

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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30 October 1985

Committee on Government Procurement
Working Party on Computer Procurement

SUMMARY NOTE ON MEETING HELD 27 SEPTEMBER 1985

Chairman: Mr. M. Shaton (Israel)

1. The Working Party held its initial meeting on 27 September 1985. It elected Mr. M. Shaton (Israel) as Chairman. The Chairman recalled the terms of reference:

"To examine the way in which signatories' Code-covered entities treat procurement contracts in the computer sector and, in particular, how the provisions of the Agreement on Government Procurement have been applied by signatories, and whether or not existing disciplines are judged to be adequate, and report to the Committee."

2. He further recalled that the Committee had agreed that these terms of reference did not in any way prejudice the position of any delegation in the Article IX:6(b) negotiations, be it with respect to questions concerning improvements, broadening or service contracts. One delegation stressed that it participated in the Working Party on this basis.

3. The Working Party agreed that, in spite of it being a formal body set up under the Committee, minutes would not be required but, instead, a summary of main points made in the course of the discussions.

4. These points are grouped below by the secretariat. Content or presentation do not bind any delegation.

A. Introductory Remarks

5. Among points made were the following:

- increasing procurement of computers appeared not to be reflected in the number of tender notices for such equipment published under the Agreement, moreover, a large imbalance between individual Parties existed in this regard. A general question was how computers were actually acquired, through open, selective or single tendering under the Agreement, or outside the Agreement in one way or another. Among examples given were leasing, the treatment of a contract as a service contract, the use of options and the practice of procuring more than originally advertized;
- there could sometimes be understandable reasons why an entity chose to stay with the original manufacturer; the cost of retraining personnel, for instance, might very much exceed the cost of hardware and software combined. The choice of supplier also depended on the way companies marketed themselves and presented their offers;

- differences between countries could be due to a number of factors, e.g. the degree of centralization in procurement. One participant noted that in its own case computers representing about 20 per cent of total Code-covered procurement were normally bought by one single Code-covered entity also on behalf of other entities; while 60 per cent was by way of single tendering, 80 per cent of this was procured from abroad;
- this work might have a bearing broader than the computer sector itself and might touch upon the traditional concepts of buying and selling. One development was into new procurement practices; another was a return to traditional procurement after a period of time, due to factors such as price reductions for certain equipment.

B. Some Specific Matters Indicated

6. One participant gave examples of matters which could be relevant:

(i) Threshold

Procurement of main frame computers was declining in comparison to the instalment of micro computers which, even when very sophisticated, would tend to fall below the threshold of the Agreement.

(ii) Leasing/rental/hire

Such practices were not Code-covered.

(iii) Conversions into service contracts

As computers became more sophisticated, entities tended to turn to suppliers for assistance with the result that the service element would increasingly exceed 50 per cent of the price. Also, whilst operating software was previously considered part of the original contract, suppliers now more and more often succeeded in introducing elements or clauses (e.g. availability of alternative computer resources; availability of company staff), which from having been without value now had subjective values attributed to them. This, combined with the traditional maintenance and installation costs, would make the contract a service contract escaping the Agreement.

(iv) Delegation of procurement

Without the intent of circumventing the Agreement, delegations of procurement could occur, either to non-Code-covered entities or specialized private firms. The contract would then become a service contract, whether or not Code obligations were passed on to the sub-contractor.

(v) National security

This was quoted in many cases as reason for not publishing notices under the Agreement.

(vi) Formulation of independent specifications

It was difficult for entities in writing computer specifications not to determine the supplier. The problem was difficult to solve as long as technology was rapidly moving forward and the determining factor in computer procurement was less the cost of the hardware and software than the cost of on-the-job retraining.

(vii) Options to upgrade equipment

Contract clauses could give the entity the possibility of benefiting from the latest technological development of a particular manufacturer.

(viii) Guarantees

Like in other sectors, suppliers gave guarantees on the performance of the equipment. This became more and more important and could frequently lead to single tendering.

(ix) Different national rules on publication

In some countries tender notices had to be published, even for contracts in the service area. In some countries entities voluntarily followed the Agreement, in yet others they did not.

7. One delegation added the following examples of problems which it had encountered in the computer area, raising the question whether the Agreement adequately addressed these points:

(x) Conversion of purchases into leasing and vice versa, without readvertizing

(xi) Contracts awarded for quantities exceeding those foreseen in the tender notice

(xii) Contracts awarded for quantities to be determined at the time of the order

8. The matters raised in items (i)-(xii) above, and in particular item (vi), were briefly commented upon by some delegations at this stage. The delegation raising the three latter points noted that the intention behind raising these problems was not to reopen a specific matter which the Committee had dealt with. On this understanding the other participant concerned agreed to discuss those points generally.

C. Further work

9. The discussion of this matter was based on the indicative list by one delegation in Annex I for the collection of information.

10. One participant suggested that the time-table for the fact-finding exercise and for examining the adequacy or otherwise of the Agreement should be approached without preconceived ideas. Another participant noted that, while his authorities were presently examining computer procurement

in the somewhat different context of improvements, and in particular the question of leasing, it could, nevertheless, agree on an exchange of information. Some delegations felt that problems should not have to be unique to computers for the Working Party to discuss them. One delegation, recalling the mandate of the Working Party, noted that, while some of the problems in the computer area also existed elsewhere, the Working Party should limit itself to the computer sector without attempting to draw general conclusions.

11. The Working Party agreed to hold its next meeting on 8 November 1985, the main aim of which would be to exchange information and agree on further work. A further meeting was foreseen in conjunction with the December meeting of the Committee and the Informal Working Group.

Annex IInformational Exchange on Computer Procurement

1. Please describe any special regulations, practices, procedures, policies, etc., which affect the government procurement of computers in your country.
2. How widespread is the use of leasing in this sector as opposed to other sectors? Has the use of leasing arrangements in this sector increased over the past few years? Are certain types of Code-covered computer purchases more likely to be leased than others (i.e. depending on the level of sophistication)? What are the primary reasons for leasing in this sector? How often do leasing arrangements involve the transfer of ownership in the computer area?
3. How widespread is the use of options contracts in this sector?
4. Is software considered to be a good or service for the purpose of evaluating Code-covered contract values? Is any distinction made between different types of software (i.e. packaged vs. custom developed)?
5. Which Code-covered entities are the most significant purchasers of computers? Does any individual entity act as a purchasing entity on behalf of other entities in this area? Which Code-covered entities have made no Code-covered computer purchases in the most recent year where data is available?
6. For national purposes, how does your government classify computers (i.e. FSC, NIPRO, CCCN code or number)?

Proposed Data Exchange

To serve as a further refinement to the statistical submissions to the Committee, the Working Party participants should, to the best of their ability, provide the following data: the number and value of Code-covered tender announcements and contracts awarded in the computer area.