

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

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**Committee on Government Procurement**

**AGREEMENT ON  
GOVERNMENT PROCUREMENT**

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\*Appendices I through IV are *not* included in this document.

## AGREEMENT ON GOVERNMENT PROCUREMENT

### PREAMBLE

Parties to this Agreement (hereinafter referred to as "Parties"),

*Recognizing* the need for an effective multilateral framework of rights and obligations with respect to laws, regulations, procedures and practices regarding government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade;

*Recognizing* that laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and services and to foreign or domestic suppliers and service providers so as to afford protection to domestic products or services or domestic suppliers or service providers and should not discriminate among foreign products or services or among foreign suppliers or service providers;

*Recognizing* that it is desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement;

*Recognizing* the need to establish international procedures on notification, consultation, surveillance and dispute settlement with a view to ensuring a fair, prompt and effective enforcement of the international provisions on government procurement and to maintain the balance of rights and obligations at the highest possible level;

*Recognizing* the need to take into account the development, financial and trade needs of developing countries, in particular the least-developed countries;

*Desiring*, in accordance with paragraph 6(b) of Article IX of the Agreement on Government Procurement done on 12 April 1979, as amended on 2 February 1987, to broaden and improve the Agreement on the basis of mutual reciprocity and to expand the coverage of the Agreement to include services contracts.

*Desiring* to encourage acceptance of and accession to this Agreement by governments not party to it;

*Having undertaken* further negotiations in pursuance of these objectives;

*Hereby agree* as follows:

*Article I*  
*Scope and Coverage*

1. This Agreement applies to any law, regulation, procedure or practice regarding any procurement by entities<sup>1</sup> covered by this Agreement, as specified in Annexes 1 to 5.<sup>2</sup>
2. This Agreement applies to procurement by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of products and services.
3. Where entities, in the context of procurement covered under this Agreement, require enterprises not included in Annexes 1-5 to award contracts in accordance with particular requirements, Article III shall apply *mutatis mutandis* to such requirements.
4. This Agreement applies to any procurement contract of a value of not less than the thresholds specified in the Annexes.

*Article II*  
*Valuation*

1. The following provisions shall apply in determining the value of contracts<sup>3</sup> for purposes of implementing this Agreement.
2. Valuation shall take into account all forms of remuneration, including any premia, fees, commissions and interest receivable.
3. The selection of the valuation method by the entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Agreement.
4. If an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:
  - (a) the actual value of similar recurring contracts concluded over the previous fiscal year or twelve months adjusted, where possible, for anticipated changes in quantity and value over the subsequent twelve months; or
  - (b) the estimated value of recurring contracts in the fiscal year or twelve months subsequent to the initial contract.

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<sup>1</sup>Throughout this Agreement, the word entities is understood to include agencies.

<sup>2</sup>Annex 1 contains central government entities.  
Annex 2 contains sub-central government entities.  
Annex 3 contains all other entities that procure in accordance with the provisions of this Agreement.  
Annex 4 reflects services, whether listed positively or negatively, covered by this Agreement.  
Annex 5 contains specifications on covered construction services.  
All Annexes include relevant thresholds.

<sup>3</sup>This Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article IX.

5. In cases of contracts for the lease, rental or hire purchase of products or services, or in the case of contracts which do not specify a total price, the basis for valuation shall be:

- (a) in the case of fixed-term contracts, where their term is twelve months or less, the calculation should be based on the total contract value for its duration, or, where their term exceeds twelve months, its total value including the estimated residual value;
- (b) in the case of contracts for an indefinite period, the monthly instalment multiplied by forty-eight;
- (c) if there is any doubt, the second basis of calculation, namely (b), is to be used.

6. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

### *Article III* *National Treatment and Non-Discrimination*

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, the Parties shall provide immediately and unconditionally to the products, services and suppliers and service providers of other Parties offering products or services of the Parties, treatment no less favourable than:

- (a) that accorded to domestic products, services, suppliers and service providers; and
- (b) that accorded to products, services, suppliers and service providers of any other Party.

2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, the Parties shall ensure:

- (a) that their entities shall not treat a locally-established supplier or service provider less favourably than another locally-established supplier or service provider on the basis of degree of foreign affiliation or ownership; and
- (b) that their entities shall not discriminate against locally-established suppliers or service providers on the basis of the country of production of the good or service being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of Article IV.

3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Agreement.



*Article IV  
Rules of Origin*

1. The Parties shall not apply rules of origin to products or services imported for purposes of government procurement covered by this Agreement from other Parties, which are different from the rules of origin applied in the normal course of trade and at the time of importation to imports of the same products or services from the same Parties.
2. Following the conclusion of negotiations in the Uruguay Round regarding harmonization of rules of origin and trade in services, the Parties shall take the results of these negotiations into account in amending the above provisions as appropriate.

*Article V  
Special and Differential Treatment for Developing Countries*

*Objectives*

1. The Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing countries, in particular the least-developed countries, in their need to:
  - (a) safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development;
  - (b) promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy;
  - (c) support industrial units so long as they are wholly or substantially dependent on government procurement; and
  - (d) encourage their economic development through regional or global arrangements among developing countries presented to the Ministerial Conference and not disapproved by it.
2. Consistently with the provisions of this Agreement, the Parties shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of the least-developed countries and of those countries at low stages of economic development.

*Coverage*

3. With a view to ensuring that developing countries are able to adhere to this Agreement on terms consistent with their development, financial and trade needs, the objectives listed in paragraph 1 above shall be duly taken into account in the course of the negotiations with respect to the lists of entities of developing countries to be covered by the provisions of this Agreement. Developed countries, in the preparation of their lists of entities to be covered by the provisions of this Agreement, shall endeavour to include entities procuring products or services of export interest to developing countries.

*Agreed Exclusions*

4. Developing countries may negotiate with other participants in the negotiation of this Agreement mutually acceptable exclusion from the rules on national treatment with respect to certain entities, products or services that are included in their lists of entities having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in paragraph 1(a)-(c) above shall be duly taken into account. Developing countries participating in regional or global arrangements among developing countries referred to in paragraph 1(d) above, may also negotiate exclusions to their lists, having regard to the particular circumstances of each case, taking into account, *inter alia*, the provisions on government procurement provided for in the regional or global arrangements concerned and taking into account, in particular, products or services which may be subject to common industrial development programmes.

5. After entry into force of this Agreement, the developing country Parties may modify their lists of entities in accordance with the provisions for modification of such lists contained in paragraph 6 of Article XXIV of this Agreement, having regard to their development, financial and trade needs, or may request the Committee to grant exclusions from the rules on national treatment for certain entities, products or services that are included in their lists of entities, having regard to the particular circumstances of each case and taking duly into account the provisions of paragraph 1(a)-(c) above. The developing country Parties may also request, after entry into force of this Agreement, the Committee to grant exclusions for certain entities, products or services that are included in their lists in the light of their participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of paragraph 1(d) above. Each request to the Committee by a developing country Party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.

6. Paragraphs 4 and 5 above shall apply *mutatis mutandis* to developing countries acceding to this Agreement after its entry into force.

7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 above shall be subject to review in accordance with the provisions of paragraph 14 of this Article.

#### *Technical Assistance for Developing Country Parties*

8. Developed country Parties shall, upon request, provide all technical assistance which they may deem appropriate to developing country Parties in resolving their problems in the field of government procurement.

9. This assistance which shall be provided on the basis of non-discrimination among the developing country Parties shall relate, *inter alia*, to:

- the solution of particular technical problems relating to the award of a specific contract; and
- any other problem which the Party making the request and another Party agree to deal with in the context of this assistance.

10. Technical assistance referred to in paragraphs 8 and 9 above would include translation of qualification documentation and tenders made by suppliers or service providers of developing country Parties into an official language of the MTO designated by the entity, unless developed country Parties deem translation as burdensome, and, in that case, explanation shall be given to developing country Parties upon their request addressed either to the developed country Parties or to their entities.

### *Information Centres*

11. The developed country Parties shall establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating to, *inter alia*, laws, regulations, procedures and practices regarding government procurement, notices about proposed procurements which have been published, addresses of the entities covered by this Agreement, and the nature and volume of products or services procured or to be procured, including available information about future tenders. The Committee established under Article XXI of this Agreement may also set up an information centre.

### *Special Treatment for Least-Developed Countries*

12. Having regard to paragraph 6 of the Decision of the CONTRACTING PARTIES of the GATT 1947 on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries, special treatment shall be granted to the least-developed country Parties and to the suppliers or service providers in those countries with respect to products or services originating in those countries, in the context of any general or specific measures in favour of the developing country Parties. The Parties may also grant the benefits of this Agreement to suppliers or service providers in the least-developed countries which are not Parties, with respect to products or services originating in those countries.

13. Developed country Parties shall, upon request, provide assistance which they may deem appropriate to potential tenderers in the least-developed countries in submitting their tenders and selecting the products or services which are likely to be of interest to entities of developed countries as well as to suppliers or service providers in the least-developed countries and likewise assist them to comply with technical regulations and standards relating to products or services which are the subject of the proposed procurement.

### *Review*

14. The Committee shall review annually the operation and effectiveness of this Article and after each three years of its operation on the basis of reports to be submitted by the Parties shall carry out a major review in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Article III, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 to 6 of this Article shall be modified or extended.

15. In the course of further rounds of negotiations in accordance with the provisions of Article XXIV, paragraph 7, the developing country Parties shall give consideration to the possibility of enlarging their lists of entities having regard to their economic, financial and trade situation.

## *Article VI*

### *Technical Specifications*

1. Technical specifications laying down the characteristics of the products or services to be procured such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procurement entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

2. Technical specifications prescribed by procurement entities shall, where appropriate:

- (a) be in terms of performance rather than design or descriptive characteristics; and
  - (b) be based on international standards, where such exist, otherwise national technical regulations<sup>4</sup>, recognized national standards<sup>5</sup>, or building codes.
3. There shall be no requirement or reference to a particular trade mark or name, patent, design or type, specific origin, producer or service provider, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.
4. Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.

## *Article VII* *Tendering Procedures*

### *General Provisions*

1. Parties shall ensure that the tendering procedures of their entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI below.
2. Entities shall not provide to any supplier or service provider information with regard to a specific procurement in a manner which would have the effect of precluding competition.

### *Definitions*

3. (a) *Open* tendering procedures, for the purposes of this Agreement, are those procedures under which all interested suppliers or service providers may submit a tender.
- (b) *Selective* tendering procedures, for the purposes of this Agreement, are those procedures under which, consistent with Article X, paragraph 3 and other relevant provisions of this Agreement, those suppliers or service providers invited to do so by the entity, may submit a tender.
- (c) *Limited* tendering procedures, for the purposes of this Agreement, are those procedures where the entity contacts suppliers or service providers individually, only under the conditions specified in Article XV below.

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<sup>4</sup>For the purpose of this Agreement, a technical regulation is a document which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

<sup>5</sup>For the purposes of this Agreement, a standard is a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

*Article VIII*  
*Qualification of Suppliers and Service Providers*

Entities, in the process of qualifying suppliers and service providers, shall not discriminate among foreign suppliers or service providers or between domestic and foreign suppliers and service providers. Qualification procedures shall be consistent with the following:

- (a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers and service providers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;
- (b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Any conditions for participation required from suppliers or service providers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers and service providers, as well as the verification of qualifications, shall be no less favourable to foreign suppliers and service providers than to domestic suppliers and service providers and shall not discriminate among foreign suppliers or service providers. The financial, commercial and technical capacity of a supplier or service provider shall be judged both on the basis of that supplier's or service provider's global business activity as well as its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organizations;
- (c) the process of, and the time required for, qualifying suppliers or service providers shall not be used in order to keep foreign suppliers or service providers off a suppliers' or service providers' list or from being considered for a particular proposed procurement. Entities shall recognize as qualified suppliers or service providers such domestic or foreign suppliers or service providers who meet the conditions for participation in a particular proposed procurement. Suppliers or service providers requesting to participate in a particular proposed procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;
- (d) entities maintaining permanent lists of qualified suppliers or service providers shall ensure that suppliers or service providers may apply for qualification at any time; and that all qualified suppliers or service providers so requesting are included in the lists within a reasonably short time;
- (e) if, after publication of the notice under Article IX:1, a supplier or service provider not yet qualified requests to participate in a particular tender, the entity shall promptly start the procedures for qualification;
- (f) any supplier or service provider having requested to become a qualified supplier or service provider shall be advised by the entities concerned of the decision in this regard. Qualified suppliers or service providers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;

- (g) the Parties shall ensure that:
  - (i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for different procedures; and
  - (ii) efforts be made to minimize differences in qualification procedures between entities.
- (h) nothing in sub-paragraphs (a) to (g) above shall preclude the exclusion of any supplier or service provider on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.

*Article IX*  
*Invitation to Participate Regarding Intended Procurement*

1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article XV (limited tendering). The notice shall be published in the appropriate publication listed in Appendix II of this Agreement.
2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.
3. Entities in Annexes 2 and 3 may use a notice of planned procurement, as provided for in paragraph 7, or a notice regarding a qualification system, as provided for in paragraph 9, as an invitation to participate.
4. Entities which use a notice of planned procurement as an invitation to participate shall subsequently invite all suppliers and service providers, who have expressed an interest, to confirm their interest on the basis of information which shall include at least the information referred to in paragraph 6.
5. Entities which use the notice regarding a qualification system as an invitation to participate shall provide, subject to the considerations referred to in Article XVIII:4 and in a timely manner, information which allows to all those who have expressed an interest, to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraphs 6 and 8, to the extent such information is available. Information provided to one interested supplier or service provider shall be provided in a non-discriminatory manner to the other interested suppliers and service providers.
6. Each notice of proposed procurement, referred to in paragraph 2 of this Article, shall contain the following information:
  - (a) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products or services to be procured;
  - (b) whether the procedure is open or selective or will involve negotiation;

- (c) any date for starting, delivery, or completion of delivery of goods or services;
- (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' or service providers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;
- (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;
- (f) any economic and technical requirements, financial guarantees and information required from suppliers or service providers;
- (g) the amount and terms of payment of any sum payable for the tender documentation; and
- (h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.

7. Each notice of planned procurement, referred to in paragraph 3 of this Article, shall contain as much of the information referred to in paragraph 6 as is available. It shall in any case include the information referred to in paragraph 8 and:

- (i) a statement that interested suppliers or service providers should express their interest in the procurement to the entity;
- (ii) a contact point with the entity from which further information may be obtained.

8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the MTO. The notice shall contain at least the following information:

- (i) subject matter of the contract;
- (ii) time-limits set for the submission of tenders or an application to be invited to tender; and
- (iii) addresses from which documents relating to the contracts may be requested.

9. In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers or service providers shall publish annually in one of the publications listed in Appendix III of this Agreement a notice of the following:

- (i) the enumeration of the lists maintained, including their headings, in relation to the products or services or categories of products or services to be procured through the lists;
- (ii) the conditions to be fulfilled by suppliers or service providers in view of their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and
- (iii) the period of validity of the lists, and the formalities for their renewal.

When such a notice is used as an invitation to participate, in accordance with paragraph 3 of this Article, the notice shall, in addition, include the following information:

- (iv) the nature of the products or services concerned;
- (v) a statement that the notice constitutes an invitation to participate.

However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Agreement.

10. If after publication of an invitation to participate, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier or service provider with respect to a particular intended procurement shall be given simultaneously to all other suppliers or service providers concerned in adequate time to permit the suppliers or service providers to consider such information and to respond to it.

11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by the Agreement.

#### *Article X* *Selection Procedures*

1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic and foreign suppliers or service providers, consistent with the efficient operation of the procurement system. They shall select the suppliers or service providers to participate in the procedure in a fair and non-discriminatory manner.

2. Entities maintaining permanent lists of qualified suppliers and service providers may select suppliers or service providers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers or service providers on the lists.

3. Suppliers or service providers requesting to participate in a particular intended procurement shall be permitted to submit a tender and be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles VIII and IX. The number of additional suppliers or service providers permitted to participate shall be limited only by the efficient operation of the procurement system.

#### *Article XI* *Time-Limits for Tendering and Delivery*

##### *General*

- 1. (a) Any prescribed time-limit shall be adequate to allow foreign as well as domestic suppliers and service providers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of



the intended procurement, the extent of sub-contracting anticipated, the normal time for transmitting tenders by mail from foreign as well as domestic points.

- (b) The Parties shall ensure that their entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.

### *Deadlines*

2. Except insofar as provided in paragraph 3 below,

- (a) in open procedures, the period for the receipt of tenders shall not be less than forty days from the date of publication referred to in Article IX:1;
- (b) in selective procedures not involving the use of a permanent list of qualified suppliers and service providers, the period for submitting an application to be invited to tender shall not be less than twenty-five days from the date of publication referred to in Article IX:1; the period for receipt of tenders shall in no case be less than forty days from the date of issuance of the invitation to tender;
- (c) in selective procedures involving the use of a permanent list of qualified suppliers and service providers, the period for receipt of tenders shall not be less than forty days from the date of the initial issuance of invitations to tender, whether or not the date of initial issuance of invitations to tender coincide with the date of the publication referred to in Article IX:1.

3. The periods referred to in paragraph 2 above may be reduced in the circumstances set out below:

- (a) where a separate notice has been published forty days and not more than twelve months in advance and the notice contains at least:
  - (i) as much of the information referred to in Article IX, paragraph 6 as is available;
  - (ii) the information referred to in Article IX, paragraph 8;
  - (iii) a statement that interested suppliers or service providers should express their interest in the procurement to the entity; and
  - (iv) a contact point with the entity from which further information may be obtained,then the forty-day limit for receipt of tenders, referred to in paragraph 2, may be replaced by a period sufficiently long to enable responsive bidding, which, as a general rule, shall not be less than twenty-four days, but in any case not less than ten days;
- (b) in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of Article IX:6, the forty-day limit for receipt of tenders referred to in paragraph 2 may be reduced to not less than twenty-four days;
- (c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question but shall in no case be less than ten days from the date of the publication referred to in Article IX:1;

- (d) the periods referred to in paragraph 2(c) may, for procurements by entities referred to in Annexes 2 and 3, be fixed by mutual agreement between the entity and the selected suppliers or service providers. In the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive bidding and shall in any case not be less than ten days.

4. Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the intended procurement, the extent of sub-contracting anticipated, the realistic time required for production, de-stocking and transport of goods from the points of supply or for delivery of the service.

## *Article XII* *Tender Documentation*

1. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the MTO.

2. Tender documentation provided to suppliers and service providers shall contain all information necessary to permit them to submit responsive tenders, including information required to be published in the notice of intended procurement, except for Article IX:6(g), and the following:

- (a) the address of the entity to which tenders should be sent;
- (b) the address where requests for supplementary information should be sent;
- (c) the language or languages in which tenders and tendering documents must be submitted;
- (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;
- (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
- (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers or service providers;
- (g) a complete description of the products or services required or of any requirements including technical specifications, conformity certification to be fulfilled, necessary plans, drawings and instructional materials;
- (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of foreign products or services, customs duties and other import charges, taxes and currency of payment;
- (i) the terms of payment;
- (j) any other terms or conditions;

- (k) in accordance with Article XVII the terms and conditions, if any, under which tenders from countries not Parties to this Agreement, but which apply the procedures of that Article, will be entertained.

*Forwarding of Tender Documentation by the Entities*

- 3.
  - (a) In open procedures, entities shall forward the tender documentation at the request of any supplier or service provider participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.
  - (b) In selective procedures, entities shall forward the tender documentation at the request of any supplier or service provider requesting to participate and shall reply promptly to any reasonable request for explanations relating thereto.
  - (c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier or service provider participating in the tendering procedure, on condition that such information does not give that supplier or service provider an advantage over its competitors in the procedure for the award of the contract.

*Article XIII*

*Submission, Receipt and Opening of Tenders and Awarding of Contracts*

- 1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:

- (a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or telecopy are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or telecopy. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or telecopy shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; requests to participate in selective tendering procedures may be submitted by telex, telegram or telecopy; and
- (b) the opportunities that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.

*Receipt of Tenders*

- 2. A supplier or service provider shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide.

*Opening of Tenders*

- 3. All tenders solicited under open or selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The receipt and opening

of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. Information on the opening of tenders shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XX and XXII of this Agreement.

*Award of Contracts*

4. (a) To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from suppliers or service providers which comply with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.
- (b) Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic or foreign products or services, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.
- (c) Awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.
- (d) Option clauses shall not be used in a manner which circumvents the provisions of the Agreement.

*Article XIV*  
*Negotiation*

1. Parties may provide for entities to conduct negotiations:
  - (a) in the context of procurements in which they have indicated such intent, namely in the notice referred to in Article IX:2 (the invitation to suppliers or service providers to participate in the procedure for the proposed procurement); or
  - (b) when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.
2. Negotiations shall primarily be used to identify the strengths and weaknesses in tenders.
3. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.
4. Entities shall not, in the course of negotiations, discriminate between different suppliers or service providers. In particular, they shall ensure that:
  - (a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation;

- (b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;
- (c) all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and
- (d) when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.

*Article XV*  
*Limited Tendering*

1. The provisions of Articles VII through XIV governing open and selective tendering procedures need not apply in the following conditions, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among foreign suppliers or service providers or protection to domestic producers or service providers:

- (a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been either collusive or do not conform to the essential requirements in the tender, or from suppliers or service providers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;
- (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or, when in the absence of competition for technical reasons the products or services can be supplied or provided only by a particular supplier or service provider and no reasonable alternative or substitute exists;
- (c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products or services could not be obtained in time by means of open or selective tendering procedures;
- (d) for additional deliveries by the original supplier or service provider which are intended either as parts replacement for existing supplies, services, or installations, or as the extension of existing supplies, services, or installations where a change of supplier, or service provider would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services<sup>6</sup>;
- (e) when an entity procures prototypes or a first product or services which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of products or services shall be subject to Articles VII through XIV<sup>7</sup>;

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<sup>6</sup>It is the understanding that "existing equipment" referred to in Article XV(d) includes software to the extent that the initial procurement of the software was covered by the Agreement.

<sup>7</sup>Original development of a first product may include limited production in order to incorporate the results of field testing and to demonstrate that the product is suitable for production in quantity to acceptable quality standards. It does not extend to quantity production to establish commercial viability or to recover research and development costs.

- (f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation, have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and when the entity needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction services may not exceed 50 per cent of the amount of the main contract;
- (g) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles VII through XIV and for which the entity indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services;
- (h) for products purchased on a commodity market;
- (i) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by firms which are not normally suppliers or service providers; or disposal of assets of businesses in liquidation, or receivership. It is not intended to cover routine purchases from regular suppliers and service providers;
- (j) in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Agreement, notably as regards the publication, in the sense of Article IX, of an invitation to suitably qualified service providers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners.

2. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 1 of this Article. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin, and a statement of the conditions in this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII and XXII of this Agreement.

#### *Article XVI* *Offsets*

1. Entities shall not, in the qualification and selection of potential suppliers, service providers, products or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets.<sup>8</sup>

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<sup>8</sup>Offsets in government procurement are measures used to encourage local development or improve the balance-of-payments accounts by means of local content, licensing of technology, investment requirements, counter-trade or similar requirements.

2. Nevertheless, having regard to general policy considerations, including those relating to development, developing countries may at the time of accession negotiate conditions for the use of offsets, such as requirements for the incorporation of domestic content. Such requirements shall be used only for qualification to participate in the procurement process and not as criteria for awarding contracts. Conditions shall be objective, clearly defined and non-discriminatory. They shall be set forth in an Annex to this Agreement and may include precise limitations on the imposition of offsets in any contract subject to this Agreement. The existence of such conditions shall be notified to the MTO Secretariat and included in the notice of intended procurement and other documentation.

*Article XVII*  
*Transparency*

1. Parties shall encourage entities to indicate the terms and conditions including any deviations from competitive tendering procedures or access to Challenge procedures, under which tenders will be entertained from suppliers and service providers situated in countries not Parties to this Agreement but which, with a view to creating transparency in their own contract awards, nevertheless:

- (a) specify their contracts in accordance with Article VI (technical specifications) of this Agreement;
- (b) publish the procurement notices referred to in Article IX, including, in the version of the notice referred to in paragraph 8 of Article IX (summary of the notice of intended procurement) which is published in an official language of the MTO, an indication of the terms and conditions under which tenders shall be entertained from suppliers or service providers situated in countries Parties to this Agreement;
- (c) are willing to ensure that their procurement regulations shall not normally change during a procurement and in the event that such change proves unavoidable, to ensure the availability of a satisfactory means of redress.

2. Governments not Parties to the Agreement, which comply with the above procedure, shall be entitled, having informed the Parties, to attend the Committee established under Article XXI of this Agreement as observers.

*Article XVIII*  
*Information and Review As Regards Obligations of Entities*

1. Entities shall publish a notice in the appropriate publication listed in Appendix II of this Agreement not later than seventy-two days after the award of a contract(s) under Articles XIII through XV. These notices shall contain:

- (a) nature and quantity of products or services in the contract award(s);
- (b) name and address of the entity awarding the contract;
- (c) date of award;
- (d) name(s) and address(es) of winning tenderer(s);
- (e) value of winning award(s) or the highest and lowest offer taken into account in the award of the contract;

- (f) where appropriate, means of identifying the notice issued under Article IX:1 or justification according to Article XV for the use of such procedure; and
  - (g) the type of procedure used.
2. Entities shall on request from suppliers or service providers from countries which are a Party to this Agreement, promptly provide:
- (a) explanation of their procurement practices and procedures;
  - (b) pertinent information concerning the reasons why their application to qualify was rejected, why their existing qualification was brought to an end, why they were not selected; and
  - (c) to unsuccessful tenderers, pertinent information concerning the reasons why their tender was not selected and on the characteristics and relevant advantages of the tender selected as well as the name of the winning tenderer.
3. Entities shall promptly inform participating suppliers and service providers of decisions on contract awards and upon request, in writing.
4. However, entities may decide that certain information on the contract award, contained in paragraphs 1 and 2(c) above, be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers and service providers.

*Article XIX*  
*Information and Review As Regards Obligations of Parties*

1. Parties shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, in the appropriate publications listed in Appendix IV of this Agreement and in such a manner as to enable other Parties and suppliers or service providers to become acquainted with them. The Parties shall be prepared, upon request, to explain to any other Party their government procurement procedures.
2. The government of the unsuccessful tenderer, which is a Party to this Agreement, may seek, without prejudice to the provisions under Article XXII, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.
3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon a request, to any other Party.



4. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers and service providers, shall not be revealed without formal authorization from the party providing the information.

5. The Parties shall collect and provide to the Committee on an annual basis statistics on their procurements covered by this Agreement. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement:

- (a) for entities in Annex 1 statistics on estimated value of contracts awarded, both above and below the threshold value on a global basis and broken down by entities; for entities in Annexes 2 and 3 statistics on estimated value of contracts awarded above the threshold value on a global basis and broken down by categories of entities;
- (b) for entities in Annex 1, statistics on number and total value of contracts awarded above the threshold value, broken down by entities and categories of products and services according to uniform classification systems; for entities in Annexes 2 and 3, statistics on estimated value of contracts awarded above the threshold value broken down by categories of entities and categories of products and services;
- (c) for entities in Annex 1, statistics, broken down by entity and by categories of products and services, on the number and total value of contracts awarded under each of the cases of Article XV; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded above the threshold value under each of the cases of Article XV; and
- (d) for entities in Annex 1, statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes.

To the extent that such information is available, Parties shall provide statistics on the country of origin of products and services purchased by their entities. With a view to ensuring that such statistics are comparable, the Committee shall provide guidance on methods to be used. With a view to ensuring effective monitoring of procurement covered by this Agreement, the Committee may decide unanimously to modify the requirements of points (a)-(d) as regards the nature and the extent of statistical information to be provided, and breakdowns and classifications to be used.

## *Article XX*

### *Challenge Procedures*

#### *(i) Consultations*

1. In the event of a complaint by a supplier or service provider that there has been a breach of this Agreement in the context of a procurement, Parties shall encourage the supplier or service provider to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

(ii) *Challenge*

2. Parties shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers and service providers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest.

3. Parties shall provide their challenge procedures in writing and make them generally available.

4. Parties shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Agreement shall be retained for three years.

5. The interested supplier or service provider may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case less than ten days.

6. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and whose members are secure from external influence during the term of appointment. A review body which is not a court shall either be subject to judicial review or shall have procedures which provide that:

- participants can be heard before an opinion is given or a decision is reached;
- participants can be represented and accompanied;
- participants shall have access to all proceedings;
- proceedings can take place in public;
- opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;
- witnesses can be presented;
- documents are disclosed to the review body.

7. Challenge procedures shall provide for:

- (a) rapid interim measures to correct breaches of the Agreement and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;
- (b) an assessment and a possibility for a decision on the justification of the challenge;
- (c) correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.

8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.

*Article XXI*  
*Institutions*

1. There shall be established under this Agreement a Committee on Government Procurement (referred to in this Agreement as "the Committee") composed of representatives from each of the Parties. This Committee shall elect its own Chairman and Vice-Chairman and shall meet as necessary but not less than once a year for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.
2. The Committee may establish working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.

*Article XXII*  
*Consultations and Dispute Settlement*

1. The provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes under the MTO (hereinafter referred to as the "Understanding") shall be applicable except as otherwise specifically provided below.
2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of the failure of another Party or Parties to carry out its obligations under this Agreement, or the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the Dispute Settlement Body, as specified below. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.
3. The Dispute Settlement Body (hereinafter referred to as DSB) shall have the authority to establish panels, adopt panel and Appellate Body reports, make recommendations or give rulings on the matter, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under this Agreement or consultations regarding remedies when withdrawal of measures found to be in contravention of the Agreement is not possible, provided that only Members Party to this Agreement shall participate in decisions or actions taken by the DSB with respect to disputes under this Agreement.
4. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within twenty days of the establishment of the panel:

"To examine, in the light of the relevant provisions of this Agreement and of (name of any other covered Agreement cited by the parties to the dispute), the matter referred to the Dispute Settlement Body by (name of party) in document GPR.DS... and to make such findings as will assist the Dispute Settlement Body in making the recommendations or in giving the rulings on the matter."

In the case of a dispute in which provisions both of this Agreement and of one or more other Agreements in the Annexes to the MTO Agreement, or of the Agreement itself, are invoked by one of the parties to the dispute, paragraph 3 of this Article shall apply only to those parts of the panel report concerning the interpretation and application of this Agreement.

5. Panels established by the DSB to examine disputes under this Agreement shall include persons qualified in the area of government procurement.

6. Every effort shall be made to accelerate the proceedings to the greatest extent possible. Notwithstanding the provisions of Section 12.8 and 12.9 of the Understanding, the panel shall attempt to provide its final report to the parties to the dispute not later than four months, and in case of delay not later than seven months, after the date on which the composition and terms of reference of the panel are agreed. Consequently, every effort shall be made to reduce also the periods foreseen in Sections 20.1 and 21.4 of the Understanding by two months. Moreover, notwithstanding the provisions of Section 21.5 of the Understanding, the panel shall attempt to issue its decision, in case of a disagreement as to the existence or consistency with a covered Agreement of measures taken to comply with the recommendations and rulings, within sixty days.

7. Notwithstanding paragraph 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, any dispute arising under any agreement listed in Appendix 1 to the aforementioned Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any agreement listed in the said Appendix 1 other than this Agreement.

#### *Article XXIII* *Exceptions to the Agreement*

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures necessary to protect public morals, order or safety, human, animal or plant life or health, intellectual property, or relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour.

#### *Article XXIV* *Final Provisions*

##### *1. Acceptance and entry into force*

This Agreement shall enter into force on 1 January 1996 for those governments<sup>9</sup> whose agreed coverage is contained in Annexes 1 through 5 of Appendix I of this Agreement and which have, by signature, accepted the Agreement by 15 April 1994 or have, by that date, signed the Agreement subject to ratification and subsequently ratified the Agreement before 1 January 1996.

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<sup>9</sup>For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Economic Community.

2. *Accession*

Any government which is a Member of the MTO, or prior to the entry into force of the MTO which is a contracting party to the GATT 1947, but which is not a Party to this Agreement may accede to this Agreement on terms to be agreed between that government and the Parties. Accession shall take place by deposit with the Director-General of the MTO of an instrument of accession which states the terms so agreed. Until the entry into force of the Agreement Establishing the Multilateral Trade Organization, the instrument shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT. The Agreement shall enter into force for an acceding government on the thirtieth day following the date of its accession to the Agreement.

3. *Transitional arrangements*

- (a) The Governments of Hong Kong and Korea may delay application of the provisions of this Agreement, except Articles XXI and XXII, to a date not later than 1 January 1997. The commencement date shall be notified to the Director-General of the Multilateral Trade Organization thirty days in advance.
- (b) During the period between the entry into force of this Agreement and its application by Hong Kong, the rights and obligations between Hong Kong and all other Parties to this Agreement which are on 15 April 1994 Parties to the Agreement on Government Procurement done at Geneva on 12 April 1979 as amended on 2 February 1987 (the "1988 Agreement") shall be governed by the substantive<sup>10</sup> provisions of the 1988 Agreement, including its annexes as modified or rectified, which provisions are incorporated herein by reference for that purpose and shall remain in force until 31 December 1996.
- (c) Between Parties to this Agreement which are also Parties to the 1988 Agreement, the rights and obligations of this Agreement shall supersede those under the 1988 Agreement.
- (d) Article XXII of this Agreement shall not enter into force until the entry into force of the MTO. Until such time, the provisions of Article VII of the 1988 Agreement shall apply to consultations and dispute settlement under this Agreement, which provisions are hereby incorporated in the Agreement by reference for that purpose. These provisions shall be applied under the auspices of the Committee under this Agreement.
- (e) Prior to the entry into force of the MTO, references to MTO bodies shall be construed as referring to the corresponding GATT body.

4. *Reservations*

Reservations may not be entered in respect of any of the provisions of this Agreement.

5. *National legislation*

- (a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices

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<sup>10</sup>All provisions of the 1988 Agreement except the Preamble, Article VII and Article IX other than paragraphs 5(a) and (b) and paragraph 10.

applied by the entities contained in its lists annexed hereto, with the provisions of this Agreement.

- (b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

6. *Rectifications or modifications*

- (a) Rectifications, transfers of an entity from one annex to another or, in exceptional cases, other modifications relating to Appendices I-IV to this Agreement shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within thirty days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII of this Agreement.
- (b) Where a Party wishes, in exercise of its rights, to withdraw an entity from the Annexes to this Agreement on the grounds that government control or influence over it has been effectively eliminated, that Party shall notify the Committee. Such modification shall become effective the day after the end of the following meeting of the Committee, provided that the meeting is no sooner than thirty days after the date of notification and no objection has been made. In the event of an objection, the matter may be pursued in accordance with the procedures on consultations and dispute settlement contained in Article XXII of this Agreement. In considering the proposed modification to the Annexes and any consequential compensatory adjustment, allowance shall be made for the market-opening effects of the removal of government control or influence.

7. *Reviews, negotiations and future work*

- (a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the General Council of the MTO of developments during the periods covered by such reviews.
- (b) Not later than the end of the third year from the entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to improving this Agreement and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, having regard to the provisions of Article V relating to developing countries.
- (c) Parties shall seek to avoid introducing or prolonging discriminatory measures and practices which distort open procurement and shall, in the context of negotiations under sub-paragraph (b), seek to eliminate those which remain on the entry into force of this Agreement.

8. *Information technology*

With a view to ensuring that the Agreement does not constitute an unnecessary obstacle to technical progress, including, if necessary, by negotiating modifications to the Agreement, Parties shall consult regularly in the Committee regarding developments in the use of information technology in government procurement. These consultations shall in particular aim to ensure that the use of information technology promotes the aims of open, non-discriminatory and efficient government procurement through transparent procedures, that contracts covered under the Agreement are clearly identified and that all available information relating to a particular contract can be identified. When a Party intends to innovate, it shall endeavour to take into account the views expressed by other Parties regarding any potential problems.

9. *Amendments*

The Parties may amend this Agreement having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with the procedures established by the Committee, shall not enter into force for any Party until it has been accepted by such Party.

10. *Withdrawal*

- (a) Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the date on which written notice of withdrawal is received by the Director-General of the Agreement Establishing the Multilateral Trade Organization. Any Party may upon such notification request an immediate meeting of the Committee.
- (b) If a Party to this Agreement does not become a Member of the MTO within one year of the entry into force of the MTO or ceases to be a Member of the MTO, this shall automatically entail withdrawal from this Agreement with effect from the same date.

11. *Non-application of this Agreement between particular Parties*

This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

12. *Notes, Appendices and Annexes*

The notes, appendices and annexes to this Agreement constitute an integral part thereof.

13. *Secretariat*

This Agreement shall be serviced by the MTO Secretariat.

14. *Deposit*

Until the entry into force of the Agreement Establishing the Multilateral Trade Organization, the text of this Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT 1947, who shall promptly furnish to each Party a certified true copy of this Agreement, of each rectification or modification thereto pursuant to paragraph 6 and of each amendment thereto pursuant to paragraph 9, and a notification of each acceptance thereof or accession thereto pursuant to paragraphs 1 and 2 and of each withdrawal therefrom pursuant to paragraph 10 of this Article. This Agreement and any amendments thereto shall, upon entry into force of the Agreement Establishing the Multilateral Trade Organization, be deposited with the Director-General of that Agreement, who

shall carry out the above tasks previously assigned to the Director-General to the CONTRACTING PARTIES to the GATT 1947.

15. *Registration*

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

*Done* at Geneva this [ ] in a single copy, in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the lists of entities annexed hereto.



## NOTES

The terms "country" or "countries" as used in this Agreement including the Appendices, are to be understood to include any separate customs territory signatory to this Agreement.

In the case of a separate customs territory signatory to this Agreement where an expression in this Agreement is qualified by the term "national", such expression shall be read as pertaining to that customs territory, unless otherwise specified.

### *Article 1, paragraph 1*

Having regard to general policy considerations relating to tied aid, including the objective of developing countries with respect to the untying of such aid, this Agreement does not apply to procurement made in furtherance of tied aid to developing countries so long as it is practised by Parties.

## **APPENDIX I**

### **ANNEXES 1-5**

Austria	-	GPR/74/Add.1
Canada	-	GPR/74/Add.2
EC	-	GPR/74/Add.3
Finland	-	GPR/74/Add.4
Hong Kong	-	GPR/74/Add.5
Israel	-	GPR/74/Add.6
Japan	-	GPR/74/Add.7
Korea	-	GPR/74/Add.8
Norway	-	GPR/74/Add.9
Sweden	-	GPR/74/Add.10
Switzerland	-	GPR/74/Add.11
United States	-	GPR/74/Add.12