

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

TN.64/NTB/30

15 July 1964

Special Distribution

Sub-Committee on Non-Tariff Barriers

Original: English

PROCUREMENT PROCEDURES TO BE ADOPTED BY PARTICIPATING GOVERNMENTS

Proposals by the United States Government

(i) The non-tariff barrier

The United States wishes to call attention to the problem which in its view must be the foundation of any further inquiry into government procurement policy. The procedures by which government procurement is effected can constitute the first and sometimes most pervasive restriction upon the importation of foreign goods by national governments. The problem is twofold. First, competition of foreign suppliers for a government contract may be prevented from the very outset if procedures do not provide a meaningful opportunity to learn about the contemplated contract and to enter the process of bidding or negotiation. Second, procedures which have the effect of giving officials substantial discretion in awarding contracts between domestic and foreign firms may result in de facto discrimination against foreign suppliers, even though such discrimination is not required by law or regulation.

Because the nature of these potential barriers is the absence of publicly defined procedures and standards, it is impossible and will continue to be impossible to make precise judgments as to their actual effect. That they do result in some discrimination against foreign goods, however, is evident from complaints registered by United States producers concerning these procedural barriers. The directive proposed by the Commission of the European Economic Community which provides in part for the elimination of such administrative practices among member States with respect to public works contracts is further evidence in support of this conclusion. Complaints have been registered by numerous United States producers concerning these procedural barriers.

(ii) Action sought

The United States believes that any discussion of ultimate standards for awarding government procurement contracts is pointless until regulations are established that will serve, to the maximum extent possible, to minimize the procedural barriers to the purchase of foreign goods described above.

First, the United States would request participating governments to publish all regulations and practices governing their procurement procedure. This procedural publication should identify: the method of publicizing contemplated contracts, criteria governing the eligibility of suppliers to compete for contracts, the different means by which suppliers invited to bid are chosen, a description of the methods such as bidding or negotiation which are used in selecting a supplier, the criteria for determining the method to be employed in particular cases, and the criteria which the responsible officer is required to apply in making awards. In the course of compiling such regulations and practices, it is anticipated that other governments would be afforded an opportunity to request further clarification if that should be appropriate.

Second, the United States would request participating governments to establish and promulgate specific procedures designed to minimize the potential discrimination described above. Although additional elements may become desirable as information about national procedures is made available, adoption of the following rules would be an important contribution to this end:

- (1) Where a list of firms invited to bid is in fact maintained, membership on the list should be open to any foreign supplier on terms and conditions equal to those applicable to domestic suppliers.
- (2) As a general rule, every proposed procurement which may result in an award in excess of \$25,000 shall be publicized in a publication freely available to foreign suppliers; such advertising shall appear sufficiently early to allow firms which are not on current bidders (or tenderers) lists, but which maintain representation in the procuring country, a reasonable period of time in which to prepare bids, proposals or tenders.
- (3) In the case of procurements so publicized, prospective contractors (including foreign firms) which are not initially invited to bid, tender, or make a proposal, shall at their request be mailed or otherwise provided copies of invitations to bid, tender, or make a proposal, wherever feasible.
- (4) The evaluation of bids, offers, or tenders and the award of contracts shall proceed according to published standards.
- (5) As a minimum, the following information on contract awards exceeding \$25,000 shall be published or otherwise made readily available to unsuccessful bidders, tenderers, or offerors:
 - (a) The name and address of each offeror receiving an award;

- (b) the items, quantities, and unit prices of each award; provided that, where the number of items or other factors makes the listing of unit prices impracticable, only the total contract price need be furnished; and
 - (c) in general terms, the reasons why the offeror's proposal was not accepted, except where the price information in (b) above readily reveals such reason, but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.
- (6) It is recognized that under certain circumstances exceptions or qualifications would have to be made to the above procedures. Such qualifications and the provisions for making such exceptions should be clearly and publicly stated.