

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/NTM/W/115

26 September 1977

Special Distribution

Multilateral Trade Negotiations

Original: English

Group "Non-Tariff Measures"

Sub-Group "Government Procurement"

## UPDATING OF INFORMATION ON REGULATIONS AND PROCEDURES OF NON-OECD COUNTRIES

In response to paragraph 4 of GATT/AIR/1363 the following communications have been received from the United Kingdom delegation on behalf of Hong Kong and from Malawi.

### HONG KONG

#### I. REGULATIONS IN FORCE

Apart from certain financial, stores and accounting regulations, buying departments have full discretion to follow the practices best suited to their needs and the nature of the purchase.

#### II. PURCHASING PROCEDURES APPLIED

As a general rule, contracts are let as a result of competition by tender, unless there are convincing reasons to the contrary. Departments have, however, discretion to adopt such procedures as appear to them appropriate, as long as the relevant regulations are followed and the prices paid are fair and reasonable.

Procedures used are open public tender, selective tender and single tender. Autonomous and certain semi-autonomous government agencies, responsible to central government departments, must comply with any conditions laid down by their "parent" department. The procurement policy of local industries is a matter for the commercial judgement of the industry. The Government does not possess any statutory power to determine their procurement policies. In the vast majority of cases, the Government is not notified of the sources of supplies purchased by industries, although the Trade Industry and Customs Department does have regulations in force regarding the importation of goods into Hong Kong and importers are required to provide details of their purchases. Government procedures used for purchases are basically related to procurement by open public tender, although other tenders are arranged in regard to purchases from single tenderers or groups of registered suppliers for specific commodities.

Single tender contracts are concluded when circumstances do not permit resort to normal competition i.e. for instance, for reasons of security, or when there is only one source of supply. Single tender is otherwise mainly used for purchases of the "patented" or "proprietary" items, development work and in certain cases of unforeseeable urgencies. Government departments are also permitted to make small value direct purchases, without reference to the central authority.

### III. PUBLICITY FOR INVITING TENDERS

When the open public tender procedure is used, invitations to tender are published in the Government Gazette and the leading English and Chinese newspapers, and in many instances, trade journals and copies of tenders are sent to resident Trade Commissioners, as well as circulated to the Crown Agents in London and on occasions to their agencies in Japan, United States, Australia, and Singapore.

In the selective tender procedure, invitations to tender which are not made public, are sent to registered suppliers drawn from approved lists maintained for the purpose, in respect of each class of goods, which a department expects to buy.

### IV. TIME LIMIT GRANTED TO TENDERERS

There is considerable flexibility of practice, dependent on the nature of the goods to be purchased, an average might be four to six weeks, but longer periods may be granted as necessary e.g. where international tenders are invited.

### V. REQUIREMENTS LAID DOWN FOR POSSIBLE SUPPLIERS

There are no residence requirements for firms desiring to bid for government contracts. Where lists of approved suppliers are maintained to enable various departments to invite tenders from contractors specializing in specific fields, any firm can apply for inclusion in a department's list. Before being admitted to the list, it has to satisfy the department of its financial standing and technical competence. Where highly technical contracts are invited, applications are sometimes invited for interested parties to pre-qualify before they are eligible to tender for these contracts.

### VI. CRITERIA FOR ASSESSING BIDS AND THE AWARDING OF CONTRACTS

Tenders are received under sealed cover and are opened by committees appointed for that purpose. Details of all offers received are recorded and then passed to the appropriate department for adjudication.

Tenders in excess of HK\$25,000 in value are awarded, after examination, by tender boards, which meet weekly for that purpose. The award of tenders below HK\$25,000.00 in value is governed by officially laid down procedure and policy.

There are basically two types of Tender Board, the Central Tender Board which adjudicates on tenders the value of which is in excess of HK\$250,000 and Subsidiary Tender Boards which process tenders between HK\$25,000 and HK\$250,000. When selecting tenders, the contract is normally awarded to the bidder offering best value for money and this is normally but not invariably, the lowest bid meeting the requirement. Depending on the individual case, the consideration will include, apart from price, life in service, servicing arrangements, cost of replacement parts and the delivery. The Government expects departments to award contracts to the best public advantage with due regard to normal commercial considerations.

#### VII. DISCLOSURE OF BIDS RECEIVED AND CONTRACTS AWARDED

Responses to invitation to tender are normally submitted in strict privacy. Results of calls for tender or results of invitations to tender are not disclosed. Unsuccessful tenderers are notified that their offers have not been accepted. Buying departments are however prepared to tell unsuccessful tenderers, upon request, in general terms, in what respect their offers were found to be unacceptable, for example, whether they have failed on price, delivery, after sale service etc. The overall sum and the name of the successful tenderer is published in the Government Gazette or is made available to bona fide enquirers who participated in the actual tender.

#### VIII. TREATMENT GRANTED TO DOMESTIC AND FOREIGN PRODUCTS AND ALL SUPPLIERS

No statutory requirements, nor any guidance of a formal, or informal character, issued to procurement officials stipulate that buying departments should give preference to goods from any particular source of supply and there are no restrictions as to the organizations with whom government departments may conduct their business.

#### IX. PROCEDURES FOR HEARING AND REVIEWING COMPLAINTS

Government purchasing departments take scrupulous care in adjudicating the tenders received. All contracting processes are subject to monitoring to ensure that the contracts are awarded properly and fairly. The result is that in practice very few complaints have arisen. Any firm which has not been selected to tender is free to appeal to the contracting authority, as also are unsuccessful bidders. Such appeals will be examined and where appropriate, reasons given.

If the firm or firms are not satisfied with the reply of the contracting authority, they may appeal to the Government Secretariat and such appeals would be handled by the Chairman of the Central Tender Board. In practice, however, the majority of complaints are handled by the actual purchasing department and normally resolved.

X. USEFUL ADDRESSES

Government Supplies Department,  
Oil Street,  
North Point,  
Hong Kong.

Public Works Department,  
Public Works Department Tender Board,  
Murray Building,  
Cotton Tree Drive,  
Hong Kong.

MALAWI

Government Procurement

(I) Tender notices are published in the Malawi Government Official Gazette and the local press at the request of the Chief Controller of Stores by the Central Tender Board and the information is normally picked up from these publications by local diplomatic representatives and passed on to their respective countries; and of course all interested parties in Malawi. In the majority of cases the London agents, Malawi Finance Company are also requested to obtain tenders for submission to this country at the same time. Normally two months are allowed for submission for tenders which include possible overseas suppliers and one month for those confined to local suppliers only. All tenders are received by the Secretary of the Central Tender Board and passed for cost analysis to the Controller of Stores who calculates all charges, notional and otherwise, both from overseas and local suppliers in order to equalise the factors making up the delivered Malawi price. They are then adjudged by the Central Tender Board.

(II) Goods brought into the country solely for Government use are allowed in free of duty and other taxes, from whatever source. At present a 10 per cent preference is given to a local manufacturer and 2½ per cent to firms in respect of similar imported materials offered ex stock as against direct importation by the Chief Controller of Stores.

In the case of proprietary articles or equipment, direct quotations are obtained from the manufacturer overseas and/or the accredited distributors or agents in Malawi. Except for the preferences shown above, there is basically no difference in treatment as between domestic and foreign suppliers or products as far as the Government is concerned but there are in some cases, restrictions and stipulations made by donor countries in connexion with projects financed by them.

(III) The principal responsibility for Government purchasing rests with the Central Stores Organization which is a department of the Ministry of Works and Supplies.

(IV) In addition to the tender and contract procurement method, there is a considerable amount of purchasing carried out by direct approach to local firms which are listed by the office of the Controller of Stores as potential suppliers of a selected range of goods not normally required in sufficient quantities to justify carrying as standard stock. Normal procedure is to obtain quotations from at least six of the firms registered.

There is also a range of goods carried in stock and not available from local sources for which the office of the Chief Controller of Stores send indents direct to their London agents, the Malawi Finance Company. These are items not considered sufficient in quantity or value to warrant open tender procedure but the agents do obtain competitive quotations by direct approach whenever possible. It is not the Government's policy to specify any particular sources of supply provided goods are of an acceptable quality and unless special circumstances call for the product of one manufacturer.