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

ARCHITECTURAL AND CONSULTING ENGINEERING SERVICES

Addendum

The present addendum contains a contribution from Japan.

I. COMMERCIAL IMPLICATIONS FOR CODE COVERAGE OF THE SERVICE

A. Definition of the service sector

In Japan, government entities do not maintain any definition for the purpose of the contracts of the architectural and consulting engineering services. However, in some cases where an entity itself carries out a construction industry (business) it concludes a consignment contract with a specialist (including specialized companies) with respect to the plan of the operation (including investigation, planning and drafting), design (including basic design and implementing design), supervision, guiding, advising and so on. Japan submits a report on these service contracts for examination.

B. Current number and value of procurement contracts by signatory government of the service and import and export figures

The amount of the above-mentioned service contracts over the threshold accounted for about ¥ 5 billion in financial year 1983.

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.?

(1) Procuring procedure: An entity generally uses the single tendering procedure since these kinds of service contracts require those suppliers of specific ability, experience and qualification. In rare cases, an entity uses the selective tendering procedure.

(2) Selection standard: Competent officers are required to choose among those qualified bidders, the most economical one within the budget.

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

We believe that it is not appropriate to apply the rules of origin of the Code as it is to the services, as these rules are established for the purpose of determining the origin of products. It is possible to define the origin of the services according to the address or site of activities of the supplying person or enterprise. In Japan, government entities do not maintain any practice to define the origin of services.

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

It depends on the type of business. A contractor can sub-contract a part of the contract if he wishes to do so, provided that he asks the orderer's approval in written note, and the latter agrees on it.

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?

No. Even in cases of multi-year operation contracts, they should be concluded on the single-year basis.

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

In general, no. Contracts are not to be done on the multi-year basis because of the single fiscal-year system of Japan.

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

No.

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

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

In this area, it is difficult to foresee whether or not the value exceeds a certain level, as it depends on the scale of engineering and construction.

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

About two to three weeks under the single tendering procedure.

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

Government entities do not maintain any such practice as to restrict foreign access to government contracts, but the following points should be taken into account:

- (i) Under the national law, only the authorized architects are allowed to design buildings in general or supervise the construction. (However, a certified foreigner as authorized architect can obtain Japanese authorization, provided that the Minister for Construction or the local Governor approve it.)
- (ii) Suppliers of these services are required to have full knowledge of national regulations, Japanese geographical and environmental conditions, mode of living of the people.
- (iii) In view of the importance of mutual understanding between the orderer and the supplier, the problem of language is decisive for foreign companies concerning whether or not they have offices or representatives stationed in Japan.
- (iv) The content of most of the consulting contracts requires such specific ability as expertise, experience and qualifications. Therefore, the supplier's ability, experience and credibility play the most important rôle in the tendering procedure.

At present information in this respect on foreign companies is not satisfactorily available to the government entities.