

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Government Procurement

ARTICLE IX:6(b) NEGOTIATIONS
STUDY OF CERTAIN TYPES OF SERVICE CONTRACTS

ARCHITECTURAL AND CONSULTING ENGINEERING SERVICES

On the clear understanding that the fact that studies were launched did not prejudice the position of any delegations in the negotiations nor the rôle of the secretariat in the area of services, the Committee agreed at its meeting on 11-12 April 1984 to carry out initial pilot studies in the areas of: (i) architectural and consulting engineering services and (ii) insurance services. A questionnaire was agreed upon as well as the target date of 15 September 1984 for submission of contributions from Parties to the secretariat. The rôle of the latter would essentially be to put together information supplied by delegations (GPR/M/11, Annex I).

At the meeting on 14-15 November 1984 it was agreed to revert to questions relating to service contracts at the next meeting on the basis of the secretariat's study (GPR/M/14, paragraph 26).

The present working document compiles contributions from Canada, Finland, Norway, Sweden, Switzerland and the United States in response to the questionnaire relating to architectural and consulting engineering. Addenda will be issued to take account of further contributions from the Parties.

I. COMMERCIAL IMPLICATIONS FOR CODE COVERAGE OF THE SERVICE

A. Definition of the service sector

CANADA

The Canadian Government purchases Engineering services covering the following categories:

Architectural services
Engineering Consultants (construction)
Engineering Consultants (other)
Engineering services (NES)

SWEDEN

One entity (National Road Administration) has indicated difficulties concerning the procurement of consulting services on the whole because they are not specified, as such, in the book-keeping.

With respect to architectural services, one entity (National Board of Public Building) has noted that such procurement is incorporated in so-called group-contracts and that it is difficult to distinguish one sector from another. The Royal Civil Defense Board has generally no difficulties in referring procurements to different sectors. Architectural and consulting engineering services, however, are closely integrated and may not be clearly identifiable separately. Two non-covered entities (National Testing Institute and State Power Board) also refer to the difficulty in drawing a line between these two types of services. According to the Civil Aviation Administration it is not always easy to distinguish consulting engineering services from data services.

SWITZERLAND

Project studies, preparation of plans and general estimates, supervision of project implementation with co-ordination of activities, establishment of final accounts and documentation for completed work order, including architectural and engineering services (civil engineer and heating, ventilation, sanitary, air-conditioning, cooling and electrical engineers), including work of surveyors, geologists and consulting engineers in the building sectors (including technical installations), civil engineering and hydraulic engineering in the broad sense of the term.

UNITED STATES

Engineering, Architectural and Surveying Services are part of the United States architectural, engineering and construction industry. Services may be for new projects or for the alteration or repair of existing buildings or facilities and may be grouped into several basic categories:

- residential buildings
- non-residential buildings (offices, stores, hospitals)
- utility facilities (transmission lines, power plants)
- transportation facilities (roads, bridges, airports)
- public works facilities (water and sewer systems)
- industrial plants (refineries, processing facilities, manufacturing facilities), and
- other miscellaneous projects (e.g. mining).

As part of the overall process, architects and engineers work together to develop conceptual designs, feasibility studies, and project plans; engineers of appropriate disciplines, such as civil, mechanical and electrical, develop detailed project designs and engineering specifications. Except for site selection, layout (surveying) and foundation testing, the design phase is usually performed offsite.

While design firms may participate only in the design phase of the project, many firms also offer management services (selection and supervision of contractors on the behalf of project owners, to including scheduling, approval of design changes, inspection of completed work, etc.). Design services typically account for 8-14 per cent of the cost of most major projects.

The Standard Industrial Classification (SIC) system, often used by government and private-sector data collection organizations, categorizes design services as indicated below:

SIC 891: Engineering, Architectural and Surveying Services
(includes establishments primarily performing service of a professional nature in the fields of engineering, architecture and land surveying.)

The American Institute of Architects, in conjunction with the American Consulting Engineers Council, has submitted extensive comments to the Technical Committee on Industrial Classification which suggests subdivisions for architectural, engineering and surveying services.

B. Current number and value of procurement contracts by signatory governments of the service

CANADA

Information on the number of contract awards is not available. The value of purchases by covered entities (except by the Canada Post Corporation) for financial year 1982-83 was \$107,759,438.

FINLAND

(1983 figures)

Number of contracts: 1200
Average annual value: FMK130-140 million

NORWAY

(1983 figures)

National Road Services	13,719,000 SDR
Postal Services Administration	231,000 SDR
State Hospital	108,000 SDR
University of Oslo	63,000 SDR
Norwegian Broadcasting Corporation	1,154,000 SDR
University of Bergen	91,000 SDR
University of Tromsø	51,000 SDR
National Civil Aviation Administration	<u>1,567,000 SDR</u>
Total	16,984,000 SDR

In Norway the functions of administering constructions of government-owned buildings as well as procuring consulting engineering services, belongs to a government entity not covered by the Agreement - the

Directorate of Public Constructions and Property. Except National Road Services and the Defence entities, which lie outside the scope of the aforementioned directorate, the figures above show only the expenses carried by the entities themselves. These include more specialized design and engineering services, like rebuilding and installation and application of machinery and technical equipment.

With regard to the defence entities, procurement of architectural and engineering services not in accordance with the exemptions of Article VIII, did not take place in 1983.

SWEDEN

(1983 figures) Values in SEK thousand:

Code-covered entities	Architectural Services		Consulting Engineering	
	Number	Value	Number	Value
Board of Public Building	648 ¹	75,000 ¹	648 ¹	75,000 ¹
Civil Defence Board	8	245	139	17,594
Prison and Probation Administration	50	1,100	140	1,700
Civil Aviation Administration	1	66	161	76,800
Post Office Administration	n.a.	750	0	23,500
Police Board	5	150	6	968
Defence Material Administration	n.a.	n.a.	n.a.	307,000
Medical Board of the Armed Forces	n.a.	n.a.	7	350
Administration of Shipping and Navigation	n.a.	n.a.	20	690
Road Administration	0	0	200	50,000
	<u>712</u>	<u>77,311</u>	<u>1,321</u>	<u>553,602</u>
<u>Other entities</u>				
Board of Customs	10	600	23	3,450
State Railways	68	2,736	160	15,370
Telecommunications Administration	42	2,503	150	6,006
State Power Board ¹	11,154 ²	195,178 ²	n.a.	n.a.
Environmental Protection Board	0	0	21	1,720
National Testing Institute	0	0	1	10
Board for the Equipment of Swedish Universities	0	0	15	235
	<u>11,274</u>	<u>201,017</u>	<u>378</u>	<u>26,791</u>
TOTAL	<u>11,986¹</u>	<u>278,328¹</u>	<u>1,699</u>	<u>580,393</u>

Apart from those mentioned in the table, two additional Code-covered entities (National Board of Forestry and National Industrial Board) made no purchases of architectural services in 1983; data on such services were not available from the remaining nine Code-covered entities.

¹The figures are divided equally between the two service categories.

²Includes consulting engineering services.

Apart from those mentioned in the table, five additional Code-covered entities (National Tax Board, National Industrial Board, Central Bureau of Statistics, Agency for Administrative Development and National Road Safety Office) did not procure consulting engineering services in 1983; data were not available from the remaining six Code-covered entities.

Three non-covered entities (National Computer Center for Administrative Data Processing, National Bacteriological Laboratory and the Geological Survey) had made no purchases of either service category.

SWITZERLAND

Entities covered by the Agreement have awarded some 300 to 500 contracts of a total of approximately Sw F. 120 million annually.

UNITED STATES

1982 USG Procurement of A-E Services	US\$1.347 billion
1983 US Export billings	US\$1.2 billion
1983 US Import billings	US\$0.074 billion

II. QUESTIONS REGARDING THE PROCUREMENT OF THIS SERVICE BY GOVERNMENT ENTITIES:

- A. What are the procedures used to procure the service, including the criteria used in evaluating and choosing bids, e.g. reliability, price, quality, etc.?

CANADA

The General policy which applies to all federal government contracting is contained in chapters 310 and 312 of the Treasury Board Administrative Policy Manual. For consulting and professional services (includes architectural and consulting engineering services), this policy is amplified and interpreted in chapter 315 of the Manual.

FINLAND

Finnish entities mainly choose the supplier through single tendering provided with necessary negotiations where supplier's professional qualifications, capacity, ability for co-operation, previous experience and pricing are proved. To some extent also open or selected procedures are used.

SWEDEN

Architectural services: All six Code-covered entities mentioned in the table used negotiated tender. Of the four non-covered entities, the Telecommunications Administration used this procedure to the extent of 40 per cent, direct procurement and straight tender accounting for the remaining 40 and 20 per cent, respectively; the State Railways used only

¹Open for inspection in the GATT secretariat.

direct procurement, the Board of Customs only straight tender and the State Power Board's procurement of architectural services took place under a framework agreement.

Consulting engineering: Eight of the ten Code-covered entities listed above used negotiated tender. The Civil Defense Board used direct procurement. Information is not available in respect of the Board of Public Building. The Medical Board of the Armed Forces also used direct procurement, as did the Shipping and Navigation Administration (in eight of twenty cases); the latter agency also used the straight tender procedure (once). Concerning non-Code-covered entities information is lacking for one (National Testing Institute). The State Power Board used framework agreements. The five other non-covered entities all used negotiated procurement; one (Telecommunications) also had direct procurement and another (Board of Customs) also straight tender procurement.

SWITZERLAND

Criteria used for choosing bids: contracts are awarded to architectural and engineering firms on the basis of the principles of free competition. The decisive criterion for choice is, in general, qualification, according to which the chosen firm is the one considered best qualified to furnish the services required. The decisive criteria include the following: professional experience, reliability, capacity, creativity, sense of profitability and economy.

The relative importance of these criteria depends on the type of contract.

The region concerned, as well as proportionate diversification of competing firms, are also taken into account as secondary criteria.

Procedures: selection is made either on the basis of a competition or by direct invitation to one or more firms (free contract award).

Competition: generally for medium-sized or major construction projects, particularly in the building sector. The competition is in respect of ideas, projects (whether public or by invitation), study projects from various competitors, or competitive bids.

Contract award: for less important contracts or those covering only incomplete services, as well as projects covered by military secrecy.

UNITED STATES

The first step in USG procurement of architectural and/or engineering services is in the publication of a notice describing the intended procurement in the Commerce Business Daily (CBD). Any firm wishing to prequalify in response to the notice must submit two forms (Form 254 and 255) which contain background information on the firm's financial status, past experience, professional capability, etc.

For each architectural/engineering contract published in the CBD, a committee of government experts, usually including USG architects and engineers, is formed to review all of the proposals. Under the Brooks Act

these proposals are evaluated on strictly technical merit and not on project price proposals. For some contracts the Committee may interview selected companies as part of the evaluation process. The evaluation criteria applied for A-E contracts are:

1. Location of firm
2. Specialized experience
3. Professional capabilities
4. Capacity to do the work.

The Committee presents its recommendations, including a ranking of a short list of the responsive firms, to the selecting officer for the contract. In principle, the selecting officer can disagree with the Committee's ranking but must justify such a change in ranking in writing. In practice, this does not occur often. The selecting officer begins negotiations with the top firm selected by the selecting officer. If negotiations are not successful with this firm, negotiations begin with the firm the selecting officer determines is second ranked, and so on.

B. In the procurement of this service by governments, are there problems in defining the origin?

CANADA

Rules of origin for goods do not apply to purchases of services. Residence of the supplier would appear to be appropriate in defining the origin.

FINLAND

There have not been any problems in defining the origin.

SWEDEN

Two of the entities reported to have procured architectural services in 1983 (i.e. the Post Office Administration and the non-covered State Power Board) had done so from abroad, the former only to a very small extent and the latter at a value of SEK 8,318,000 (ca. 3 per cent of the total amount). It should be noted, however, that the figures for the latter entity also includes consulting engineering services.

Four entities were known to have procured consulting engineering services from foreign sources in 1983:

Police Board	Total SEK 960,000; Foreign Sourced SEK 16,000
Civil Aviation	Total SEK76,800,000; Foreign Sourced SEK 1,000
Post Office	Total SEK23,500,000; "to a very small extent"
Environmental Protection Board (non-covered)	Total SEK 1,720,000; Foreign Sourced SEK 2,000

In general, and without reference to any particular service category, it has been pointed out that the composition of goods in the procurement by the Defense Materials Administration is such as to reduce the likelihood of foreign consultants being engaged. The Swedish Forest Service (no procurement of these services in 1983) only procures domestically. The same applies to two non-covered entities, i.e. the Telecommunications Administration and the Board for the Equipment of Swedish Universities.

SWITZERLAND

None.

UNITED STATES

Since Architectural-Engineering services do not involve physical products, the rules of origin applied for goods under the Government Procurement Agreement do not apply. Place of registration could be used as a rule of origin.

C. Does the procurement of this service typically involve sub-contracting?

CANADA

Subcontracting is unlikely to be involved in the procurement of architectural or consulting engineering services.

FINLAND

Sub-contracting is usually included in the contracts.

SWEDEN

In the Civil Aviation Administration sub-contractors are engaged relatively frequently in consulting engineering; in the Civil Defense Administration sub-contracting occurs both in architecture and consulting engineering. Of the two non-covered entities for which information is available, one (Board of Customs) may use several sub-contractors in certain consulting engineering services. Another (Telecommunications Administration) never uses sub-contracting in these service areas.

SWITZERLAND

Normally not.

UNITED STATES

Procurement of architectural and engineering services can involve subcontractors. However, primary contractors must identify their subcontractors at the time of bidding. These subcontractors must have appropriate licenses and qualifications. If during the contract period the primary contractor changes subcontractors, the US Government must approve the change.

- D. Are there issues or ambiguities concerning the valuation of the service procurement contract, including, inter alia:
1. Is the procurement of the service in some cases not the purchase of a discrete service, but rather a contract for ongoing, possibly open-ended work?

CANADA

Under Section 2.1 of Chapter 315 of the Treasury Board Administrative Policy Manual, a contract for consulting or professional services "shall not be for indeterminate work or for an indeterminate period".

FINLAND

There have not been any special ambiguities concerning the valuation. The payment is normally done according to definite invoicing with maximal price limits.

SWEDEN

According to two Code-covered entities (Medical Board of the Armed Forces and the Police Board) there are usually no such problems. In one entity (Board of Public Building) ongoing contracts are unusual. One non-covered entity (Telecommunications Administration) never concludes such contracts for architectural and consulting engineering services. This entity indicates, however, that it may sometimes be difficult to estimate the value in advance because the first effort aims, among other things, precisely at establishing such an estimate. Two covered entities (Civil Aviation Administration and Civil Defence Board) have made similar comments on difficulties in estimating the final value due to complexity of the work involved and, respectively, when the services have the character of studies.

SWITZERLAND

The contract covers study and implementation of the relevant work order. It is terminated upon completion and handing-over of the work. There are no open-ended contracts.

UNITED STATES

In some cases the United States Government will award contracts for open-ended work and multi-year contracts referred to as indefinite quantity contracts. In these cases, the government may specify a dollar ceiling for any individual work order and a maximum number of hours that can accumulate under the contract. Before each work order can be completed, however, the contractor must enter into specific negotiations as to the number of hours necessary to complete the work to be carried on.

2. Is the procurement of the service done in some cases through multi-year contracts?

CANADA and the UNITED STATES

See D.1 above.

FINLAND

Some of the projects last more than one year.

SWEDEN

Multi-year contracts are used in cases of feasibility studies and project evaluations, including follow-up during the construction phase (Board of Public Building); and in the case of service of medico-technical equipment (Medical Board of the Armed Forces). The Road Administration usually concludes contracts of up to a year's duration but a multi-year framework may also occur.

One non-covered entity (Board of Customs) may conclude multi-year contracts for certain development work in the area of consulting engineering and cleaning. Another, the State Power Board, has also mentioned architectural services in this respect, noting, however, that such contracts are not frequently used. The Telecommunications Administration does not conclude multi-year contracts concerning these services, except for concrete long-running projects.

Replies from five other covered entities and one non-covered entity appear to indicate that multi-year contracts are unusual or never occur for these types of services.

SWITZERLAND

There are no multi-year contracts as such.

3. Is there ambiguity as to what would be considered the value of the service procurement contract?

CANADA

For consulting and professional services contracts, the value of the contract will be determined by the basis specified in the contract on which a consultant or expert is to be paid. For architectural or engineering services, the basis for payment will generally be a percentage of the estimated or contract cost of the construction work.

FINLAND

No. See reply to question D.1.

SWEDEN

Problems exist or may occur in identifying the service share of contracts involving procurement of products. Six entities have explicitly noted this in connection with this study (Board of Health and Welfare, Defense Material Administration, Civil Aviation Administration, Post Office Administration, Road Administration as well as Board of Customs

¹Reference: Appendix D of the Administrative Policy manual entitled "Fee calculations and basis of payments"/"Calculs des honoraires et base de paiement". The manual is available for inspection in the secretariat.

(non-covered)). Some entities do not consider this a problem in these kinds of services, i.e. Civil Defense Board (service element is very small in such contracts), Board of Forestry (normally separate contracts for services and products), Board of Public Building, Prison and Probation and the non-covered Telecommunications Administration.

SWITZERLAND

There is no ambiguity as to what would be considered the value of the service procurement contract.

UNITED STATES

No.

E. Further characteristics of government procurement of this service, such as:

1. What is the range of typical values of government contracts in this area? Do the bulk of purchases typically exceed a certain value?

CANADA

The value of these contracts typically ranges between \$25,000 and \$250,000 with some contracts valued up to approximately \$2,000,000. The bulk of contracts are valued at below \$100,000.

FINLAND

The range of values in this field is quite large, i.e. it varies from FMK1000 to several millions.

SWEDEN

(Values in SEK thousand) (1983 figures)	<u>Architectural Services</u>		<u>Consulting Engineering</u>	
	Most Contracts Above	Range	Most Contracts Above	Range
<u>Code-covered entities</u>				
Board of Public Building	65% below 50	6 cases above 3,000	(both service types combined)	
Civil Defence Board	20	12-43	50	5-2,660
Prison and Probation Admin.	10	5-100	10	5-100
Post Office Admin.	100	100 and above	100	100-2,000
Police Board	25	15-50	100	16-450
Medical Board of Armed Forces	-	-	15	1-150
Civil Aviation Admin.	-	-	100	10-30,000 (one contract = 30,000)

(Values in SEK thousand) (1983 figures)	<u>Architectural Services</u>		<u>Consulting Engineering</u>	
	Most Contracts Above	Range	Most Contracts Above	Range
Shipping and Navigation Admin.	-	-	30	5-87
Road Administration	-	-	10	1-2,000
<u>Non-covered entities</u>				
Board of Customs	n.a.	10-370	300	10-1,450
State Railways	19	2-710	20	0.3-4,440
Telecommunications Admin.	10	0.3-300	30	1-235
Power Board	n.a.	2-27,000	-	-
Environmental Protection Board	-	-	50	5-420
Board for the Equipment of Swedish Universities	-	-	15	3-100

SWITZERLAND

The range of typical values is very variable depending on the contract coverage and the magnitude of the work order. It can be between a few thousand francs or more than a million francs - more in the case of major projects.

UNITED STATES

The bulk of government contracts are typically above US\$220,000 in value.

2. What is the typical time necessary in the procurement process of this service between invitation to tender and bid deadline?

CANADA

The time period between issuance of Requests for Proposal and closing date varies widely depending on the nature and complexity of the work required.

FINLAND

The typical time which is necessary for the process is four weeks.

SWEDEN

Available data seem to indicate that some entities have their own typical bid-times. The time also seems to vary with the tendering technique used. The normal period is the same for architectural and consulting engineering in the Civil Defense and Police Boards (three weeks), the Civil Aviation Administration (30 days (in one singular purchase of consulting engineering 90 days)), and the Post Office Administration (3-6 weeks). All these procurements were negotiated, apart from direct purchases in the case of consulting engineering services

acquired by the Civil Defence Board. The Power Board practices "framework agreements", where two to four weeks is normal, both for architectural and consulting engineering. In the Telecommunications Administration one week to one month is the normal time for bidding (possibly reflecting the fact that all the three different tendering procedures are used). Negotiated procurement for consulting engineering services requires one to two weeks in the Environmental Protection Board, eight to twelve days in the Administration of Shipping and Navigation (three weeks for straight tenders), two weeks in the Board of Customs (four weeks for straight tenders in both types of services), three weeks in the Board for the Equipment of Swedish Universities, four weeks in the Road Administration and the State Railways (one to two weeks for direct purchases of architectural services), four to six weeks in the Defence Material Administration.

SWITZERLAND

The time necessary between invitation to tender (or the opening of a competition) and award of the contract can vary between one and five to seven years.

UNITED STATES

The time between invitation to tender and the bid deadline can be six months or longer. The average period of time is four months.

F. Are there practices that affect foreign access to government contracts in this service area?

CANADA

When potential sources are being sought, firms that are resident in Canada shall be given first consideration.

FINLAND

There is no special practice which could affect the government contracts but naturally consulting in this field requires that the supplier is familiar with Finnish law, administration and technical regulations.

SWEDEN

Various factors have been mentioned:

- language difficulties (Post Office Administration, Civil Aviation Administration, Testing Institute, Telecommunications Administration, State Railways);
- local conditions, service aspects, including easy geographic availability (Board of Public Building, State Railways, Telecommunications Administration, Civil Aviation Administration);
- secrecy or security requirements (Testing Institute, State Railways, Telecommunications Administration, Police Board (where for certain services the personnel contracted have to be national citizens without police record));

- defence and preparedness interests (Civil Defence Board, Defence Material Administration, Medical Board of the Armed Forces (the latter may, for instance, not procure services abroad when the value amounts to SEK 150,000));
- national standards, regulations, engineering specifications, etc. may differ from international ones or may be unfamiliar to foreign suppliers (Civil Aviation Administration, Administration of Shipping and Navigation, Road Administration);
- price; many small contracts (Telecommunications Administration, National Board of Forestry);
- propriety and patent problems (State Railways);
- qualification requirements concerning suppliers, including in some cases inspection of products and visits of company; tax and credit-worthiness control; qualified Swedish representative in the respective fields of activity (Board for the Equipment of Swedish Universities, Telecommunications Administration, State Railway).

SWITZERLAND

Public competitions for projects to be implemented in Switzerland are generally limited to all or part of the national territory. For competitions by invitation, foreign firms can be included when the nature of the project so warrants. In the case of Swiss diplomatic and consular missions abroad, wherever possible we use the services of firms established in the country concerned, particularly during the implementation phase.

UNITED STATES

The Federal Acquisition Regulation (FAR) requires that, among other criteria, "agencies shall evaluate each potential contractor in terms of its location in the general geographical area of the project and knowledge of the locality of the project; provided, that application of this criterion leaves an appropriate number of qualified firms given the nature and size of the project". Thus, generally, only architect/engineer firms in the geographic area of the project are considered, with exceptions made to accommodate special projects of national significance, sensitivity, or historic value.

The Government also has set-asides for small business. All USG civilian agencies, including the General Services Administration, provide for a class set-aside for small business Architectural-Engineering (A-E) contracts for construction projects estimated to cost not more than US\$2.5 million. The Department of Defense sets aside all A-E defense contracts under US\$85,000 for small businesses. Conversely, all DOD contracts for defense construction greater than US\$85,000 are open. DOD sets aside for small businesses any civilian construction contract where two or more qualified United States small businesses can compete.

For compliance purposes a small A-E business is defined as follows:

gross sales of US\$7.5 million and below for engineering firms; and
gross sales of US\$3.5 million and below for architectural firms.