

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/IC/W/13

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(95-0029)

Interim Committee on Government Procurement

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APPLICATION FOR ACCESSION TO THE AGREEMENT ON GOVERNMENT
PROCUREMENT AND REQUEST FOR OBSERVER STATUS
IN THE INTERIM COMMITTEE

Liechtenstein

The following communication, dated 12 December 1994, has been received from the Head of the Government of the Principality of Liechtenstein with the request that it be circulated to the Signatories to the Agreement on Government Procurement (1994).

I have the honour to inform you that the Government of the Principality of Liechtenstein is interested in acceding to the newly concluded Agreement on Government Procurement (AGP) 1994 and is ready to enter into negotiations with the Signatories to the said Agreement. In order to acquaint itself already at this stage with the new Agreement on Government Procurement and the activities of the Interim Committee on Government Procurement, and especially in view of the negotiations to take place with the Signatories to the Agreement, the Government of the Principality of Liechtenstein would like to ask the members of the Interim Committee on Government Procurement to grant Liechtenstein observer status in the Committee (pursuant to decision GPA/IC/M/1, paragraph 4).

I forward hereby an offer by way of appropriate Appendices as well as an explanation of the current government procurement régime in the Principality of Liechtenstein and I would appreciate it very much if you could kindly circulate this communication and this draft offer for the attention of the Signatories to the Agreement on Government Procurement (AGP) 1994.

MEMORANDUM

The Current Government Procurement Régime in the Principality of Liechtenstein

Since 1992 - following a communication of the Swiss Confederation, dated 12 March 1992 - the Tokyo Round Agreement on Government Procurement applied also to the Principality of Liechtenstein, on the basis of the Customs Union Treaty between the two countries.

Represented by Switzerland, Liechtenstein has participated in the Uruguay Round negotiations and also in those concerning the revision of the government procurement agreement. The entities of Liechtenstein are included in the final Swiss offer on government procurement. Liechtenstein became a contracting party to the GATT on 29 March 1994 and, by signing the Agreement Establishing the World Trade Organization in Marrakesh, has expressed its intention to become a founding member of the WTO. As a consequence of this, Liechtenstein desires to become an independent Party to the new Agreement on Government Procurement as well.

Liechtenstein submits to the Signatories of the Agreement on Government Procurement an entity list, which includes the relevant procurement entities in the areas of goods, services and construction. Annex 1 mentions the Government of the Principality of Liechtenstein. Annex 2 includes the Public Authorities and bodies governed by public law and not having an industrial or commercial character at the local level. Annex 3 contains entities in connection with the production, transport or distribution of drinking water and electricity. It further includes entities providing services to the public in the field of public transport by bus. As Liechtenstein does not have airports or harbours, there are no entities mentioned in these fields.

As far as the same areas of public procurement are concerned, Liechtenstein would like to include entities under the GATT Agreement on Government Procurement that are identical to those under the Agreement on the European Economic Area (EEA). Liechtenstein so far has signed, but not ratified, the EEA Agreement. The Liechtenstein Government wishes to ratify the EEA Agreement as early as possible in 1995.

**ACCESSION OF CONTRACTING PARTIES TO THE NEW GOVERNMENT
PROCUREMENT AGREEMENT, GPA (GPR/M/1, ANNEX 1)**

Offer of the Principality of Liechtenstein

Without prejudice

1. Attached is the conditional offer of the Principality of Liechtenstein in respect of its future accession to the GPA.
2. Having regard to the relevant provisions of the GPA, in particular Articles I and III, the offer includes lists of entities as well as covered services (including construction services) by way of appropriate annexes (Appendix I). As well attached are Appendices II, III and IV which contain the relevant publications.
3. The Principality of Liechtenstein reserves the right to make technical changes to this offer and to correct any errors, omissions or inaccuracies.

The Principality of Liechtenstein is ready to hold consultations with the Parties on the terms of its accession to the Agreement.

APPENDIX I

This Appendix contains five Annexes as well as General Notes and Derogations from Article III of the GPA.

ANNEX 1

*Central Government Entities which Procure in Accordance With
the Provisions of this Agreement*

<i>Supplies</i>	<i>Threshold:</i>	SDR 130,000
<i>Services</i> (specified in Annex 4)	<i>Threshold:</i>	SDR 130,000
<i>Construction services</i> (specified in Annex 5)	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

Government of the Principality of Liechtenstein

Note to Annex 1

The Agreement shall not apply to contracts awarded by contracting authorities in the field of drink water, energy, transport or telecommunications.

ANNEX 2

Sub-Central Entities which Procure in Accordance With the Provisions of this Agreement

<i>Supplies</i>	<i>Threshold:</i>	SDR 200,000
<i>Services</i> (specified in Annex 4)	<i>Threshold:</i>	SDR 200,000
<i>Construction services</i> (specified in Annex 5)	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

1. Public Authorities at local level
2. Bodies governed by public law and not having an industrial or commercial character at the local level.

Note to Annex 2

The Agreement shall not apply to contracts awarded by contracting authorities in connection with activities in the field of drinking water, energy, transport or telecommunications.

ANNEX 3

All Other Entities which Procure in Accordance With the Provisions of this Agreement

<i>Supplies</i>	<i>Threshold:</i>	SDR 400,000
<i>Services</i>	<i>Threshold:</i>	SDR 400,000
<i>Works</i> (specified in Annex 5)	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

The contracting entities which are public authorities¹ or public undertakings² and which have as at least one of their activities any of those referred to below:

1. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or the supply of drinking water to such networks (as specified under title I);

¹Public authorities means the State, regional or local authorities, bodies governed by public law, or associations formed by one or more of such authorities or bodies governed by public law. A body is considered to be governed by public law where it:

- is established for the specific purpose of meeting needs in the general interest, not being of an industrial or commercial nature;
- has legal personality; and
- is financed for the most part by the State, or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law.

²Public undertakings means any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

- hold the majority of the undertaking's subscribed capital; or
- control the majority of the votes attaching to shares issued by the undertaking; or
- can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

2. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such networks (as specified under title II);
3. the operation of fixed networks providing a service to the public in the field of transport by urban railway, automated systems, tramway, trolleybus, bus or cable (as specified under title III);
4. the exploitation of a geographical area for the purpose of the provision of airport or other terminal facilities to carriers by air (as specified under title IV);
5. the exploitation of a geographical area for the purpose of the provision of inland port or other terminal facilities to carriers by sea or inland waterway (as specified under title V).

I. Production, transport or distribution of drinking water

Public authorities and public undertakings producing, transporting and distributing drinking water. Such public authorities and public undertakings are operating under local legislation or under individual agreements based thereupon.

- Gruppenwasserversorgung Liechtensteiner Oberland
- Gruppenwasserversorgung Liechtensteiner Unterland

II. Production, transport or distribution of electricity

Public authorities and public undertakings for the production, transport and distribution of electricity operating on the basis of authorizations for expropriation pursuant to the "Gesetz vom 16. Juni 1947 betreffend die "Liechtensteinischen Kraftwerke" (LKWG)".

- Liechtensteinische Kraftwerke

III. Contracting entities in the field of urban railway, automated systems, tramway, trolley bus, bus or cable services

Liechtensteinische Post-, Telefon- und Telegrafienbetriebe (PTT)

according to "Vertrag vom 9. Januar 1978 zwischen dem Fürstentum Liechtenstein und der Schweizerischen Eidgenossenschaft über die Besorgung der Post- und Fernmeldedienste im Fürstentum Liechtenstein durch die Schweizerischen Post-, Telefon- und Telegrafienbetriebe (PTT).

IV. Contracting entities in the field of airport facilities

None

Notes to Annex 3

This Agreement shall not apply:

1. to contracts which the contracting entity awards for purposes other than the pursuit of their activities as described in this Annex.
2. to contracts awarded for purposes of re-sale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.
3. to contracts for the purchase of water.
4. to contracts of contracting entities other than a public authority exercising the supply of drinking water or electricity to networks which provide a service to the public, if they produce these services by themselves and consume them for the purpose of carrying out other activities than those described under this Annex under I and II and provided that the supply to the public network depends only on the entity's own consumption and does not exceed 30 per cent of the entity's total production of drinking water or energy, having regard to the average for the preceding three years.
5. to contracts for the supply of energy or of fuels for the production of energy.
6. to contracts awarded by contracting entities providing a bus service if other entities are free to offer the same service either in general or in a specific geographical area and under the same conditions.

ANNEX 4

Services

The following services from the services sectoral classification list contained in document MTN.GNS/W/120 are included:

Subject

Maintenance and repair services	6112, 6122, 633, 886
Land transport services, including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304
Air transport services of passengers and freight, except transport of mail	73 (except 7321)
Transport of mail by land, except rail, and by air	71235, 7321
Telecommunications services	752 ³
Financial services	ex 81
(a) Insurance services	812, 814
(b) Banking and investment services ⁴	
Computer and related services	84
Accounting, auditing and bookkeeping services	862
Market research and public opinion polling services	864
Management consulting services and related services	865, 866 ⁵
Architectural services; engineering services and integrated engineering services, urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	867

³Except voice telephony, telex, radiotelephony, paging and satellite services

⁴Except contracts for financial services in connection with the issue, sale, purchase, or transfer of securities or other financial instruments, and central bank services

⁵Except arbitration and conciliation services

Advertising services	871
Building-cleaning services and property management services	874, 82201-82206
Publishing and printing services on a fee or contract basis	88442
Sewage and refuse disposal; sanitation and similar services	94

Notes to Annex 4

The Agreement shall not apply to:

1. service contracts awarded to an entity which is itself a procuring entity listed in Annex 1 or 2 on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision.
2. service contracts which a contracting entity awards to an affiliated undertaking or which are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out an activity within the meaning of Annex 3 or to an undertaking which is affiliated with one of these contracting entities. At least 80 per cent of the average turnover of that undertaking for the preceding three years has to derive from the provision of such services to undertakings with which it is affiliated. Where more than one undertaking affiliated with the contracting entity provides the same service, the total turnover deriving from the provision of services by those undertakings shall be taken into account.
3. contracts for the acquisition or rental, by whatever means, of land, existing buildings, or other immovable property or concerning rights thereon.
4. to contracts of employment.
5. for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time.

ANNEX 5

Construction Services

Definition:

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

List of Division 51, CPC:

General construction work for buildings	512
General construction work for civil engineering	513
Installation and assembly work	514 + 516
Building completion and finishing work	517
Other	511 + 515 + 518

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III

1. The Principality of Liechtenstein will not extend the benefits of this Agreement:

- as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada and the United States of America,
- as regards the award of contracts by entities listed in Annex 3 in the following sectors:
 - water: to the suppliers and service providers of Canada and the United States of America;
 - electricity: to the suppliers and service providers of Canada, Japan and the United States of America;
 - urban transport: to the suppliers and service providers of Canada, Israel, Japan, Korea and the United States of America

until such time as the Principality of Liechtenstein has accepted that the Parties concerned give comparable and effective access for undertakings of the Principality of Liechtenstein to the relevant markets;

- to service providers of Parties which do not include service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.

2. The provisions of Article XX shall not apply to suppliers and service providers of:

- Israel, Japan and Korea in contesting the award of contracts by bodies governed by public law and not having an industrial or commercial character listed in Annex 2, paragraph 2, until such time as the Principality of Liechtenstein accepts that they have completed coverage of sub-central entities;
- Canada, Japan, Korea and the United States of America in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small- or medium-sized enterprises under the relevant provisions of the law of Liechtenstein until such time as the Principality of Liechtenstein accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;
- Israel, Japan and Korea in contesting the award of contracts by entities of the Principality of Liechtenstein, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.

3. Until such time as the Principality of Liechtenstein has accepted that the Parties concerned provide access for suppliers and service providers to their own markets, the Principality of Liechtenstein will not extend the benefits of this Agreement to suppliers and service providers of:

- Canada, as regards procurement of FSC 36, 70 and 74 (special industry machinery; general purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations); office machines, visible record equipment and ADP equipment);
 - Canada, as regards procurement of FSC 58 (communications, protection and coherent radiation equipment) and the United States of America as regards air traffic control equipment;
 - Korea and Israel as regards procurement by entities listed in Annex 3, paragraph (B) as regards procurement of HS Nos 8504, 8535, 8537 and 8544 (electrical transformers, plugs, switches and insulated cables); and for Israel, HS Nos 8501, 8536 and 902830;
 - Canada and the United States of America as regards contracts for good or service components of contracts which, although awarded by an entity covered by this Agreement, are not themselves subject to this Agreement.
4. The Agreement shall not apply to contracts awarded under:
- an international agreement and intended for the joint implementation or exploitation of a project by signatory States;
 - the particular procedure of an international organization.
5. The Agreement shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.
6. The provision of services, including construction services, in the context of procurement procedures according to this Agreement is subject to the conditions and qualifications for market access and national treatment as will be required by the Principality of Liechtenstein in conformity with its commitments under the GATS.

APPENDIX II

**PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION
OF NOTICES OF INTENDED PROCUREMENTS - PARAGRAPH 1
OF ARTICLE IX, AND OF POST-AWARD NOTICES -
PARAGRAPH 1 OF ARTICLE XVIII**

Daily Press: "Liechtensteiner Volksblatt", "Liechtensteiner Vaterland"

APPENDIX III

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION ANNUALLY OF INFORMATION ON PERMANENT LISTS OF QUALIFIED SUPPLIERS IN THE CASE OF SELECTIVE TENDERING PROCEDURES - PARAGRAPH 9 OF ARTICLE IX

Official Journal of the European Communities (after the entry into force of the
EEA Agreement for Liechtenstein)

(Currently no such lists exist)

APPENDIX IV

**PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION OF LAWS,
REGULATIONS, JUDICIAL DECISIONS, ADMINISTRATIVE RULINGS OF GENERAL
APPLICATION AND ANY PROCEDURE REGARDING GOVERNMENT PROCUREMENT
COVERED BY THIS AGREEMENT - PARAGRAPH 1 OF ARTICLE XIX**

Landesgesetzblatt

Liechtensteinische Entscheidsammlung

(Laws, judicial decisions, administrative rulings and procedures regarding government procurement for entities listed in Annexes 2 and 3 of Appendix I are available either through relevant local publications or directly from the listed entities.)