



Asia Pacific Projects Update

TOKYO 2020 OLYMPICS UPDATE PART 2 - PROCUREMENT

This article was authored by David Nancarrow (Partner, Perth), Koji Ishikawa (Partner, Tokyo) Alyson Eather (Senior Associate, Perth) and Celeste Koravos (Associate, Melbourne and Tokyo). David and Celeste are qualified civil engineers with industry experience on large infrastructure projects.

KEY CONTACTS

Koji Ishikawa

Partner - Tokyo, Japan
Corporate
T +8 13455 02825
koji.ishikawa@dlapiper.com

David Nancarrow

Partner - Perth, Australia
Finance & Projects
T +61 8 6467 6028
david.nancarrow@dlapiper.com

BACKGROUND

Tokyo will host the Games of the XXXII Olympiad from 25 July - 9 August 2020, and the Paralympic Games from 25 August - 6 September 2020.

According to Jacques Rogge, former President of the International Olympic Committee ("IOC"), Tokyo's Bid invited IOC's members to "discover tomorrow" "by delivering a well-organised and safe Games that will reinforce the Olympic values while demonstrating the benefits of sport to a new generation". Contributing factors to Tokyo's successful bid included Japan's operational excellence, ability to deliver, comparatively modest development plans and the rejuvenation of Japan's economy through Abenomics.

DLA Piper's Tokyo 2020 Olympics Updates will cover various hot topics in relation to the Games, including new

developments and legal issues. Part 1 covered infrastructure opportunities in relation to the Games.¹

This Part 2 provides an overview of the procurement process and what Japan is likely to expect from tenderers from commercial, compliance and cultural perspectives.

Now is the perfect time to get set for Tokyo 2020. Japan is a unique and delightful business partner. Having emerged in the Asia-Pacific before many of its neighbours, it enjoys a similar economic footing to its Western neighbours and has a rich culture. For further information to realise your business' potential in Japan, access DLA Piper's "Doing Business in Japan" Guide [here](#).

OPPORTUNITIES

It is expected that there will be opportunities for foreign participation in the following projects:

- Competition venues, including 35 refurbished or new competition sites. Permanent works for the main Olympic Stadium are set to commence in October 2015. There may also be post Games construction for the modification of venues to serve communities in the longer term.
- Accommodation, including the Olympic Village Site which will, after the Games, become the Tokyo International Exchange Plaza residential and mix-use development. It is also expected that 6,257 new hotel rooms will be produced.
- Transport upgrades, including 20 km of major urban arterial routes to be widened, one train station to be

expanded and 28 km of motorways and major urban arterial routes to be constructed.

- Casino resorts, if the *Casino Special Law* is passed in the Diet in 2014. Casinos are currently illegal in Japan.

The Tokyo 2020 Bid Committee ("**Bid Committee**") intends that only green energy will be used at the Games facilities and venues, but there is limited information available on this point. It will be interesting to see the interplay between this, the deregulation of Japan's power sector, and the current feed-in-tariff regime for renewable energy projects.

The Games will invite financial investment from the private sector, including:

- most of the budget for the Organising Committee for the Olympic Games ("**OCOG**") budget (with the exclusion of a 50% government contribution to the Paralympic Games operating cost); and
- expenditure for permanent competition and on-competition venues, training venues and infrastructure. The Tokyo Metropolitan Government ("**TMG**") has established a Hosting Reserve fund of USD \$4.5 billion for the construction and upgrade of infrastructure and city owned venues relating to the Games.

There is a breadth of non-infrastructure opportunities for investors. In June 2013 Japan formalised the establishment of "National Strategic Economic Growth Areas" which will see the collaboration of the Japan Government, local government and the private sector to implement projects which will impact Japan's economic growth. Approved sponsorship investment is also essential for the wellbeing of the Games.

PROCUREMENT

Tender process

Foreign companies can participate in the tender process if they have been approved under the *Construction Business Act*².

The TMG, Japan Sport Council, Nippon Budokan and one "private body" will manage the planning, design, tendering and construction of competition venues for the various permanent works.

These responsible bodies will be assisted by the Olympic Venues Department in the Tokyo OCOG, which will provide requirements for venues, participate in tender reviews, review design concepts, monitor progress and facilitate reporting to the IOC. It will also coordinate the planning, design, tendering and management of construction and post Games removal of overlays.

The bidding process will be implemented by the TMG, in accordance with the World Trade Organisation Agreement on Government Procurement ("**Agreement**")³ and the Government's existing contracting procedures.

Foreign companies should note that under the Agreement, the use of measures to encourage local development or improve the balance-of-payment accounts by means of domestic content, licensing of technology, investment requirements or otherwise is explicitly prohibited as a criteria for awarding contracts (Article XVI). In fact, the stated purpose of the Agreement is to ensure that government procurement is more transparent and that domestic products or suppliers are not favoured.

According to the Bid Committee, the three main phases of the tendering process will be:

- 1 Public announcement: the Tokyo OCOG and the TMG will publish the project name and other tendering conditions via the Internet and other sources.
- 2 Receipt of applications: interested parties will submit applications to participate in the tender process. A review process will be conducted, and there will be a public announcement of a short-list of approved bidders. Note that under the Agreement, tenderers will generally be granted at least 40 days to do so (Article XI.2 (a)).
- 3 Receipt of tenders and selection process: approved bidders will submit their tender to the Tokyo OCOG or the TMG. The tenders will be evaluated from a technical, environmental and financial perspective, and the "best value" bidder selected.

Project delivery expectations

Based on publicly available information regarding proposed Games projects, we expect that tenderers will need to demonstrate the following design, construction and operation parameters:

- Timely delivery, including compliance with the Bid Committee's construction schedule in order to allow conduct of planned pre-Olympic test events. The Bid Committee notes that the punctuality of Japanese construction projects is widely known throughout the world and all venue work should be completed well within schedule. Land has been secured for every venue. Progress will be strictly managed by a detailed schedule for each project.
- Capability in earthquake-resistant design. Japan has the world's strictest earthquake-resistance building standards.
- Reduction in environmental impact, with the Games aiming to be carbon-neutral, including completion of

an environmental impact assessment based on the Tokyo Metropolitan Environmental Impact Assessment Ordinance⁴. All venues or facilities will be required to comply with the TMG Green Building Program and Comprehensive Assessment System for Building Environmental Efficiency.

- Compliance with urban development standards, including the CASBEE Urban Development Standard⁵ for the Olympic and Paralympic Village and relevant elements of the LEED Neighbourhood Development Standard⁶.
- Superior accessibility including compliance with the *Law for Improving Easily Accessible Transportation and Facilities for the Elderly and Disabled*.
- Alignment with the applicable principles in Tokyo's Vision 2020, including achieving a sophisticated disaster-resistant city, demonstrating Tokyo's safety to the world, creating a low-carbon and "smart grid" society, building a network of water and greenery corridors, increasing mobility in public spaces and creating a society where everyone can enjoy sports.
- Consideration of the heritage status of many of the relevant sites. Road cycling events, for example, will commence at the sacred Imperial Palace Gardens which border the home of the Emperor.
- Adoption of "Secured by Design" principles during early design phases to reduce venue vulnerability and create a combination of robust natural and built barriers to reinforce efficient access and zone control.
- Integrated waste management through the reduction of waste, re-use and recycling in order to achieve a "zero-waste" outcome.

There will be nine temporary venues constructed for the Games, which includes those traditionally expected to be dismantled (such as for archery and beach volleyball) and others which will require significant dismantling works (such as the 12,000 seat Olympic Gymnastics Centre). Tenderers seeking involvement in temporary facilities will need to design and build around principles of innovation, sustainable development and high standards of sport delivery. Rented materials must be used where possible, and temporary and recyclable materials will be donated for facilities such as schools after the Games.

Tenderers will of course need to consider safety and security, as with any major international sporting event. However it is interesting to note the TMG, in collaboration with national government agencies, has assessed relevant risks as having a "very low" to "low" chance of impacting the Games, including fire, intrusion into Olympic facilities, civil disobedience, crime,

telecommunication risks, traffic, earthquakes and tsunamis, air disasters and major traffic accidents.

Foreign participants in the Games should be aware that they may come under the jurisdiction of various Japanese laws, and may need to demonstrate awareness of or compliance with the following:

- Contract law: the Bid Committee has confirmed that all contracts in Japan must be executed according to the Japan *Civil Code*. It has not yet specified whether the language of the contracts will be English or Japanese.
- Building law: Article 7 of the *Construction Business Act* sets out the requirements for obtaining a licence for 28 categories of construction work. Requirements include having an experienced employee as a responsible person for management and operation, assigning a full-time engineer and financial stability. These licences are valid for five years.
- Environmental law: participants in the construction industry may need to comply with pollution related laws including the *Air Pollution Control Act*, the *Water Pollution Control Act*, the *Noise Regulation Act*, the *Vibration Regulation Act* and the *Offensive Odor Control Act*. There are also various laws and regulations aimed at creating a "recycling society" such as the *Act on the Promotion of Effective Utilization of Resources*, which cover the appropriate disposal of waste and recycling.
- Corporate law: there is no express requirement in the *Civil Code* for foreign entities to establish a local presence in Japan in order to execute a contract. However there may be some activities which foreign entities cannot perform unless they establish a local presence in Japan. For example, the *Construction Business Act* assumes that a person operating a construction business will have an established office. There are three main choices for corporate formation in Japan, being joint-stock companies (called kabushiki kaisha or KK), limited liability companies (called godo kaisha or GK) and registered branch offices.
- Taxation law: historically, special measures concerning taxes have been implemented in relation to international sporting events in Japan. The Japanese tax system is mainly constituted by income and asset tax. The Japanese Corporations tax will apply to KKs and GKs on income generated domestically and abroad, and foreign sourced income (unless Japan has entered into a Double Taxation Treaty with the relevant jurisdiction such that tax exemptions or a lower tax rate apply). Japan has entered into Double Taxation Treaties with over 60 jurisdictions, including

Singapore, Korea, Hong Kong, the PRC, Australia and the USA. A branch office will only be subject to the Japanese Corporations Tax for income generated in Japan.

- Employment law: foreign nationals in Japan will generally be subject to regular Japanese employment law. The Japanese construction industry is short of new workers, and it is anticipated that foreign labour may be required for Games infrastructure projects.
- Immigration law: foreign nationals who enter Japan generally need a valid passport and a visa issued by a Japanese embassy or consulate outside of Japan (with some exceptions for temporary visitation purposes). Upon entry into Japan, foreign nationals will be granted an appropriate "status of residence" setting out the terms of that individual's ability to work and live in Japan. Separate requirements apply for those who carry and Olympic Identity and Accreditation Card under Rule 52 of the Olympic Charter⁷. These holders are exempt from visa requirements and will be granted a status of residence for entry and stay in Japan, from one month before and after the Games. It is also expected that immigration procedures at airports will be streamlined for visitors, with increased numbers of immigration officers and the installation of automatic processing gates.

Finally, tenderers should demonstrate skills which are generally appreciated in the Japan building and construction industry, including the use of innovation to reduce construction times, competitive pricing due to high construction costs, clear and prompt communications and a focus on building long-term relationships.

CONCLUSION

The next few years will offer exciting opportunities for doing business with Japan. We look forward to the formal release of invitations to tender by the OCOG and the TMG after the formation of the OCOG.

Tenderers will benefit from familiarisation with Japan's project delivery expectations, regulatory environment and values, to best position themselves to reap long-term financial and strategic benefits in Japan and from the Games.

DLA Piper's Tokyo office can provide local expertise on Japan's regulatory framework. If you would like further information please contact Koji Ishikawa or David Nancarrow. DLA Piper supplied legal services to the Olympic Delivery Authority for the London 2012 Games.

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¹ A copy of the Part 1 publication is available [here](#).

² A copy of the Act is available [here](#).

³ A copy of the Agreement is available [here](#).

⁴ Further information is available [here](#).

⁵ English language versions of CASBEE tools are available [here](#).

⁶ Further information is available [here](#).

⁷ A copy of the Olympic Charter is available [here](#).