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Special Distribution

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

Committee on Government Procurement

Original: English

IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Supplement

Legislation of Sweden

In accordance with Article IX:4(b) of the Agreement on Government Procurement, the Delegation of Sweden hereby submits an unofficial translation into English of the Swedish Government Procurement Ordinance (SFS 1980:850) incorporating the amendments to the Ordinance (SFS 1983:38 and SFS 1983:846) made since the legislation of Sweden was first circulated in document GPR/3/Add.2 on 11 March 1981. The amendments to the Ordinance are clearly marked in the margin.

A translation of the amended instructions to the Ordinance, as issued by the Swedish National Audit Bureau, will soon be submitted to the secretariat and will then be open for inspection.

Unofficial translation of the Swedish Government
Procurement Ordinance (SFS 1980:850 as amended by
SFS 1983:38 and SFS 1983:846)

General Provisions

Article 1. This Ordinance shall apply to procurements by Government agencies unless the Government directs otherwise. The provisions in Article 16 a, third paragraph, apply also in the procurement by municipal agencies.

In certain cases, procurement is also subject to the Ordinance (1980:849) on the application of the GATT Agreement on Government Procurement.

Article 2. The term "procurement" is taken to cover the purchasing or ordering of goods of building, civil engineering or other works, or of services.

The term "supplier" is taken to cover anyone who provides goods or who performs work or services.

Article 3. When procuring the agency shall take advantage of the opportunities arising from competition and shall, in other respects as well, adhere to commerciality and shall deal objectively with tenders and tenderers.

The agency shall in particular make certain that there is collaboration with other agencies in the interest of the State,

that the possibilities of acquiring technical goods or systems currently not available in the marketplace

are reviewed in connection with procurements of a long range nature

that the requirements as to quality and performance are not set any higher than is necessary in each individual case

that use is made of current standards as regards goods, packaging units and so on, unless there are special reasons for doing otherwise.

The agency shall further ensure

that complete and clear tender documentation is drawn up in the form of descriptions, written programmes, specifications, etc.

that the procurement is so planned as to permit manufacture and delivery to be timed where possible to yield the most advantageous price

that the tenderers are given reasonable time within which to submit their tenders.

Forms of Procurement

Article 4. Procurement shall take the form of straight-tender procurement, negotiated procurement or direct procurement.

Article 5. Straight-tender procurement proceeds by the invitation of tenders and the consideration and acceptance of tenders without any prior negotiation with tenderers.

In the case of any obvious error in writing or in calculation or any other obvious mistake, the agency may permit the tenderer to make a correction. Where special considerations apply, the agency may also request the tenderer to submit such clarifications or additions as may be needed to make his tender comparable with others.

Article 6. Negotiated procurement proceeds by the invitation, consideration and acceptance of tenders, it being permissible in this case for decisions to be preceded by negotiations with tenderers.

Negotiations pursuant to the foregoing paragraph shall be conducted with as many tenderers as is necessary to comply with the requirements in respect of competition, other aspects of commerciality, and objective treatment.

Article 7. Direct procurement proceeds by purchasing or ordering on the open market without any invitation to tender in a prescribed order.

Article 8. In each individual case, the agency shall select that form of procurement that is judged to be appropriate with due consideration to the requirement as to commerciality.

Invitation and Opening of Tenders, etc.

Article 9. Tenders are invited by advertisement or by letter.

In the case of negotiated procurement, however, tenders may be invited on other ways. This does not apply to procurement pursuant to the Ordinance (1980:849) on the application of the GATT Agreement on Government Procurement.

Where tenders are invited by advertising, an advertisement shall be inserted in the Tidning för Leveranser till Staten (Gazette of Government Contracts), a supplement to Post- och Inrikes Tidningar (the Official Gazette), and insofar as this furthers the aim of the advertising, in one or more other newspapers.

Where tenders are invited without advertising, they shall be requested from as many suppliers as necessary with regard to the nature and scope of the proposed procurement and to the possibility of generating adequate competition.

Article 10. The invitation to tender shall state the closing date for submission of tenders and the date up to which tenders are to remain binding. It shall further be stated that tenders must be submitted either by sealed letter or by telecopy, telegram or telex, in which latter cases the contents must be promptly confirmed by the submission of written tender documents.

In the case of negotiated procurement, however, the invitation to tender may state that tenders may be submitted by other means as well. This does not apply to procurement pursuant to the Ordinance (1980:849) on the application of the GATT Agreement on Government Procurement.

The invitation to tender shall also state the regulations and other items of information that pertain to the proposed procurement. The form of procurement must always be stated.

If a tender is invited from a tenderer who is not liable to tax under the Act on Value-Added Tax (1968:430), it shall be stated in the invitation to tender that the tenderer must also indicate the tender amount that he would have quoted if he had been liable to such tax.

Article 11. As soon as possible after the expiry of the closing date for receipt of tenders, tenders shall be opened at a proceeding attended by at least two persons appointed by the agency. Where a tenderer so requests

an impartial person appointed for the purpose by the appropriate chamber of commerce may be present at the proceeding if this can be arranged without charge to the public purse. The tenders shall be entered in a schedule that must be verified by the persons attending the proceeding.

In the case of negotiated procurement, however, tenders may be opened and recorded without such formal proceeding as is described in the foregoing paragraph, being dealt with either all at the same time or - if there are special grounds for so doing - in the order of receipt. The provisions of this paragraph do not apply to procurement pursuant to the Ordinance (1980:849) on the application of the GATT Agreement on Government Procurement.

Tenders submitted in accordance with the second paragraph of Article 10 shall be recorded upon receipt.

Article 12. The Agency shall ensure that tenders, with the pertinent descriptions, models, drawings and samples, along with tender schedules, collations, etc, are kept in a safe place.

Consideration of Tenders

Article 13. Tenders shall be considered within such time that a notification of the acceptance of a tender can be transmitted to the tenderer within the period during which the tender is binding upon the tenderer.

Article 14. Consideration must also be given to tenders submitted by tenderers who have not been specifically asked to do so.

Special regulations apply to procurement pursuant to the Ordinance (1980:849) on the application of the GATT Agreement on Government Procurement.

Article 15. Subject to the provisions of Article 17, the agency shall accept the tender which, having regard to all the commercial circumstances, can be regarded as the most advantageous.

If two or more tenders are on a par with each other, the agency may make its own choice between them or else invite the relevant tenderers to submit differentiating tenders.

If all the tenders quote too high a price, or if they are otherwise disadvantageous, or if there are grounds for not carrying through the procurement, the agency may reject all the tenders.

Article 16. For the purpose of comparison between a tenderer who is liable to tax under the Act on Value-Added Tax (1968:430) and a tenderer who is not so liable, the quotation submitted by the latter tenderer must be calculated so as to include an amount equal to the value-added tax the tenderer would have had to pay if he had been so liable.

Article 16 a. Before a tender is accepted the agency shall, if not unnecessary, make sure with the County Administrative Board and the Local Tax Authority concerned that the tenderer is properly registered as to the account and payment of valueadded tax, retained preliminary income tax and fees on the total amounts of wages. If it is not unnecessary the agency shall also with the Court Order Enforcement Service acquire information on any taxes or public dues for which the tenderer might be in debt.

If the agency decides to engage a tenderer who is indebted with regard to taxes or public dues, the Court Order Enforcement Service shall be informed accordingly. At the request of the Court Order Enforcement Service, the

agency shall also inform about the compensation the tenderer receives for the contract and when such compensation is to be transferred.

The County Administrative Boards, the Local Tax Authorities and the Court Order Enforcement Services are required to submit the requested informations to the agencies in the manner prescribed by the Swedish National Audit Bureau.

Article 17. A tender cannot be accepted;

if it has been submitted by a person who, being employed by a Government agency, is dealing with matters concerning Government procurement or

if the tenderer has not registered for payment of value added tax, retained preliminary income tax or employers fees, although there is an obligation to do so.

It is incumbent upon the agency to decide whether a tender is acceptable;

if it has been submitted by a Government employee other than is stated in the first paragraph of this Article,

if the tenderer, or anyone acting on his behalf, has handed over, promised or offered a gift or other improper benefit in connection with a procurement matter to any civil servant or other person who is concerned in the processing of such a matter on behalf of the State,

if it has come in after the closing date for receipt of tenders and it is obvious that the dealy cannot be blamed on the tenderer, or

if there is reason to believe that competitive tendering has been prevented by a tendering cartel or other agreement concluded between suppliers.

Article 18. The agency shall keep on file a document setting forth the grounds on which a tender has been accepted and recording any other events of significance during the consideration of the tenders.

Article 19. When a tender has been accepted the agency shall notify the tenderer thereof in writing as soon as possible and at the latest within the period for which the tender is binding upon the tenderer. To save time, however, the notification may be effected by other means. In such cases, the notification must be confirmed in writing without delay. If the agency accepts the tender subject to additions, deletions or reservation not provided for in the tender, the agency shall request written confirmation from the tenderer as to whether such additions, deletions or reservations are accepted.

Tenderers whose tenders have not been accepted shall be advised thereof without unreasonable delay.

Special Provisions

Article 20. An agency may grant a supplier a reasonable advance payment if the supplier requested an advance at the time when the tender was submitted. Failing this, the agency may grant the supplier such an advance if there are strong grounds for so doing. In the latter case, however, the supplier shall be liable to pay interest.

The agency shall require security to be pledged and maintained in respect of advances and interest.

The agency may, at its discretion, request security to be pledged covering materials, etc, provided by the agency.

Article 21. The agency may agree with a supplier on a amendment to contract conditions. In so doing, the agency shall take due account of commerciality.

Article 22. The agency may sanction the transfer of the contract by the supplier to a third party if this can be regarded as compatible with the agency's interests.

Article 23. If the agency proposes to conclude a contract on procurement which, from considerations of national security, shall be kept secret, it is incumbent upon the agency to conclude with the supplier a written agreement covering the security provisions that are needed in the individual case. Provisions for the control of personnel in connection with procurement are included in the Ordinance on Control of Personnel (1969:446). When concluding the contract the agency shall comply with the provisions and instructions issued by the National Swedish Police Board in consultation with the Supreme Commander of the Swedish Armed Forces.

The foregoing paragraph is valid in applicable parts when the agency invites tenders for procurement that is covered by the said paragraph.

Any agency which, in the course of its duties, has to conclude contracts that come under the first or second paragraphs of this Article shall appoint an official who, subordinated directly to the head of the agency, will have charge of matters covered by this Article.

Article 24. Decisions on procurement matters in accordance with this Ordinance are final.

Article 25. Instructions governing the application of this Ordinance are issued by the Swedish National Audit Bureau.