public accounting system

In 2018 and 2019, the Ministry of Finance hosted a series of study sessions to discuss the public accounting system with external experts.<sup>105</sup> Specifically, the issues around using public procurement for accessory policy, among other topics, were discussed. As an output, the study group published a discussion paper on those topics. In the paper, from the position as a ministry in charge of the Public Accounting Act,

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<sup>99</sup> Article 41, Paragraphs 2 and 4, and Article 43, Paragraph 3 of the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting.

<sup>100</sup> Article 46, Paragraph 1 of the Public Accounting Act.

<sup>101</sup> Article 46, Paragraph 2 of the Public Accounting Act.

<sup>102</sup> Article 91 of the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting.

<sup>103</sup> Administrative Reform Committee, [Strengthening improvement of public procurement](#), 26 January 2015, Page 13.

<sup>104</sup> Article 12 of the Ministry of Finance's Order on Treatment of Contract Works.

<sup>105</sup> The meeting minutes are disclosed on the Ministry's [website](#).

the Ministry of Finance presented its negative view on utilizing public procurement for realization of certain administrative goals due to the concern that the principles of public procurement such as economical efficiency and fairness may not be ensured.

#### 4.4. Board of Audit

The Board of Audit, which is independent from any ministries and agencies, conducts audits on, among others, monthly expenditures of the central government,<sup>106</sup> including public procurement. The audits are conducted from the perspectives of accuracy, regularity, economy, efficiency, effectiveness, and from other perspectives necessary for auditing.<sup>107</sup>

#### 4.5. The Ministry of Internal Affairs and Communications

Regarding the provision of public services, the Ministry of Internal Affairs and Communications is responsible for realizing quality and affordable public services through the utilisation of bidding processes involving both public and private entities. Under the Law on System Reform in Public Services Introducing Competition, the Committee for Supervision of Public-Private Bidding was established in the Ministry.

#### 4.6. The Ministry of Land, Infrastructure, Transport and Tourism

The Ministry of Land, Infrastructure, Transport and Tourism is responsible for the Law on Encouraging Optimization of Bidding and Contracting for Public Construction. The Law was enacted for the purpose of ensuring people's trust on public construction and healthy development of the construction sector which engages in public construction<sup>108</sup>. Under the Law, Heads of the ministries and agencies shall notify the Minister of Land, Infrastructure, Transport and Tourism (or relevant local governors) of any suspected violations of certain provisions of the Law on Construction by their contractors<sup>109</sup>. Also, the Minister of Land, Infrastructure, Transport and Tourism is, together with the Minister of Finance and the Minister of Internal Affairs and Communications, responsible for creating and publishing Guidelines for Measures to Optimize Bidding and Contracting of Public Construction<sup>110</sup>.

#### 4.7. Fair Trade Commission

The Fair Trade Commission has worked on ensuring competitiveness in public procurement from the perspective of competition policy. For example, in 2022, the Commission published the result of Survey on Public Procurement for Information Systems, which was conducted in order to understand the actual situation of information systems procurement by the central and local governments with the aim of improving the environment where diverse system vendors can participate in the process. Another example is the fact-finding survey on actions by ministries and agencies for preventing collusive bidding at the initiatives of government officials.<sup>111</sup> However, those surveys do not mention human rights.

Also, under the abovementioned Law on Encouraging Optimization of Bidding and Contracting for Public Construction, Heads of the ministries and agencies shall notify the Fair Trade Commission of any suspected violations of certain provisions of Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.

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<sup>106</sup> Article 22, Item 1 of the [Board of Audit Act](#).

<sup>107</sup> Article 20, Paragraph 3 of the Board of Audit Act.

<sup>108</sup> Article 1 of the Law on Encouraging Optimization of Bidding and Contracting for Public Construction.

<sup>109</sup> Article 11 of the Law on Encouraging Optimization of Bidding and Contracting for Public Construction.

<sup>110</sup> Article 17 of the Law on Encouraging Optimization of Bidding and Contracting for Public Construction.

<sup>111</sup> <https://www.iftc.go.jp/houdou/pressrelease/cyosa/cyosa-tyoutatsu/index.html>

#### 4.8. Administrative Reform Task Force (and Administrative Reform Committee)

In 2013, the Cabinet decided to establish the Administrative Reform Task Force in order to realize reasonable and efficient administration. The Task Force is chaired by the Prime Minister and comprised of all ministers. The Task Force issued a decision called "Promoting actions for improvement of public procurement," under which:

- (1) Each ministry or agency is required to prepare and disclose annual reports on its public procurement improvement plan;
- (2) Each ministry or agency is required to conduct and disclose its self-assessment on the implementation status of its own public procurement improvement plan;
- (3) Each ministry or agency is required to establish its system to improve its procurement by consulting with external experts; and
- (4) The Administrative Reform Committee, which was established under the Task Force, is required to check the results of the self-assessments of the ministries and agencies, and, when necessary, to give comments or advice to the ministries and agencies in order to share and standardize the know-hows of public procurement improvement.

In addition, as explained above, each ministry or agency needs to provide information and consult with Secretariat of the Administrative Reform Task Force (and the Minister of Finance) before considering usage of public procurement for accessory policy.

### 5. Complaint Process

#### 5.1. Each ministry / agency: Complaint-handling Procedures

Under the Law on Promoting Optimization of Bidding and Contracting of Public Construction, the Cabinet issued its Guidelines for Measures to Optimize Bidding and Contracting of Public Construction in order to ensure public's trust in public constructions and healthy development of the construction sector. The Guidelines were revised in 2006 to request that the Heads of the ministries and agencies establish complaint-handling procedures to deal with complaints regarding their bidding and contracting processes. Based on the Guidelines, some complaint-handling procedures have been established. For example, the Ministry of the Environment manages its complaint-handling procedures specifically for those who are suspended from participation in bidding.<sup>112</sup> However complaints regarding human rights abuses are not included in the four types of complaint which are explicitly addressed under the Guidelines: complaints regarding failure to satisfy requisite qualifications for participation in open tenders; complaints regarding failure to be designated in selective tender; complaints regarding reasons for failure to win the comprehensive evaluation type open tender; and complaints regarding suspension of designation.<sup>113</sup>

#### 5.2. Cabinet Office: Government Procurement Challenge System

The Cabinet Office provides secretariat support for the Government Procurement Challenge System, which is a complaint-handling mechanism regarding the government's procurement of goods and services. Under the System, specific complaints regarding government procurement of goods and services are handled. The system was launched in response to the WTO Agreement on Government Procurement, which includes items regarding the deployment of a complaint review system for procurement procedure complaints and

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<sup>112</sup> The Ministry of the Environment, [Issuance of the Guidance for Complaint-handling Procedures regarding Suspension of Designation](#).

<sup>113</sup> Guidelines for Measures to Optimize Bidding and Contracting of Public Construction , II.2.(2)

other matters.<sup>114</sup> By using the system, claimants may file complaints regarding specific instances of individual public procurement by the central government that violate the WTO Agreement on Government Procurement and/or other international agreements and measures that apply to public procurement.<sup>115</sup> The system is **not** designed for handling complaints regarding human rights abuses, as the grounds for complaints are violation of the WTO Agreement on Government Procurement and/or other international agreements and measures that apply to public procurement. According to the Cabinet Office website, as of December 2023, 23 cases have been received and addressed by the System but none of them relate to human rights abuses.<sup>116</sup>

The Council on the Government Procurement Review, chaired by the Cabinet Office Vice-Minister and composed of vice-ministers and other representatives from individual related ministries, is responsible for establishment of the complaint-handling mechanism. The Government Procurement Review Board, which takes and reviews complaints, is comprised of experts in the field of public procurement. The Government Procurement Review Board Subcommittee is established under the Board. The system receives complaints regarding public procurement performed by the central government entities and other government-affiliated entities such as special public corporations.<sup>117</sup> Complaints can be filed with the Government Procurement Review Board, whose executive office is located in the Cabinet Government Procurement Review Office.<sup>118</sup> In order to file complaints, a Government Procurement Complaint Form must be submitted either in person or by postal mail.<sup>119</sup> Complaints can be filed by any person participating or qualified to participate in government procurement.<sup>120</sup> Also, parties with a specific individual interest in the procurement generating the complaint (those parties should also be persons participating or qualified to participate in the government procurement) may participate in the complaint review procedure.<sup>121</sup>

If the Board concludes that measures defined in government procurement agreement, etc. have not been implemented in the procurement, it will create a written proposal together with a report. As a general rule, the procuring entity must comply with the proposal issued by the Board in response to the complaint.<sup>122</sup>

### 5.3. The Ministry of Foreign Affairs: National Contact Point

Japan's National Contact Point for Responsible Business Conduct (NCP) is mandated to handle specific instances as a non-judicial grievance mechanism of the government. The NCP is established at the OECD Division, Economic Affairs Bureau, the Ministry of Foreign Affairs.<sup>123</sup> As the OECD Guidelines cover human rights elements, the NCP may receive and handle complaints regarding human rights violations in the supply chain of the government, but the mechanism itself is **not** specifically designed to receive complaints related to public procurement. According to the Ministry of Foreign Affairs, the NCP has dealt

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<sup>114</sup> Cabinet Office, [Government Procurement Challenge System](#), 1(2)

<sup>115</sup> Cabinet Office, [Government Procurement Challenge System](#), 2(1)

<sup>116</sup> Cabinet Office, [Public Release of Status of Receipt and Review of Complaints](#)

<sup>117</sup> Cabinet Office, [CHANS:The Government Procurement Challenge System](#), Government procurement scope.

<sup>118</sup> Cabinet Office, [CHANS:The Government Procurement Challenge System](#), Where to file complaints.

<sup>119</sup> Cabinet Office, [CHANS:The Government Procurement Challenge System](#), How to file complaints.

<sup>120</sup> Cabinet Office, [CHANS:The Government Procurement Challenge System](#), Complainants

<sup>121</sup> Cabinet Office, [CHANS:The Government Procurement Challenge System](#), Participants

<sup>122</sup> Cabinet Office, [CHANS:The Government Procurement Challenge System](#), Overview of the Government Procurement Complaint Procedure

<sup>123</sup> The Ministry of Foreign Affairs, [OECD Guidelines for Multinational Enterprises](#), National Contact Points (NCPs)

with 10 cases (this is the number of cases which were closed). The NCP has been criticized for not satisfying some of the requirements under the OECD Procedural Guidance for NCPs.<sup>124</sup>

#### 5.4. The Fair Trade Commission: Subcontract Act Consultation Desk

The Subcontract Act aims to ensure that transactions between main subcontracting entrepreneurs and subcontractors are fair and, at the same time, to protect the interests of the subcontractors.<sup>125</sup> The Fair Trade Commission is responsible for the Subcontract Act, and the Commission provides consultation service for the inquiries from subcontractors.<sup>126</sup> Since the inquiries may include situations where main contractors of the central government impose an excessive burden regarding human rights due diligence on their subcontractors (which may be violations of the Act<sup>127</sup>) as mentioned by the Japanese Guidelines on Respecting Human Rights in Responsible Supply Chains, the Consultation Desk may handle complaints regarding human rights issues in the supply chain of the government. However, the mechanism itself is **not** designed specifically for handling complaints regarding human rights abuses.

#### 5.5. The Ministry of Justice: Human Rights Counselling

The Human Rights Bureau of the Ministry of Justice offers a multi-language human rights counselling in-person, via telephone and internet. Based on the counselling, the Bureau may provide supports for victims to find solutions by conciliation, instruction and recommendation to violators, or advice and referrals to specialized agencies that can provide legal services.<sup>128</sup> The counselling may concern human rights abuses in the supply chain of the central government. However, the mechanism itself is **not** designed specifically for handling complaints regarding public procurement, but complaints related to human rights due diligence could be made by workers in state supply chains.

#### 5.6 The Ministry of Health, Labour and Welfare: Labour-related hotlines

The Ministry of Health, Labour and Welfare provides various hotlines for consulting labour-related issues such as working conditions, workplace health and safety, and harassment. Those hotlines are also available in 13 foreign languages, and may deal with migrant workers' rights<sup>129</sup>. However, the mechanism itself is **not** designed specifically for handling complaints regarding public procurement, and covers workers' rights only.

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<sup>124</sup> OECD Watch, [NCP Japan](#).

<sup>125</sup> Japan Fair Trade Commission, [The Subcontract Act](#).

<sup>126</sup> Japan Fair Trade Commission, [Consultation Desk](#) (in Japanese).

<sup>127</sup> The Inter-Ministerial Committee on Policy Promotion for the Implementation of Japan's National Action Plan on Business and Human Rights, [Guidelines on Respecting Human Rights in Responsible Supply Chains](#), Page 14.

<sup>128</sup> The Ministry of Justice, [Information on Human Rights Counseling in Foreign Languages](#).

<sup>129</sup> The Ministry of Health, Labor and Welfare, [Counseling Services and Hotlines in Foreign Languages](#).

## 6. Guidance and Support

The *Guidelines for Public Procurement and Governmental Grants to Promote Women's Active Engagement* provide that procurers may consider, in addition to the usage of comprehensive evaluation type open tender as well as private contract, awareness-raising programs for corporations which promote work-life-balance, etc. about the ways to know procurement opportunities<sup>130</sup> as well as asking companies to understand importance of promoting women's active engagement in the opportunities of bidding, etc. on the assumption that the relevant actions do not affect the selection of suppliers.<sup>131</sup>

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<sup>130</sup> Section 2, Item 2(1) of the Guidelines for Public Procurement and Governmental Grants to Promote Women's Active Engagement.

<sup>131</sup> Section 2, Item 4 of the Guidelines for Public Procurement and Governmental Grants to Promote Women's Active Engagement.