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COMMUNICATION FROM JAPAN

Measures by the Government of Japan Relating to its Public Sector Procurement
of Telecommunications Products and Services and of
Medical Technology Products and Services

The following communication¹ has been received from the delegation of Japan with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Comité des marchés publics

COMMUNICATION DU JAPON

Mesures prises par le gouvernement japonais au sujet de ses marchés publics
de produits et services de télécommunication et de produits et services
de technologie médicale

La délégation du Japon a fait parvenir au Secrétariat la communication ci-après¹, en lui demandant de la distribuer aux Parties à l'Accord relatif aux marchés publics.

Comité de Compras del Sector Público

COMUNICACIÓN DEL JAPÓN

Medidas del Gobierno del Japón relativas a las compras por su sector público
de productos y servicios de telecomunicaciones y de productos
y servicios de tecnología médica

Se ha recibido de la delegación del Japón la comunicación¹ adjunta, con el ruego de que se distribuya a las Partes en el Acuerdo sobre Compras del Sector Público.

¹English only/anglais seulement/inglés solamente.

(TELECOMMUNICATIONS)

Dear Ambassador Kantor,

With regard to the procurement of telecommunications products and services in the Japanese public sector market, I am pleased to state the following upon instructions from my Government.

The Government of Japan reaffirms the Framework for a New Economic Partnership established by the "Joint Statement on the Japan-United States Framework for a New Economic Partnership" of the Heads of the Governments of Japan and the United States on 10 July 1993 (hereinafter referred to as the "Framework"). The goals of the Framework are to deal with structural and sectoral issues in order substantially to increase access and sales of competitive foreign goods and services through market-opening and macroeconomic measures; to increase investment; to promote international competitiveness; and to enhance bilateral economic cooperation between the United States and Japan.

To accomplish these goals with respect to Japanese public sector procurement of telecommunications products and services, the Government of Japan has adopted the "Measures on Japanese Public Sector Procurement of Telecommunications Products and Services" (hereinafter referred to as the "Measures") and the "Operational Guidelines with Respect to Measures on Japanese Public Sector Procurement of Telecommunications Products and Services" (hereinafter referred to as the "Guidelines"), attached as Appendices A and B respectively, with the aim of significantly increasing access and sales of competitive foreign telecommunications products and services in the Japanese public sector procurement market.

Assessment of the implementation of the Measures and Guidelines, as well as the evaluation of progress achieved, will be based on the overall consideration of the following qualitative and quantitative criteria. These qualitative and quantitative criteria will be considered as a set, and no one criterion will be determinative of the assessment of the Measures and Guidelines, or the evaluation of progress achieved. These criteria do not constitute numerical targets, but rather are to be used for the purpose of evaluating progress achieved toward the goals of the Framework and the goals of this sector, as set forth above.

1. QUANTITATIVE CRITERIA

Annual evaluation of progress in the value and share of procurements of foreign telecommunications products and services covered by the Measures and Guidelines to achieve, over the medium term, a significant increase in access and sales of competitive foreign telecommunications products and services, by:

- 1.1 Annual value and share of procurements of foreign telecommunications products and services covered by the Measures and Guidelines, evaluated by reference to recent trends in the value, rate of growth and share of procurements of foreign telecommunications products and services, and the total value of procurements covered by the Measures and Guidelines;

NOTE: In the initial years of consultations (before multiple years of data have been collected) it will be necessary to consider recent GATT data.

- 1.2 Annual number of entities procuring foreign telecommunications products and services covered by the Measures and Guidelines, in relation to the total number of entities procuring telecommunications products and services covered by the Measures and Guidelines;

- 1.3 Annual number and value of contracts awarded as a result of a decrease in single tendering;
- 1.4 Annual number of tenders submitted by all suppliers and foreign suppliers; and
- 1.5 Relative competitiveness of foreign telecommunications products and services.

2. QUALITATIVE CRITERIA

- 2.1 Full and non-discriminatory access to procurement information by foreign suppliers at all stages of the procurement process, as provided in the Measures and Guidelines;
- 2.2 Improvement in subcontracting opportunities for foreign suppliers;
- 2.3 Full implementation of all requirements of the Measures, Guidelines and letters, in addition to those mentioned above;
- 2.4 Efforts by foreign suppliers to utilize procurement opportunities, including comments on draft specifications; and
- 2.5 Market conditions, including exchange rates.

The Government of Japan will keep the Measures and Guidelines under continual review. The Governments of Japan and the United States will meet in June 1995 and annually thereafter, or at any time upon the request of either Government, to discuss any matters related to the Measures and Guidelines, including assessment of implementation of the Measures and Guidelines and evaluation of progress achieved toward the goals of the Framework and the goals of this sector, as set forth above. Such consultations will be held until the end of FY 2000, at which point the two Governments will decide whether or not to continue these consultations.

In addition to the Measures which already have been implemented, the Guidelines will be implemented as of 1 November 1994, except for procurements in which a Notice of Procurement or a Request for Comments was published before 1 November 1994. As is consistent with the Framework, it is confirmed that the benefits of the Measures and Guidelines will be on a Most-Favoured-Nation basis.

The Government of Japan will collect the data set forth in Appendix C for use in the consultations described above. Depending on the results of the consultations, the Government of Japan will, if necessary, take appropriate actions, and the Government of the United States will, if necessary, further encourage U.S. firms to take advantage of opportunities created by the Government of Japan and, if appropriate, will consider additional efforts.

With respect to the distribution of telecommunications products and services, in accordance with its policy of promoting fair and free competition to increase market entry opportunities, including those of foreign companies, the Government of Japan reaffirms its commitment to enforce effectively the Anti-Monopoly Act and related Guidelines to address anti-competitive activities, if any, related to the distribution of goods and services, including telecommunications products and services. The Government of Japan will encourage the private sector, including manufacturers and distributors of telecommunications products and services, to establish internal Anti-Monopoly Act compliance programmes.

The Government of Japan recognizes that adequate budgets for the procurement of telecommunications products and services are necessary to ensure fair and competitive procurements. To this end, my Government will request and, as a matter of policy, make maximum efforts in the

future to obtain sufficient funds to enable public procurement of telecommunications products and services based on prices for similar products and services in similar working environments in the private sector.

I understand that it is the policy of the Government of the United States to provide non-discriminatory, transparent, fair and open opportunities consistent with its obligations under the GATT Agreement on Government Procurement and, after entry into force for the United States, the new Agreement on Government Procurement. I also understand that the Government of the United States will consult, at the above-mentioned consultations, with my Government upon request concerning such policies, and areas of particular interest in this sector, and will consider the views of the Government of Japan. The Government of Japan welcomes these policies of the Government of the United States, and implements the Measures and Guidelines and the contents of this letter.

Sincerely,

Takakazu Kuriyama

- Appendix A: Measures on Japanese Public Sector Procurement of Telecommunications Products and Services
- Appendix B: Operational Guidelines with Respect to Measures on Japanese Public Sector Procurement of Telecommunications Products and Services
- Appendix C: Data Collection

APPENDIX A

MEASURES ON JAPANESE PUBLIC SECTOR PROCUREMENT OF TELECOMMUNICATIONS PRODUCTS AND SERVICES

I. GENERAL POLICIES

1. The purpose of these Measures on Japanese Public Sector Procurement of Telecommunications Products and Services (hereinafter referred to as the "Measures") is to ensure non-discriminatory, transparent, fair, competitive and open public sector procurement procedures. With the aim of achieving this purpose and significantly increasing access and sales of competitive foreign telecommunications products and services in the Japanese public sector procurement, the Government of Japan (hereinafter referred to as the "Government") will implement the Measures set out below.
2. The Government reaffirms its obligations to observe the provisions of the existing Agreement on Government Procurement and states its support of the new Agreement on Government Procurement, which is expected to come into effect on 1 January 1996. Prior to entry into force for Japan of the new Agreement on Government Procurement, the Measures will be implemented in addition to the requirements of the existing Agreement on Government Procurement, while ensuring consistency with it. After entry into force for Japan of the new Agreement on Government Procurement, the Measures will be implemented in addition to the requirements of the existing and new Agreements, while ensuring consistency with them. (The existing Agreement and the new Agreement are hereinafter referred to collectively as the "Code".)
3. The Measures will govern procurement of not less than SDRs 100,000 or the Code threshold, whichever is lower, by the entities specified in Annexes 1 and 2 (hereinafter referred to as the "entities") of all telecommunications products and services set forth in Annex 3 by any contractual means, such as purchase, lease, rental and hire purchase.

II. NATIONAL TREATMENT AND NON-DISCRIMINATION

1. With regard to procurement covered by the Measures, the Government will accord to foreign products and services and foreign suppliers of such products and services, treatment no less favourable than it accords to:
 - (1) domestic products, services and suppliers; and
 - (2) products, services and suppliers of any other foreign country.
2. With regard to procurement covered by the Measures, the Government will not:
 - (1) treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; or
 - (2) discriminate against a locally-established supplier on the basis that the products or services offered by that supplier for the particular procurement are foreign products or services.

III. POLICIES AND PROCEDURES APPLICABLE TO ALL PROCUREMENTS COVERED BY THE MEASURES

1. Future Procurement Plans

Entities will invite suppliers to submit comments on the following procurement plans, by publishing in the Kanpo procurement information of telecommunications products and services (the name and address of the entity, subject matter of the procurement such as its name and volume, planned date of the notice of procurement), covered by the Measures as early in the fiscal year as possible, and will make the information available for public perusal at a contact point in the entity, as provided for in Section IV(3). In the case that the notice of procurement or the Request for Comments set out in the subparagraph 5 below has been published, entities need not take the procedures to provide information set out in this paragraph.

2. General Requirements

2.1 Where an entity has a requirement for a telecommunications product or service, it will undertake procurement planning and conduct market research, as necessary, in order to promote competition to the maximum extent possible, and to ensure that the entity meets its needs with the most appropriate telecommunications product or service.

2.2 Information made available on a budget request to any suppliers will be made available on a non-discriminatory basis. No entity may provide advance knowledge to any supplier, if such knowledge would give that supplier an advantage over other suppliers, about pre-tender information, where available, at any stage of a procurement, from the formulation of a budget request and the beginning of specification development through issuance of tender documentation to award of a contract. Entities will accord equal access to all pre-tender information to all foreign and domestic suppliers and provide them with equal opportunities to participate in pre-tender activities. No entity may use information gathered during the pre-tender phase to exclude any supplier.

2.3 Entities will ensure that all suppliers are given the same opportunities to participate in technical reference committees, advisory groups, study councils, or any such groups, if established, that discuss the technology, budget, specifications, functions or any other aspect of procurements of telecommunications products and services.

2.4 Qualification of Suppliers

- (1) Entities, in the process of qualifying suppliers in a tendering procedure, will not discriminate among foreign suppliers or between domestic and foreign suppliers.
- (2) Entities will limit any conditions for participation to those that are essential to ensure the supplier's capacity to fulfil the contract in question.
- (3) Entities will publish annually in the Kanpo an invitation to suppliers to qualify, which will set forth objective and specific qualification requirements for participation in tenders.
- (4) In determining whether a supplier is qualified, entities will consider net worth and business activities outside of Japan.

- (5) Entities will provide opportunities to suppliers to qualify at any time, including after a Notice of Procurement has been issued for a particular procurement. The qualification obtained will be effective until the next regular qualification. If qualified at a regular qualification, the qualification will be effective for at least two years.
 - (6) Entities will notify suppliers in writing of the results of the qualification. If the entity does not qualify a supplier, the entity will notify the supplier of the reasons for the disqualification and that it is entitled to request further explanation within seven days of receipt of the disqualification notice.
- 2.5 Entities will not award a contract for telecommunications products or services to any supplier, or to its affiliates, if that supplier has provided research or design services for that procurement, and such involvement could result in an unfair competitive advantage, except to the extent such services are included in the contract for procurements requiring the Request for Comments procedures set out in the Measures.
- 2.6 Entities will treat follow-on contracts as separate procurements subject to the procedures set out in the Measures. Contracts awarded as the result of the exercise of options or renewal provisions in a contract awarded in accordance with the procedures set out in the Measures will not be considered "follow-on" contracts.
- 2.7 No entity may:
 - (1) prepare, design or otherwise structure any procurement with the intention of avoiding the application of the measures or favouring any particular supplier; or
 - (2) divide a procurement with the intention of reducing the value of any resulting contracts below the threshold set out in Section I.
- 2.8 Entities will:
 - (1) determine the value of contracts consistent with the Code and the Measures, in determining whether a procurement is subject to the Measures.
 - (2) not select a valuation method for a proposed procurement with the intention of avoiding the application of the Measures.
- 3. Tendering Procedures
- 3.1 Entities will use open tendering procedures, to the maximum extent possible, for the procurement of telecommunications products and services.
- 3.2 The Government will ensure that the tendering procedures of its entities:
 - (1) are applied in a non-discriminatory manner;
 - (2) do not provide any supplier with information on a specific procurement in a manner that would have the effect of diminishing competition; and
 - (3) are consistent with the provisions of the Measures.

4. Limitations on Single Tendering

4.1 Entities will reduce their use of single tendering.

4.2 Because competitive procurements are the foundation of the Government's procurement policies and practices, single tendering will be used only in exceptional cases, justified in accordance with Code procedures, and will not be used to favour or exclude domestic or foreign suppliers of telecommunications products or services, or to contravene any provision, intent or purpose of the Measures.

4.3 Except in the cases that no tenders are submitted in competitive tendering or no successful tenders are re-submitted in the second tendering, or in cases of extreme urgency, entities will publish an announcement of a single tender procurement covered by the Measures in the Kanpo at least 40 days before the contract is awarded. The notice will contain:

- (1) a description of the procurement, including volume to be procured;
- (2) the planned contract date;
- (3) the Code justification for the single tender; and
- (4) the name of an intended supplier, in the case that discussions on the contract have begun with that supplier.

5. Request for Comments

5.1 Request for submission of materials

For the procurements in which entities face difficulties in developing appropriate specifications without requesting the submission of materials from suppliers, and the contract awards of which are expected to be greater than SDRS 800,000, entities will take the following at the beginning of the fiscal year or as early as possible before the beginning of the fiscal year, except in the case of urgency or in the case of single tendering provided for in the Code:

- (1) Entities will publish a notice in the Kanpo of their request for materials and other necessary information on basic needs of the planned procurement, and provide copies of the notice to suppliers upon request.
- (2) The notice in the Kanpo includes the following:
 - (a) the name and address of the entity;
 - (b) subject matter of the procurement (its name and volume, basic needs of the planned procurement);
 - (c) deadline of the submission of the materials; and
 - (d) notice of a conference for the planned procurement, if such a conference is held.
- (3) The deadline of (c) above will be, except in the case of urgency, at least 30 days after publication of the Request for submission of materials.

- (4) Where an entity amends or has additional information concerning an announced procurement set out in (2) above, it will simultaneously provide the amendment or additional information to all suppliers that have responded to the Request for submission of materials. If the amendment or additional information are concerning the subject matter of the procurement set out in (b) above, entities will allow at least 30 days for suppliers to consider and respond to the amendment or information.

5.2 Request for Comments on draft specifications

For (i) procurements of modified products or services or specially developed products or services, (ii) procurements of all off-the-shelf products or services with a value greater than SDRs 800,000, except in cases where off-the-shelf products or services with a unit value of SDRs 500 or below are being procured in high volume, or (iii) other procurements for which entities acknowledge the need to use the Request for Comments, entities will take the following measures in order to ensure that interested suppliers submit their comments on draft specifications prepared by the entities. In the case of urgency, however, the entities may shorten the period to the extent that suppliers will be able to respond, by announcing specific reasons for the period reduction in the notice of the Request for Comments in the Kanpo. In the case of extreme urgency with which the entities will not be able to cope by the above period reduction, the entities may omit part or whole of the procedures set out below, provided that the entities announce specific reasons for the omission in the Notice of Procurement.

Where the established specifications need to be repeatedly used to meet requirements of compatibility with already existing equipment, entities may choose, instead of publishing the Request for Comments, to announce specific reasons for the use of such specifications in the announcement in the Kanpo as provided for in III(1), or, if unable to take this step, to announce the specific reasons in the Kanpo some time in advance. When, in this case, any supplier requests entities, within ten days after the day following the publication provided for in III(1), or the publication of the specific reasons in the Kanpo in advance, to take the Request for Comments procedures set forth in this subparagraph, the entities will take the procedures.

- (1) Entities will publish the notice of the completion of developing draft specifications in the Kanpo at least 60 days before the intended date of the Notice of Procurement, and will promptly send a copy of the Request for Comments to suppliers upon request.
- (2) Entities will announce the following in the notice of the completion of developing draft specifications:
 - (a) subject matter of the procurement (its name and volume);
 - (b) the addresses from which the draft specifications may be obtained;
 - (c) the deadline for the submission of comments;
 - (d) the name and address of the entity;
 - (e) the date and location of the conference for draft specifications, if such conference is to be held; and
 - (f) invitation to interested suppliers to express interest in subcontracts involved in that procurement.

- (3) The deadline for the submission of comments set out in (c) above will be at least 30 days after the day following the publications of the Request for Comments for draft specifications.
- (4) When entities recognize the need to improve their draft specifications announced in the notice of the Request and amend them as a result of the comments submitted from interested suppliers, the entities will notify all the domestic and foreign suppliers that have expressed interest in the procurement. In such a case, the entities will allow sufficient time for the deadline for the submission of comments in order for suppliers to consider and respond to the amendment or information prior to publication of the Notice of Procurement.

6. Technical Specifications

6.1 Any technical specification prescribed by an entity will be, where appropriate:

- (1) specified in terms of performance rather than design or descriptive characteristics; and
- (2) based on international standards, where such exist, and otherwise based on national technical regulations or recognized national standards.

6.2 Entities will prepare technical specifications with the minimum detail needed to define the performance criteria. Entities will not require features not essential to the performance criteria.

6.3 Entities will formulate specifications in an impartial manner. Entities will not prepare, adopt or apply any technical specification with the intent of creating obstacles to any supplier or class of suppliers, including foreign suppliers. If the procurement will replace or interconnect with an existing system, the specifications will not be designed to impede competition.

6.4 Entities will not allow any supplier directly involved in the development of specifications in a procurement to participate in the tendering process, except where:

- (1) the supplier has provided comments in response to a Request for Comments, as provided for in Section III(5) and such participation would not result in an unfair competitive advantage for any supplier;
- (2) the supplier has provided information or assistance to an entity in preparing or refining specifications and the entity has controlled the process and conducted it in a fair and impartial manner and has provided the same opportunities to all suppliers to provide information and assistance; or
- (3) the supplier has provided, at the request of an entity, product specifications or data about a product it supplies and all suppliers are provided an equal and impartial opportunity to participate or provide product specifications or data.

6.5 Entities will not prescribe a technical specification that requires or refers to a particular trademark or name, patent, design or type, specific origin or producer or supplier unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.

7. Notice of Procurement

- 7.1 Entities will invite all suppliers to participate in the procurement by publishing in the Kanpo a Notice of Procurement at least 50 days, in principle, but in no case less than 40 days, prior to the deadline for the submission of tenders, unless justified by the Code.
- 7.2 Each entity will, after publishing the Notice of Procurement in the Kanpo, promptly make such Notice available for public perusal at a contact point in the entity, as provided for in Section VI(1).
- 7.3 The Notice of Procurement will include sufficient information for a supplier to make an informed decision as to whether to participate in the procurement, and will contain the following information:
- (1) subject matter of the procurement;
 - (2) method of evaluation of tenders;
 - (3) the addresses from which the tender documentation may be obtained;
 - (4) if a pre-tender conference is held, its date and location; and
 - (5) the deadline and address for the submission of tenders.
- 7.4 If, after publication of the Notice of Procurement, but before the deadline for submission of tenders, the entity amends the Notice, it will publish the amendment in the Kanpo and make the information available for public perusal at a contact point in the entity, as provided for in Section VI(1).

8. Tender Documentation

- 8.1 Entities will use tender documentation to communicate their needs to suppliers and to solicit tenders from them.
- 8.2 Entities will prepare the tender documentation, including evaluation criteria when the overall greatest value methodology is used, in an impartial manner so as to ensure that equal opportunities are provided to all suppliers on a non-discriminatory basis.
- 8.3 In preparing tender documentation, no entity may accept the provision of any assistance from any supplier, which could give that supplier any advantage over other suppliers, other than in accordance with the procedures set out in the Measures.
- 8.4 Tender documentation provided to suppliers will contain all information necessary to permit them to submit responsive tenders, including information required to be published in the Notice of Procurement, except for the amount and terms of payment of any sum payable for the tender documentation, and the following:
- (1) the address of the entity to which tenders should be sent and the names of officers responsible for the procurement;
 - (2) the address to which requests for supplementary information should be sent;

- (3) the language or languages in which tenders and other tendering documents must be submitted;
- (4) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;
- (5) the persons authorized to be present at the opening of tenders and the date, time and place of the opening;
- (6) any economic and technical requirements, financial guarantees and other information required from suppliers;
- (7) a complete description of the products or services to be procured and requirements, including technical specifications, conformity certification and necessary plans, drawings and instructional materials;
- (8) all criteria that will be applied to determine the successful supplier that will be awarded the contract, including all evaluation factors and sub-factors, weighted in terms of importance to the evaluation and including any factors that are to be considered and the cost elements to be included in evaluating prices, such as transportation, insurance and inspection costs;
- (9) the terms of payment;
- (10) if a pre-tender conference is held, its date, time and location; and
- (11) any other terms or conditions.

8.5 Entities will:

- (1) make the tender documentation available at the time of publication of the Notice of Procurement;
- (2) send the tender documentation promptly to a supplier upon its request;
- (3) reply promptly to any reasonable request for information relevant to the tender documentation made by a supplier participating in the tendering procedures, on the condition that such information does not give that supplier an advantage over its competitors in the award of the contract;
- (4) promptly put in writing communications with suppliers, except when it imposes an unnecessary burden on the entity, concerning the preparation of tender documentation, including specifications, standards and other tendering terms.

9. Pre-Tender Conference

- 9.1 At least 30 days prior to the deadline set out in the Notice of Procurement for the submission of tenders, entities will hold a pre-tender conference with regard to any procurements for which Request for Comments procedures are to be taken as set out in Section III(5) and for any other procurement, as necessary. Such conferences will include the opportunity for direct discussions between suppliers and that entity on technical, administrative and any other aspect of the procurement, and for all suppliers to obtain information on tendering on an equal basis.

- 9.2 Entities will not make attendance at a pre-tender conference a prerequisite for tender submission or consider attendance in the evaluation of tenders.
10. Evaluation of Tenders
- 10.1 In evaluating tenders and selecting the successful supplier, entities will use a selection procedure designed to:
- (1) maximize competition;
 - (2) minimize the complexity of the tender documentation, the evaluation and the selection decision; and
 - (3) ensure impartial and comprehensive evaluation of tenders submitted by suppliers.
- 10.2 Entities will evaluate tenders in a transparent manner that ensures equal treatment of all suppliers submitting tenders.
- 10.3 Entities will conduct technical evaluations and system performance evaluations, when used, under the same conditions for all suppliers in the tendering process and any testing criteria will apply to all suppliers and will be made available upon request.
- 10.4 Entities will evaluate tenders as follows:
- (1) After a one-year preparation period following introduction of the Measures, entities will evaluate tenders and award contracts based on the overall greatest value for the entities, for (i) procurements of modified products or services or specially developed products or services, (ii) procurements of off-the-shelf products or services with a value greater than SDRs 800,000, except in cases where off-the-shelf products or services with a unit value of SDRs 500 or below are being procured in high volume, or (iii) all procurements with a value greater than 800,000 SDRs for which the same specifications are repeatedly used in the case where the established specifications need to be repeatedly used to meet requirements of compatibility with already existing equipment. For other procurements, entities may use the overall greatest value methodology based on their own decision.
 - (2) Tenders will be evaluated on a pass/fail basis based upon the specific technical and other evaluation criteria stated in the specifications, and contracts will be awarded to the lowest-priced tender among those tenders which have met the evaluation criteria, unless the entity chooses the overall greatest value methodology as set out in subparagraph (1).
- 10.5 Where evaluation of tenders is conducted based on the overall greatest value methodology, the following procedures will apply:
- (1) Entities will evaluate tenders based on overall greatest value to the entity, which is determined by considering functional and performance factors, price and other factors specified in the tender documentation. Entities will apply the relative weights set out in the tender documentation to the evaluation criteria. The price/cost evaluation may be based on the total life cycle cost of procurement.
 - (2) Entities may require field testing of prototypes as part of the specification-formulating process and evaluation process leading to the award of the contract, provided that this

requirement is set out in the Request for Comments or tender documentation and the testing is conducted in an open and impartial manner.

- (3) When entities use the overall greatest value methodology, they may not change the evaluation factors and their relative importance for a specific procurement without formally amending the tender documentation and providing the amended tender documentation in the same manner and to the same suppliers as the original tender documentation.
- (4) Entities will make the award as soon as practicable after completion of the evaluation process.
- (5) Entities will put in writing promptly evaluation of tenders and the resulting selection decision, including the scoring of all factors and name of persons responsible for selection decisions.

10.6 No supplier will be allowed to modify the contents of a tender once submitted.

11. Contract Award Information

11.1 The entity will make the award as soon as practicable after completion of the evaluation process and will publish information on the contract award in the Kanpo and promptly notify all suppliers that submitted tenders of its selection and the award price, and will also make the information available for public perusal at a contact point in the entity, as provided for in Section VI(1).

11.2 Upon request from an unsuccessful supplier, an entity will promptly provide such supplier with an explanation of the reasons for not being selected, the name of the selected supplier and the relative advantages of that supplier's tender where the overall greatest value methodology is used.

11.3 Including those cases in which entities provide information in accordance with paragraph 11.2, entities will not:

- (1) disclose to any third party a supplier's trade secrets, manufacturing process, intellectual property or other confidential business information provided by a supplier; or
- (2) supply to any third party information that would prejudice the legitimate commercial interest of a supplier or fair competition among suppliers.

12. Post-Award Contract modifications

Any modification of the scope of a contract that would increase the value of the contract by SDRs 100,000 SDRs or more will be subject to the procedures set forth in the Measures as if it were a new procurement.

13. Treatment of Subcontractors

When an entity publishes a Request for Comments, it will also publish an invitation for suppliers to express interest in subcontracts involved in that procurement. The entity will provide list of potential subcontractors having expressed such interests to those who request such a list and those who respond to the Request for Comments, with the presumption that the entity is not responsible for the competency

of the suppliers listed, as well as make it available for public perusal at a contact point in the entity, as provided for in Section IV(3).

IV. SUPPORTING MEASURES

1. Improvement of Methods to Provide Procurement Information

Entities will make the maximum possible use of procedures described in 6. of the Procedures for Government Procurement on Products (Operational Guidelines) to contribute to convenience for domestic and foreign suppliers that have expressed an interest in government procurement of telecommunications products and services.

2. Follow-up of the Measures

To ensure effective implementation of the Measures, the Government will set up a forum for follow-up to examine concrete steps including the following:

- 2.1 The Government will establish a committee to study a standardized manual to develop non-discriminatory and simplified specifications for procurements of telecommunications products and services procured by two or more entities;
- 2.2 The Government will establish a committee to develop a standardized format, consistent with the Measures, to be used by all entities, to the extent practicable, for tender documentation of telecommunications products and services.

2.3 Training

The Government will establish a programme to provide training to entity procurement officials regarding the implementation of the Measures.

3. Contact Points

Each entity will establish a central contact point to provide general information about all procurements of telecommunications products and services and more specific information about procurements subject to the Measures.

4. Meetings

- 4.1 Each entity will conduct an annual conference for entity procurement officials and domestic and foreign suppliers to discuss information about the entity's major short-term procurement plans and, with budgetary reservations, their longer-term procurement outlook. This may be replaced by the entity's participation in a similar conference established by the Government or their entities.
- 4.2 Each entity conducting a procurement conference will publish notice of the conference in the Kanpo at least 30 days prior to the conference.

5. Procurement-related Groups

Where the Government establishes any committee or similar group, whether formal or informal, which includes only private sector or both public and private sector participation, primarily related to the public sector procurement of telecommunications products or services, the Government will publish notice in the Kanpo of information related to the group's establishment.

V. UNFAIR TENDERS

1. Given that it is the policy of the Government to procure telecommunications products and services based on tenders that are consistent with the Anti-Monopoly Act, including the prohibition against unjust low-priced sales, entities will take appropriate actions to address anti-competitive practices.
2. Where a tender is submitted that, because of its price or other terms, unlawfully impedes fair competition, the entity will deem the tender void in its entirety and will not consider that tender in awarding the contract.
3. Entities will deem any supplier that submits a tender referred to in paragraph 2 to be ineligible to re-submit a tender in that telecommunications product or service procurement; and the entities will announce the name of that supplier publicly.
4. When entities obtain information indicating the existence of practices that may impede fair competition in relation to its procurement, including the formulation of their procurement specifications, the entities will provide such information on a timely basis to the Fair Trade Commission so as to enable the Commission to take such steps as it deems appropriate.
5. To this end, entities will provide the names of their contact persons to the Fair Trade Commission to facilitate procedures for the detection of, and exchange of information concerning, practices that may violate the Anti-Monopoly Act.

VI. COMPLAINT MECHANISMS

Procedures of fair complaint mechanisms, described in Annex 4 of the Action Plan on Reform of the Bidding and Contracting Procedures for Public Works (hereinafter referred to as the "Action Plan"), will be applied to provide equitable, timely, transparent and effective complaint procedures for suppliers of telecommunications products and services covered by the Measures, until the new Agreement on Government Procurement enters into force and Japan becomes a party to it. The title "construction procurement review board" will be replaced by "procurement review board". In light of the nature of telecommunications products and services, the following modifications will be made. (For ease of reference, Annex 4 of the Action Plan, as amended by the following, is attached as Annex 4 of the Measures.)

1. Replace 2, 3, 4-(4) and 6-(2) of Annex 4 of the Action Plan respectively by 3-1, 3-8, 3-4 and 5-2 of Annex III of the Measures Related to Japanese Public Sector Procurements of Computer Products and Services. "Potential suppliers" in Annex 4 of the Action Plan will be replaced by "suppliers", whereas "commissioning entity" by "entity".
2. Change the duration for making a report (5-(1) of Annex 4 of the Action Plan) to 90 days.

VII. ENCOURAGEMENT TO PREFECTURAL GOVERNMENTS AND DESIGNATED CITIES

The Government will encourage prefectural governments and Designated Cities to take, in principle, necessary measures similar to the Measures, for their procurement of not less than SDRs 200,000, taking into account local circumstances and the provisions of relevant laws and regulations.

The Government will encourage prefectural governments and Designated Cities to consider establishing a review mechanism with respect to their procurement of not less than SDRs 200,000.

VIII. TIME TABLE FOR IMPLEMENTATION

The Measures will be basically introduced to the maximum extent for procurement under the initial budget of FY 1994, and a system for procurement in accordance with the Measures will be established by the end of FY 1994.

IX. REVIEW OF THE IMPLEMENTATION OF THE MEASURES

The Government will hold a review to assess the extent that the Measures contribute to improvement of non-discriminatory nature, transparency, openness, competitiveness and fairness of procurement of telecommunications products and services covered by the Measures and, in addition, to address specific issues in implementing the Measures. The review will be held annually, and as necessary, under the Committee for Drawing Up and Promoting the Action Program. Administration relating to the review will be governed by the Cabinet Councillors' Office on External Affairs. At the review, implementation and utilization by suppliers of the Measures will be examined by using statistics and other relevant information. This will include the opportunity of listening to opinions of domestic and foreign companies and business associations.

X. DEFINITIONS

For purposes of the Measures:

"Days" means calendar days, except in the case of Annex 3, where references to "days" mean working days;

"Locally-established supplier" means a supplier that is established in Japan, without regard to the source of its capital;

"Supplier" means a person that has provided or could provide products or services in response to a Notice of Procurement;

"Affiliates" means (a) companies which a supplier who has provided research or design services controls or are controlled by, or (b) other companies which are controlled by a company controlling a supplier who has provided research or design services, where control means ownership in excess of 50 per cent of the issued stock if the affiliate is a stock corporation, and ownership in excess of 50 per cent of the capital if the affiliate is a limited company;

"Modified products or services" means telecommunications products or services that exist in the international marketplace at the time the Request for Comments is published in the Kanpo but require modification to meet the legitimate requirements of the entity for the procurement that significantly alter their function or essential physical characteristic;

"Off-the-shelf products or services" means telecommunications products or services that exist in the international marketplace at the time the Request for Comments or the Notice of Procurement is published in the Kanpo; and

"Specially developed products or services" means telecommunications products or services that do not exist in a form that meets the performance requirements in the international marketplace and must be developed especially to meet the legitimate requirements of the entity for the procurement.

ANNEX I
CENTRAL GOVERNMENT ENTITIES

House of Representatives

House of Councillors

Supreme Court

Board of Audit

Cabinet

National Personnel Authority

Prime Minister's Office

Fair Trade Commission

National Public Safety Commission (National Police Agency)

Environmental Disputes Co-ordination Commission

Imperial Household Agency

Management and Co-ordination Agency

Hokkaido Development Agency

Defense Agency

Economic Planning Agency

Science and Technology Agency

Environment Agency

Okinawa Development Agency

National Land Agency

Ministry of Justice

Ministry of Foreign Affairs

Ministry of Finance

Ministry of Education

Ministry of Health and Welfare

Ministry of Agriculture, Forestry and Fisheries

Ministry of International Trade and Industry

Ministry of Transport

Ministry of Posts and Telecommunications

Ministry of Labour

Ministry of Construction

Ministry of Home Affairs

ANNEX 2

OTHER ENTITIES COVERED BY THE MEASURES

Water Resources Development Public Corporation
New Tokyo International Airport Authority
Japan Highway Public Corporation
Japan Environment Corporation
Japan International Cooperation Agency
Social Welfare and Medical Services Corporation
Pension Welfare Service Public Corporation
Labour Welfare Corporation
Employment Promotion Corporation
Hokkaido and Tohoku Development Finance Public Corporation
Okinawa Development Finance Corporation
People's Finance Corporation
Environmental Sanitation Business Financing Corporation
Agriculture, Forestry and Fisheries Finance Corporation
Japan Finance Corporation for Small Business
Small Business Credit Insurance Corporation
Housing Loan Corporation
Japan Finance Corporation for Municipal Enterprises
Japan Development Bank
Export-Import Bank of Japan
Japan Tobacco Inc.
Hokkaido Japan Railway Company
East Japan Railway Company
Central Japan Railway Company

West Japan Railway Company

Shikoku Japan Railway Company

Kyushu Japan Railway Company

Japan Freight Railway Company

Japan Consumer Information Centre

Japan Information Centre of Science and Technology

Japan Foundation

University of the Air Foundation

National Stadium and School Health Centre of Japan

Japan Racing Association

Japan External Trade Organization

New Energy and Industrial Technology Development Organization

Northern Territories Issue Association

The Overseas Economic Cooperation Fund

Power Reactor and Nuclear Fuel Development Corporation

Japan Atomic Energy Research Institute

Pollution-Related Health Damage Compensation Association

Japan Regional Development Corporation

Fund for the Promotion and Development of the Amami Islands

The Japan Scholarship Foundation

Mutual Aid Association of Private School Personnel

Social Insurance Medical Fee Payment Fund

Association for Welfare of the Mentally & Physically Handicapped

Japan Agricultural Land Development Agency

Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel

Japan National Oil Corporation

Metal Mining Agency of Japan

Coal Mining Areas Restoration Agency

Japan Small Business Corporation

Japan Keirin Racing Association

Institute of Developing Economies

Japan Motorcycle Racing Organization

JNR Settlement Corporation

Teito Rapid Transit Authority

Postal Life Insurance Welfare Corporation

Small Enterprise Retirement Allowance Mutual Aid Association

Japan Institute of Labour

Metropolitan Expressway Public Corporation

Housing and Urban Development Corporation

Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen

Forest Development Corporation

The Maritime Credit Corporation

Japan Railway Construction Public Corporation

Hanshin Expressway Public Corporation

Honshu-Shikoku Bridge Authority

Research and Development Corporation of Japan

Livestock Industry Promotion Corporation

Japan Raw Silk and Sugar Price Stabilization Agency

Institute of Physical and Chemical Research

National Education Centre

Japan Arts Council

Japan Society for the Promotion of Science

Japan Private School Promotion Foundation

Social Development Research Institute

National Association of Racing

Farmer's Pension Fund

Japan National Tourist Organization

Rail Development Fund

Construction, the Sake Brewing Industry and Forestry Retirement Allowance Mutual Aid Association

ANNEX 3

TELECOMMUNICATIONS PRODUCTS AND SERVICES COVERED BY THE MEASURES

I. Telecommunications Products

In the Measures, "telecommunications products" means terminals, switching equipment, transmission equipment, wireless equipment and telecommunications cable.

This includes, for example, the following:

1. Terminals

telephone sets, facsimile machines

2. Switching Equipment

private branch exchange equipment, packet switches

3. Transmission Equipment

multiplexers, modems, DSU

4. Wireless Equipment

base station equipment, transmitter/receiver/amplifier equipment, antennas, digital radio, wireless terminals including pager

5. Telecommunications Cable

optical fibre cable, copper cable

II. Telecommunications Services

In the Measures, "telecommunications services" means the following:

1. Relating to the products of I. above,

- (1) Operation and maintenance services
- (2) Systems integration
- (3) Custom software development
- (4) Network management and operation
- (5) Consulting, management, and other analytical services and studies

2. Other services²
 - (1) Electronic mail
 - (2) Voice mail
 - (3) On-line information and data base retrieval
 - (4) Electronic data interchange (EDI)
 - (5) Enhanced facsimile services
 - (6) Code and protocol conversion
 - (7) On-line information and/or data processing (including transaction processing)

²2.(1)-(7) is a list according to Annex 4 of the new Agreement on Government Procurement submitted by the Government of Japan.

ANNEX 4

PROCUREMENT REVIEW BOARD

1. Board

- (1) The Board will have no substantial interest in the outcome of a procurement subject to its review.
- (2) The Board will receive complaints in writing, conduct investigations of the facts and make recommendations to an entity with respect to any aspect of a procurement by the entity.
- (3) The Board will be comprised of persons who have knowledge and experience related to public sector procurement. No member of the Board will participate in the review of a complaint in which that member has a conflict of interest.
- (4) Where necessary, the Board may hear opinions from technical experts who have in-depth knowledge and experiences related to the procurement subject to its review. None of those technical experts should have substantial interest in the outcome of the procurement.

2. Eligibility for Complaint

A supplier may file a complaint with the Board when it believes the procurement has been carried out in a manner inconsistent with the intent or any provision of the Measures. It may also file a complaint based upon the allegation that the contract was awarded to a supplier that had submitted a bid in violation of the Anti-Monopoly Act. Suppliers are encouraged to seek resolution initially with the entity of any alleged inconsistency with the Measures.

3. Participants

The entity and suppliers, whose direct economic interest would be affected by the award of, or the failure to award, a contract, may participate in a complaint proceeding.

4. Procurement Review Process

- (1) A supplier, that believes a procurement covered by the Measures has been carried out in a manner inconsistent with the intent or any provision of the Measures, may file a complaint in writing with the Board, at any time during the procurement process, but no later than ten days after the basis of the complaint is known or reasonably should have been known. The supplier will submit a copy of the complaint to the entity within one working day of filing it with the Board. (Days will be considered calendar days unless otherwise specified.)
- (2) The Board may receive and consider a complaint which is not timely filed, if it finds that good cause is shown.
- (3) The Board will review a complaint within seven days of its filing, and may, in writing and with reasons given, dismiss any complaint found to be:
 - (a) not submitted in a timely manner;

- (b) not subject to the Measures;
 - (c) frivolous or trivial on its face;
 - (d) not submitted by a supplier; or
 - (e) otherwise inappropriate for review by the Board.
- (4) Where the Board determines that a complaint has been filed properly, it will notify in writing all suppliers within one working day of the complaint.
- (5) Suspension of Award of Contract or Contract Performance
 - (a) Within ten days of the filing of a pre-award complaint, the Board will promptly issue a written request for suspension of contract award pending resolution of the complaint.
 - (b) In the case of a post-award complaint, filed within ten days after the award, the Board will promptly request in writing suspension of the Contract Performance pending resolution of the complaint.
 - (c) The entity will suspend the award or the performance of the contract immediately after it receives the Board's request, unless the head of the entity determines that urgent and compelling circumstances do not allow the entity to follow the request, or that the award or the performance of the contract will be in the best interests of Japan, in which case he will immediately provide written notification to the Board of his determination and the factual circumstances on which it is based.
- (6) Investigation
 - (a) The Board will conduct an investigation of the complaint, which may include the filing of briefs, pleadings and other documentation by the complainant and entity.
 - (b) The Board may, on the request of the complainant or the entity or on the Board's own initiative, hold a hearing on the merits of complaints.
- (7) Report by the Entity
 - (a) Within 14 days after the day on which a copy of the complaint was sent to the entity, the entity will file with the Board a written report on the complaint, containing the following:
 - (i) relevant documentation for tender, including the specifications or portions thereof relevant to the complaint;
 - (ii) all other documents relevant to the complaint;
 - (iii) a statement that sets out all relevant facts, findings, actions and recommendations of the entity and responds fully to all allegations of the complaint;

- (iv) any additional evidence or information that may be necessary in order to resolve the complaint.
- (b) The Board will forthwith after receiving the report referred to in paragraph (a) above, send a copy of the relevant material to the complainant and give the complainant an opportunity, within seven days after it receives the relevant material, to file with the Board comments or request that the case be decided on the existing record. The Board will, forthwith after receiving the comments, send a copy to the entity.

5. Findings and Recommendations

- (1) The Board will make a report of its findings and recommendations to the entity within 90 days after the day on which the complaint is filed. Its findings, in which the Board will grant or deny the complaint in whole or in part, will specify whether the procurement process or award was inconsistent with the intent or specific provisions of the measures.
- (2) Whenever the Board finds evidence of misconduct, actions or behaviour contrary to law, it will refer the matter to the appropriate enforcement authorities for action.
- (3) In making its findings and recommendations, the Board will consider all the circumstances surrounding the procurement process or award, including the seriousness of any deficiency in the procurement process, the degree of prejudice to any or all suppliers, the degree of impediment to the integrity and effectiveness of the Measures, the good faith of the participants, the extent of performance of the contract to which the procurement relates, the cost of the recommendation to the Government of Japan, the urgency of the procurement, and the impact of the recommendation on the business of the entity.
- (4) Where the Board finds that the intent or any provision of the Measures has not been followed, it will recommend an appropriate remedy, including one or more of the following:
 - (a) that a new tender documentation be issued;
 - (b) that new offers for the contract be sought;
 - (c) that the offers be re-evaluated;
 - (d) that the contract be awarded to another supplier;
 - (e) that the contract be terminated.
- (5) The Board will send its findings in writing with its recommendations to the complainant, the entity and any other participants, within one working day after issuance.
- (6) The entity will, in principle, and as its own decision, duly follow the findings of the Board on any complaint brought appropriately before the Board. The entity must report to the Board within 60 days of receipt of the Board's recommendation, if it has decided not to comply with the recommendation with the reasons for its decision.

- (7) The Board will respond to external inquiries concerning its findings.

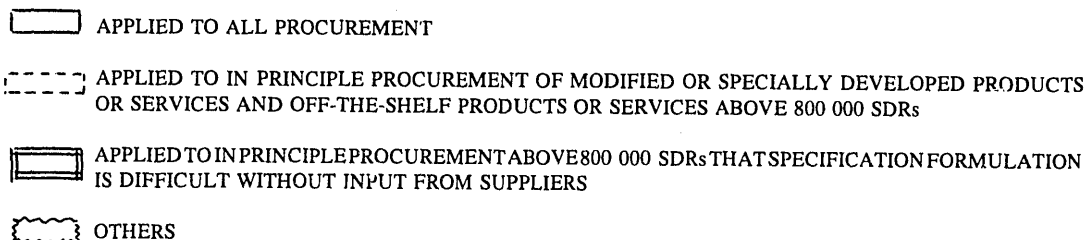
6. Express Option

- (1) Where the complainant or the entity requests in writing an expeditious handling of a complaint, the Board will consider the feasibility of using the procedure set out in this section, referred to herein as the "express option".
- (2) The Board will determine whether to apply the express option within two working days after receiving a request therefor and will notify the complainant and entity as to whether the express option is to be applied.
- (3) Where the express option is applied, the time limits and procedures will be as set forth in this paragraph.
 - (a) The entity will, within six days after the day on which it is notified by the Board that the express option is to be applied, file with the Board a written report on the complaint, as specified in paragraph 4.(7) above. The Board will, forthwith after receiving the report, send a copy of the relevant material to the complainant and any other participants. The Board will give the complainant and any other participants five days to file with the Board comments on such material or request that the case be decided on the existing record. The Board will, forthwith after receiving the comments, send a copy to the entity.
 - (b) The Board will issue its findings and recommendations on the complaint in writing within 25 days after the day on which the complaint is filed.

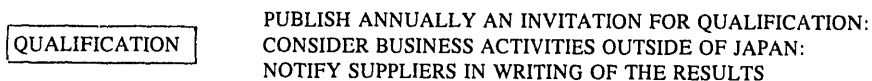
7. Document Retention

To contribute to the above procedures, each entity will maintain complete documentation related to all procurement not less than the thresholds set forth in I.2. of the Measures, for five years from the date of the contract award, to allow verification that the procurement process was carried out in accordance with the Measures.

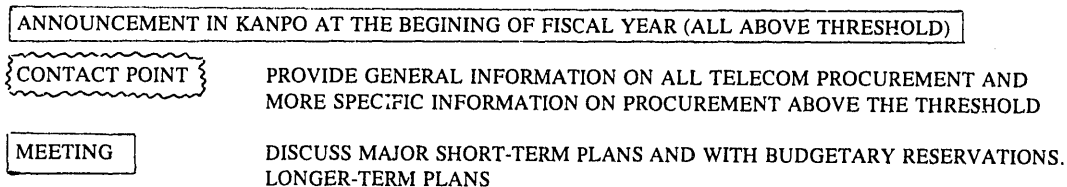
(APPENDIX 1) (OUTLINE OF PROCEDURES OF TELECOMMUNICATIONS PROCUREMENT)



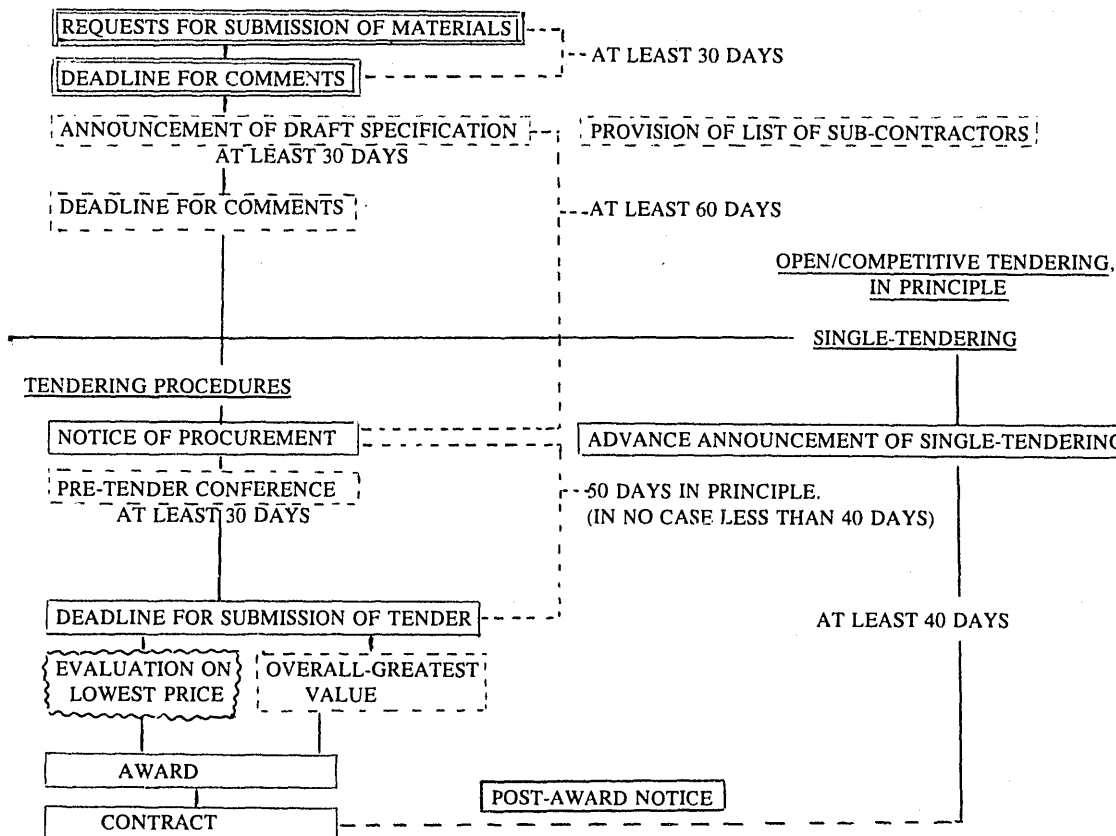
QUALIFICATION PROCEDURES



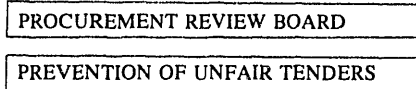
FUTURE PROCUREMENT PLANS



REQUESTS FOR COMMENTS



COMPLAINT MECHANISMS



(Appendix 2)

List of Central Contact Points set forth in Section IV of the Measures

Entity	Contact Point	Tel. Number	Ext.	FAX Number
House of Representatives	Procurement Section Accounts Div. General Affairs Dept.	03-3581-5111	(2323)	03-3581-9214
House of Councillors	Accounts Div. General Affairs Dept.	03-3581-3111	(2579)	03-3581-1020
Supreme Court	Auditing Div. Accounting Bureau	03-3264-8111	(3446)	03-3234-3529
Board of Audit	Accounts Div. Secretariat	03-3581-3251	(2268)	03-3581-8076
Cabinet and Prime Minister's Office	Contracts Section. Accounts Div. Minister's Secretariat	03-3581-2361	(2322)	03-3581-2267
Fair Trade Commission	Personnel and Accounts Div. Executive Office Secretariat	03-3581-5471	(434)	03-3581-1963
National Public Safety Commission (National Police Agency)	Finance Div. Commissioner-General's Secretariat	03-3581-0141	(2243)	03-3581-0633
Environmental Disputes Coordination Commission	Accounts Section General Affairs Div. Executive Office	03-3581-2361	(3516)	03-3581-9488
Imperial Household Agency	Section in Charge of the Acts to Incur Disbursement Accounting Div.	03-3213-1111	(276)	03-3282-1541
Management and Coordination Agency	Examination Section Accounts Div. Director-General's Secretariat	03-3581-6361	(4148)	03-3506-1941
Hokkaido Development Agency	First Accounting Section. General Affairs Div.	03-3581-9111	(2325)	03-3581-1208
Defence Agency	Procurement & Supply Office. Coordination Division. Bureau of Equipment	03-3408-5211	(2119)	03-3746-1415
Economic Planning Agency	Accounts and Budget Div.	03-3581-0261	(5129)	03-3581-9404
Science and Technology Agency	Finance Div. Minister's Secretariat	03-3581-5271	(272)	03-3504-2684
Environment Agency	Accounts Section Budget and Accounts Div. Minister's Secretariat	03-3581-3351	(6170)	03-3593-8932
Okinawa Development Agency	Accounts Div. General Affairs Bureau	03-3581-2361	(4023)	03-5251-7177
National Land Agency	Accounts Section, Budget and Accounts Div. Minister's Secretariat	03-3593-3311	(7153)	03-3501-5349
Ministry of Justice	Auditing Office Finance Div. Minister's Secretariat	03-3580-4111	(2212)	03-3592-7112
Ministry of Foreign Affairs	Procurement Office, Financial Affairs Div. Minister's Secretariat	03-3580-5257	(Direct)	03-3581-9444
Ministry of Finance	First Account Settlement Section, Accounts Div. Minister's Secretariat	03-3581-4111	(2126)	03-5251-2162
Ministry of Education	Law and Regulation Unit. General Affairs Section. Budgeting and Accounting Div. Minister's Secretariat	03-3581-11211	(2185)	03-3591-8140
Ministry of Health and Welfare	Accounts Div. Minister's Secretariat	03-3503-1711	(2212)	03-3508-1112
Ministry of Agriculture, Forestry and Fisheries	General Section on Specified Procurements, Accounting Div. Minister's Secretariat	03-3502-8111	(2491)	03-3506-1935
Ministry of International Trade and Industry	Budget and Accounts Div. Minister's Secretariat	03-3501-1511	(2236)	03-3580-2493
Ministry of Transport	Senior Contract-Coordinator Officer. Finance Div. Minister's Secretariat	03-3580-3111	(5385)	03-3580-7804
Ministry of Posts and Telecommunications	International Procurement Planning Office Finance Dept. Minister's Secretariat	03-3504-4241	(Direct)	03-3504-0194
Ministry of Labour	Finance Div. Minister's Secretariat	03-3593-1211	(6112)	03-3502-2950

Ministry of Construction	Procurement Information Section. Finance Dept., Minister's Secretariat	03-3580-4311	(2277)	03-5251-1923
Ministry of Home Affairs	Section of Contract and Payment. Financial Div. Minister's Secretariat	03-3581-5311	(422)	03-3597-0065
Hokkaido Railway Company	Purchasing and Stores Div. Finance Dept.	011-222-7131	(Direct)	011-261-6814
East Japan Railway Company	Purchasing and Stores Div. Finance Dept.	03-3212-2657	(Direct)	03-3712-2581
Central Japan Railway Company	Materials Section Financial Dept.	052-564-2538	(Direct)	052-564-2535
West Japan Railway Company	Purchasing and Stores Div. Finance Dept.	06-375-8991	(Direct)	06-375-8862
Shikoku Railway Company	Purchasing and Stores Div. Finance Dept.	0878-22-3990	(Direct)	0878-22-3990
Kyushu Railway Company	Purchasing and Stores Div. Finance and Accounting Dept.	093-331-3504	(Direct)	093-331-3504
Japan Freight Railway Company	Purchasing and Stores Div. Finance Dept.	03-3212-8908	(Direct)	03-3285-0070
Japan Tobacco Inc.	General Administration Div. General Administration Dept.	03-3474-3111	(2322)	03-5479-0340
People's Finance Corporaton	Supply Div. General Affairs Dept.	03-3270-4111	(726)	03-3241-9479
Housing Loan Corporation	Contract Section. Accounting Div. Finance and Accounting Dept.	03-3796-6111	(296)	03-3796-6176
Agriculture, Forestry and Fisheries Finance Corporation	General Affairs Div. General Affairs Dept.	03-3270-2261	(338)	03-3270-2350
Japan Finance Corporation for Small Business	General Service Div. General Service Dept.	03-3270-1261	(2511)	03-3270-1207
Finance Corporation of Local Public Enterprise	Second Section General Affairs Div.	03-3581-0311	(30)	03-3506-1969
Hokkaidu-Tohoku Development Corporation	General Service Div. Business Control and Accounting Dept.	03-3270-1657	(281)	03-3246-0776
Social Welfare and Medical Service Corporation	Accounting Section. General Accounting Dept.	03-3438-9929	(Direct)	03-3438-0219
Small Business Credit Insurance Corporation	Accounting and Treasury Div. Accounting and Treasury Dept.	03-3270-2361	(8311)	03-3242-0043
Environmental Sanitation Business Financing Corporation	Accounting Div. Accounting Dept.	03-3582-5416	(Direct)	03-3582-4730
Okinawa Development Finance Corporation	General Affairs Div., General Affairs Dept.	03-3581-3241	(Direct)	03-5511-8233
Japan Development Bank	General Services Div. General Services Dept.	03-3244-1860	(Direct)	03-3270-8097
Export-Import Bank of Japan	Planning and Coordination Div. Administration Dept.	03-3287-9445	(Direct)	03-3287-9540
Water Resources Development Public Corporation	Contracts Div. Accounting Dept.	03-3584-1251	(2215)	03-3584-1247
Japan Regional Development Corporation	Contract Management Div. Accounting Dept.	03-3501-5211	(637)	03-3501-5209
Japan Agricultural Land Development Agency	Accounting Div. Budget and Accounting Dept.	03-3433-0171	(355)	03-3433-5465
Japan National Oil Corporation	Accounting Div. General Administration Dept.	03-3597-7537	(Direct)	03-3591-0172
New Tokyo International Airport Authority	Contract Div. Finance Dept.	03-3639-6284	(Direct)	03-3639-8227
Japan Highway Public Corporation	Contract Administration Div. Procurement and Right-of-way Dept.	03-3506-0111	(6279)	03-3506-0939
Metropolitan Expressway Public Corporation	Contract Research Section. Contract Div. Finance Dept.	03-3502-7311	(2838)	03-3502-3062
Housing and Urban Development Corporation	Administration Section. Contract Administration Div. Finance Dept.	03-3263-8111	(8309)	03-3263-8147
Power Reactor and Nuclear Fuel Development Corporation	Consignment Contract Section. Contact Div.	03-3586-3311	(2305)	03-3505-1552

Japan Environmental Corporation	Contract Div. Accounts and Finance Dept.	03-5251-1027	(Direct)	03-3592-5057
Japan International Cooperation Agency	Facilities and Supplies Div. Finance and Accounting Dept.	03-3346-5103	(Direct)	03-3346-5447
Pension Welfare Service Public Corporation	Financial Section. Financial Dept.	03-3502-2481	(312)	03-3502-2058
Metal Mining Agency of Japan	Contract Examination Div. General Affairs Dept.	03-3503-2801	(344)	03-3503-0570
Coal Mine Damage Corporation	General Coordination Div. General Coordination Dept.	03-3502-5221	(Direct)	03-3503-7486
Japan Small Business Corporation	Accounting Dept.	03-3433-8811	(2081)	03-5470-1512
JNR Settlement Corporation	First Accounting Div. Finance and Accounting Dept.	03-3214-3556	(Direct)	03-3214-7952
Postal Life Insurance Welfare Corporation	General Affairs Section. General Affairs Div.	03-3586-4311	(Direct)	03-3585-7298
Labour Welfare Corporation	Contract Div. Accounting Dept.	03-3292-8871	(311)	03-3292-8836
Small Enterprise Retirement Allowance Mutual Aid Corporation	Finance Div. General Coordination Dept.	03-3406-0151	(624)	03-3437-4438
Employment Promotion Corporation	The First Contracts Div. Accounting Dept.	03-3222-8067	(Direct)	03-3222-1040
Teito Rapid Transit Authority	Finance and Accounting Dept.	03-3837-7066	(Direct)	03-3837-7192
Northern Territories Issue Association	Accounting Section. General Affairs Div.	03-3263-7691	(Direct)	03-3263-7693
The Overseas Economic Cooperation Fund	Supplies and Welfare Div. Accounting and General Service Dept.	03-5606-3604	(Direct)	03-5606-3615
Japan Consumers Information Center	Accounts and Budget Div. Administration Dept.	03-3443-7869	(Direct)	03-3443-1201
Japan Atomic Energy Research Institute	Contracts Div. I. Contracts Dept.	03-3592-2344	(Direct)	03-3592-2349
Japan Information Center of Science and Technology	Contract Section. Accounting and Contract Div. Accounting and Finance Dept.	03-3581-6411	(474)	03-3581-6610
Pollution-Related Health Damage Compensation Association	Planning Section. General Affairs Dept.	03-3586-6041	(237)	03-3224-9586
Fund for the Promotion and Development of the Amani Islands	Tokyo Office	03-3443-4318	(Direct)	03-5473-9340
Japan Foundation	Accounting Div. Financial and Accounting Dept.	03-3263-4496	(Direct)	03-5275-6908
Japan Scholarship Foundation	Account Section. Account Div.	03-3269-4261	(462)	03-3269-4828
Mutual Aid-Association of Private School Personnel	Supplies Subsection. Accounting Section. Financial Div.	03-3813-5321	(539)	03-3813-5932
National Stadium and School Health Center of Japan	General Accounting Div.	03-5410-9140	(Direct)	03-5410-9146
Social Insurance Medical Fee Payment Fund	Accounts Div.	03-3591-7441	(Direct)	03-3591-6194
Association for Welfare of the Mentally and Physically Handicapped	General Affairs Section. General Affairs Div. General Affairs Dept.	0273-25-1501	(Direct)	0273-27-7628
University of the Air Foundation	Supplies Unit. Budget and Accounts Div. General Affairs Dept.	043-276-5111	(2615)	043-276-5166
Japan Racing Association	Procurement Section. Contract Div. Financial and Accounting Dept.	03-3591-5251	(3260)	03-(5401)4060
Mutual Aid Association of Agriculture Forestry and Fishery Corporation	General Services Section. General Affairs Div. General Affairs Dept.	03-3432-8108	(Direct)	03-3432-3750
Japan External Trade Organization	Contracts and Maintenance Div. Financing and Accounting Dept.	03-3582-5548	(Direct)	03-3583-6182
Japan Keirin Association	General Affairs Div.	03-3582-3311	(2160)	03-5563-0724
Institute of Developing Economics	Accounts Div. Administrative Dept.	03-3353-4231	(690)	03-3226-8475

Japan Motorcycle Racing Organization	General Affairs Section. General Affairs Dept.	03-3503-6421	(Direct)	03-3503-6428
New Energy and Industrial Technology Development Organization	Contracts Div. Accounting Dept.	03-3987-9322	(Direct)	03-5992-1184
Japan Institute of Labour Mutual Aid Fund for Official	Finance Dept.	03-5470-4024	(Direct)	03-3459-0226
Casualties and Retirement of Volunteer Firemen	Financial Affairs Official.	03-3595-0541	(Direct)	03-3581-7720
Forest Development Corporation	General Affairs Div.			
	Procurement Section. Accounting and Treasury Div. Accounting and Treasury Dept.	03-3222-1231	(Direct)	03-3222-1410
Maritime Credit Corporation	Plannning Office. General Affairs Dept.	03-3501-2146	(Direct)	03-3580-8173
Japan Railway Construction Public Corporation	Contract Div. Finance Dept.	03-3506-1827	(Direct)	03-3506-1890
Hanshin Expressway Public Corporation	Contract Evalution Subsection. Contract Section. Administration Div.	06-252-8121	(3344)	06-251-6930
Honshu-Shikoku Bridge Authority	Procurement Div. Procurement and Compensation Dept.	03-3434-7281	(2523)	03-3431-2417
Research Development Corporation of Japan	Office of Planning	048-226-5608	(Direct)	048-226-5651
Livestock Industry Promotion Corporation	General Affairs Dept.	03-3582-3381	(330)	03-3583-8472
Japan Raw Silk and Sugar Price Stabilization Agency	First Finance and Accounting Div. Finance and Accounting Dept.	03-3667-8356	(Direct)	03-3667-0364
Institute of Physical and Chemical Research	Purchase Section. Finance Div.	048-462-1111	(2341)	048-462-4605
National Education Center	Marketing and Accounting Div. Fiscal Affairs Div. Budgets and Accounts Dept.	03-3580-1256	(322)	03-3581-2018
Japan Arts Council		03-3265-7411	(2214)	03-3265-8782
Japan Society for the Promotion of Science	Budget Unit. Accounting Div. Administration Dept.	03-3263-1721	(224)	03-3237-8238
Japan Private School Promotion Foundation	Supplies Unit. Budgeting and Accounting Div. General Affairs Dept.	03-3230-7834	(Direct)	03-3230-1325
Social Development Research Institute	General Affairs Dept.	03-3589-1381	(Direct)	03-3589-3864
The National Association of Racing	Accounting and Treasury Div. Accounting and Treasury Dept.	03-3583-6841	(243)	03-5570-6449
Farmers Pension Fund	Accounting and Treasury Div. Accounting and Treasury Dept.	03-3502-3941	(43)	03-3592-2660
Japan National Tourist Organization	Finance Dept.	03-3216-1904	(Direct)	03-3216-1846
Rail Development Fund	General Affairs Div. Administration Dept.	03-3215-9682	(Direct)	03-3240-5640
Construction the Sake Brewing Industry and Forestry Retirement Allowance Mutual Aid Association	Accounting Div. Administration Dept.	03-5400-4308	(Direct)	03-3459-8369

APPENDIX B

[TELECOMMUNICATIONS]

OPERATIONAL GUIDELINES WITH RESPECT TO MEASURES ON
JAPANESE PUBLIC SECTOR PROCUREMENT OF TELECOMMUNICATIONS
PRODUCTS AND SERVICES

The Government of Japan has decided to issue and implement these Operational Guidelines to supplement and clarify the Measures on Japanese Public Sector Procurement of Telecommunications Products and Services (hereinafter referred to as "the Measures" which were decided by the Committee for Drawing Up and Promoting the Action Program on 28 March 1994, as follows. In carrying out the Measures, the Guidelines will be fully implemented and respected.

1. SECTION III.1: FUTURE PROCUREMENT PLANS

When an entity publishes in the Kanpo procurement information on telecommunications products and services covered by the Measures as set forth in Section III.1, the entity will invite suppliers to submit materials, comments and other necessary information on the procurement. Entities will give full consideration to any information submitted by suppliers.

2. SECTION III.5: REQUEST FOR COMMENTS

- (1) In the case of Request for Submission of Materials set forth in Section III.5.1, supplier can submit materials and comments on the entity's actual needs with regard to the procurement for which a Request for Submission of Materials has been issued.
- (2) With respect to Section III.5.1, all procurements in which the contract award is expected to be greater than SDRs 800,000 are deemed to be those in which entities face difficulties in developing appropriate specifications without requesting the submission of materials from suppliers. This may not be the case, where the established specifications are repeatedly used to meet requirements of compatibility with already existing equipment.
- (3) For procurements in which the contract award is expected to be SDRs 800,000 or below, entities may use the Request for Submission of Materials procedures when they determine that they face difficulties in developing appropriate specifications without requesting the submission of materials from suppliers.
- (4) The phrase in Section III.5.2 of the Measures, which states "entities will take the following measures in order to ensure that interested suppliers submit their comments on draft specifications prepared by the entities" is not intended to limit comments submitted to those on draft specifications. Suppliers can submit materials and comments on, in addition to draft specifications, other technical information or any other aspect of the procurement, including the supplier's view on the estimated cost of the procurement.

3. SECTION III.6.1: TECHNICAL SPECIFICATIONS

In implementing Section III.6.1(2), in the case where international standards do not exist, the entity will give full consideration to using de facto international standards, in addition to using national technical regulations and recognized national standards as the basis of technical specifications.

4. SECTION III.10.4: EVALUATION OF TENDERS

- (1) Subparagraph (iii) of III.10.4(1) means that entities will use the overall greatest value methodology for off-the-shelf products or services with a value greater than SDRs 800,000 for which the same specifications are repeatedly used.
- (2) The evaluation method described in Section III.10.4(2) will be used for all procurements other than those specified in paragraph 10.4(1), unless the entity chooses to use the overall greatest value methodology described in Section III.10.4(1).

5. THRESHOLD FOR OVERALL GREATEST VALUE EVALUATION AND REQUEST FOR COMMENTS

With respect to the threshold that applies to overall greatest value evaluation and Request for Comments, as set out in Sections III.5.1, III.5.2 and III.10.4 of the Measures and paragraphs 2(2), 2(3) and 4(1) of these Guidelines, the Government will lower the threshold from SDRs 800,000 to SDRs 600,000 on 1 April 1996, to SDRs 400,000 on 1 April 1997, and to SDRs 385,000 on 1 April 1998.

6. SECTION III.13: TREATMENT OF SUBCONTRACTORS

In addition to the measures described in Section III.13, when an entity publishes in the Kanpo procurement information of telecommunications products and services as set forth in Section III.1 of the Measures, the entity will invite suppliers to express interest in subcontracts involved in those procurements. Each entity will compile lists of potential subcontractors which have responded to the invitations issued in accordance with Section III.13 of the Measures and this paragraph of these Guidelines, and will attach these lists to tender documentation distributed to suppliers, with the presumption that the entity is not responsible for the competency of the suppliers listed.

7. SECTION IV.2.1: SUPPORTING MEASURES

The committee set forth in Section IV.2.1 has the objective of developing a standardized manual for non-discriminatory and simplified specifications, and will seek to identify appropriate fields for developing uniform specifications.

8. SECTION IV.4: MEETING

Entities which procured in the previous fiscal year a total of SDRs 5,000,000 or more of telecommunications products and services covered by the Measures will hold their own meetings.

9. ANNEX 3: TELECOMMUNICATIONS PRODUCTS AND SERVICES COVERED BY THE MEASURES

(1) Products covered by the Measures

"Telecommunications products" as described in Annex 3 to the Measures means all types of terminals, switching equipment, transmission equipment, wireless equipment and telecommunications cable.

Under the Measures, no specific telecommunications products are excluded.

(2) Services covered by the Measures

New enhanced or value-added services that emerge in the future will be included in the services covered by the Measures.

Enhanced or value-added services are defined as services offered over Type I carrier transmission facilities, which employ such computer processing applications as described below:

- (i) that convert the content, code, protocol or similar aspects of the subscriber's transmitted information (conversions performed solely for the benefit of the network shall not be included within the scope of this definition);
- (ii) that provide the subscriber with additional, different or restructured information; and
- (iii) that involve subscriber interaction with stored information a service involving the storage and automatic delivery of information to the recipient will be allowed whenever the service includes one of the processing applications described in subparagraphs (i) or (ii) of this paragraph, or whenever the storage and delivery function provides a service of value to the sender or recipient).

APPENDIX C

DATA COLLECTION
(TELECOMMUNICATIONS)

The Government of Japan will report the following information and data annually, beginning with Calendar Year 1994, for procurements subject to the Measures:

1. The total number and value of contracts awarded by all covered entities and by each such entity:
 - (1) for the major types of products and services classified by product categories 1 through 5 in I. of Annex 3 to the Measures and service categories 1 (services "relating to the products of the I. above") and 2 ("other services") in II. of the above-mentioned Annex 3;
 - (2) in the aggregate for all products; and
 - (3) in the aggregate for all services.
2. The total number and value of contracts awarded for foreign products and services by all covered entities and by each such entity:
 - (1) for the major types of products and services classified by product categories 1 through 5 in I. of Annex 3 to the Measures and service categories 1 (services "relating to the products of the I. above") and 2 ("other services") in II. of the above-mentioned Annex 3;
 - (2) in the aggregate for all products; and
 - (3) in the aggregate for all services.
3. The number and percentage of contracts that were single tender contracts, the value of such contracts, and the number and value of those contracts awarded for foreign products and services.
4. The total number and value of contracts awarded by all covered entities and by each such entity:
 - (1) in the cases that only tenders of domestic products or services were submitted;
 - (2) in the cases that only tenders of foreign products or services were submitted; and
 - (3) in the cases that both tenders of domestic and foreign products or services were submitted, broken down by contracts awarded for domestic products or services and those awarded for foreign products or services.

NOTE: The above-referenced data by each entity covered by the Measures will most likely fluctuate year by year.

Dear Ambassador Kuriyama,

I am pleased to receive your letter of today's date concerning procurement of telecommunications products and services in the Japanese public sector market and the "Measures on Japanese Public Sector Procurement of Telecommunications Products and Services" (hereinafter referred to as the "Measures") and "Operational Guidelines with Respect to Measures on Japanese Public Sector Procurement of Telecommunications Products and Services" (hereinafter referred to as the "Guidelines") attached thereto.

The Government of the United States reaffirms the Framework for a New Economic Partnership established by the "Joint Statement on the Japan-United States Framework for a New Economic Partnership" of the Heads of the Governments of Japan and the United States on 10 July 1993 (hereinafter referred to as the "Framework"). The goals of the Framework are to deal with structural and sectoral issues in order substantially to increase access and sales of competitive foreign goods and services through market-opening and macroeconomic measures; to increase investment; to promote international competitiveness; and to enhance bilateral economic cooperation between the United States and Japan.

I am pleased to learn that, to accomplish these goals with respect to Japanese public sector procurement of telecommunications products and services, your Government has adopted the Measures and Guidelines with the aim of significantly increasing access and sales of competitive foreign telecommunications products and services in the Japanese public sector procurement market.

I welcome your Government's decision to implement the Measures and Guidelines and willingness to keep the Measures and Guidelines under continual review. I would like to confirm that the Governments of Japan and the United States will meet in June 1995 and annually thereafter, or at any time upon the request of either Government, to discuss any matters related to the Measures and Guidelines, including assessment of implementation of the Measures and Guidelines and evaluation of progress achieved toward the goals of the Framework and the goals of this sector, as set forth above. I would like to confirm that such consultations will be held until the end of FY 2000, at which point the two Governments will decide whether or not to continue these consultations. Depending on the results of the consultations described above, the Government of the United States will, if necessary, further encourage U.S. firms to take advantage of opportunities created by the Government of Japan and, if appropriate, consider additional efforts.

Assessment of the implementation of the measures and Guidelines, as well as the evaluation of progress achieved, will be based on the overall consideration of the following qualitative and quantitative criteria. These qualitative and quantitative criteria will be considered as a set, and no one criterion will be determinative of the assessment of the Measures and Guidelines, or the evaluation of progress achieved. These criteria do not constitute numerical targets, but rather are to be used for the purpose of evaluating progress achieved toward the goals of the Framework and the goals of this sector, as set forth above.

1. QUANTITATIVE CRITERIA

Annual evaluation of progress in the value and share of procurements of foreign medical technology products and services covered by the Measures and Guidelines to achieve, over the medium term, a significant increase in access and sales of competitive foreign medical technology products and services, by:

- 1.1 Annual value and share of procurements of foreign medical technology products and services covered by the Measures and Guidelines, evaluated by reference to recent trends in the value,

rate of growth and share of procurements of foreign medical technology products and services, and the total value of procurements covered by the Measures and Guidelines;

NOTE: In the initial years of consultations (before multiple years of data have been collected) it will be necessary to consider recent Kanpo data.

- 1.2 Annual number of entities procuring foreign medical technology products and services covered by the Measures and Guidelines, in relation to the total number of entities procuring medical technology products and services covered by the Measures and Guidelines;
- 1.3 Annual number and value of contracts awarded as a result of a decrease in single tendering;
- 1.4 Annual number of tenders submitted by all suppliers and foreign suppliers; and
- 1.5 Relative competitiveness of foreign medical technology products and services.
2. **QUALITATIVE CRITERIA**
 - 2.1 Full and non-discriminatory access to procurement information by foreign suppliers at all stages of the procurement process, as provided in the Measures and Guidelines;
 - 2.2 Results of the reviews conducted by the Procurement Review Board;
 - 2.3 Full implementation of all requirements of the Measures, Guidelines and letters, in addition to those mentioned above;
 - 2.4 Efforts by foreign suppliers to utilize procurement opportunities, including comments on draft specifications; and
 - 2.5 Market conditions, including exchange rates.

In addition to the Measures which already have been implemented, the Guidelines will be implemented as of 1 November 1994, except for procurements in which a Notice of Procurement or a Request for Comments was published before 1 November 1994.

I also welcome your Government's reaffirmation with respect to distribution of medical technology products and services, and hope that the maintenance of the Government of Japan's policy of promoting fair and free competition will further increase market entry opportunities, including those of foreign companies. I also welcome your Government's decision to encourage the private sector, including manufacturers and distributors of medical technology products and services, to establish internal Anti-Monopoly Act compliance programmes.

I welcome your Government's intent to request and, as a matter of policy, to make maximum efforts in the future to obtain sufficient funds to enable the public procurement of medical technology products and services based on prices for similar products and services in similar working environments in the private sector.

I am of the view that the Measures and Guidelines represent substantial progress toward resolving problems related to procurements by the Government of Japan of medical technology products and services and are a major achievement of the Framework. I expect that the implementation of the Measures and Guidelines will give foreign medical technology suppliers and service providers full access to the public sector procurement market in Japan. We will continue to monitor this situation and,

combined with efforts by U.S. firms, look forward to increased access and sales of competitive medical technology products and services by U.S. and other foreign firms under the Measures and Guidelines.

We note that in response to technological and market developments, the public sector in Japan will be modernizing its telecommunications systems. In light of these developments, I believe that the Measures and Guidelines will provide significant additional market access for foreign suppliers of telecommunications products and services.

The Government of the United States will encourage U.S. firms to take advantage of opportunities created by the Government of Japan. The Government of the United States reconfirms that it is the policy of the Government of the United States to provide non-discriminatory, transparent, fair and open opportunities consistent with its obligations under the GATT Agreement on Government Procurement and, after entry into force for the United States, the new Agreement on Government Procurement. My Government will consult with your Government upon request concerning such policies, and areas of particular interest. We are also prepared to provide the Government of Japan with necessary information as requested concerning our procurements.

Sincerely,

Michael Kantor

(MEDICAL TECHNOLOGY)

Dear Secretary Brown,

With regard to the procurement of medical technology products and services in the Japanese public sector market, I am pleased to state the following upon instructions from my Government.

The Government of Japan reaffirms the Framework for a New Economic Partnership established by the "Joint Statement on the Japan-United States Framework for a New Economic Partnership" of the Heads of the Governments of Japan and the United States on 10 July 1993 (hereinafter referred to as the "Framework"). The goals of the Framework are to deal with structural and sectoral issues in order substantially to increase access and sales of competitive foreign goods and services through market-opening and macroeconomic measures; to increase investment; to promote international competitiveness; and to enhance bilateral economic cooperation between the United States and Japan.

To accomplish these goals with respect to Japanese public sector procurement of medical technology products and services, the Government of Japan has adopted the "Measures Related to Japanese Public Sector Procurement of Medical Technology Products and services" (hereinafter referred to as the "Measures") and the "Operational Guidelines with Respect to Measures Related to Japanese Public Sector Procurement of Medical Technology Products and Services" (hereinafter referred to as the "Guidelines"), attached as Appendices A and B respectively, with the aim of significantly increasing access and sales of competitive foreign medical technology products and services in the Japanese public sector procurement market.

Assessment of the implementation of the Measures and Guidelines, as well as the evaluation of progress achieved, will be based on the overall consideration of the following qualitative and quantitative criteria. These qualitative and quantitative criteria will be considered as a set, and no one criterion will be determinative of the assessment of the Measures and Guidelines, or the evaluation of progress achieved. These criteria do not constitute numerical targets, but rather are to be used for the purpose of evaluating progress achieved toward the goals of the Framework and the goals of this sector, as set forth above.

1. QUANTITATIVE CRITERIA

Annual evaluation of progress in the value and share of procurements of foreign medical technology products and services covered by the Measures and Guidelines to achieve, over the medium term, a significant increase in access and sales of competitive foreign medical technology products and services, by:

- 1.1 Annual value and share of procurements of foreign medical technology products and services covered by the Measures and Guidelines, evaluated by reference to recent trends in the value, rate of growth and share of procurements of foreign medical technology products and services, and the total value of procurements covered by the Measures and Guidelines;

NOTE: In the initial years of consultations (before multiple years of data have been collected) it will be necessary to consider recent Kanpo data.

- 1.2 Annual number of entities procuring foreign medical technology products and services covered by the Measures and Guidelines, in relation to the total number of entities procuring medical technology products and services covered by the Measures and Guidelines;
 - 1.3 Annual number and value of contracts awarded as a result of a decrease in single tendering;
 - 1.4 Annual number of tenders submitted by all suppliers and foreign suppliers; and
 - 1.5 Relative competitiveness of foreign medical technology products and services.
2. QUALITATIVE CRITERIA
- 2.1 Full and non-discriminatory access to procurement information by foreign suppliers at all stages of the procurement process, as provided in the Measures and Guidelines;
 - 2.2 Results of the reviews conducted by the Procurement Review Board;
 - 2.3 Full implementation of all requirements of the Measures, Guidelines and letters, in addition to those mentioned above;
 - 2.4 Efforts by foreign suppliers to utilize procurement opportunities, including comments on draft specifications; and
 - 2.5 Market conditions, including exchange rates.

The Government of Japan will keep the Measures and Guidelines under continual review. The Governments of Japan and the United States will meet in June 1995 and annually thereafter, or at any time upon the request of either Government, to discuss any matters related to the Measures and Guidelines, including assessment of implementation of the Measures and Guidelines and evaluation of progress achieved toward the goals of the Framework and the goals of this sector, as set forth above. Such consultations will be held until the end of FY 2000, at which point the two Governments will decide whether or not to continue these consultations.

In addition to the Measures which already have been implemented, the Guidelines will be implemented as of 1 November 1994, except for procurements in which a Notice of Procurement or a Request for Comments was published before 1 November 1994. As is consistent with the Framework, it is confirmed that the benefits of the Measures and Guidelines will be on a most-favoured-nation basis.

The Government of Japan will collect the data set forth in Appendix C for use in the consultations described above. Depending on the results of the consultations, the Government of Japan will, if necessary, take appropriate action, and the Government of the United States will, if necessary, further encourage U.S. firms to take advantage of opportunities created by the Government of Japan and, if appropriate, will consider additional efforts.

With respect to the distribution of medical technology products and services, in accordance with its policy of promoting fair and free competition to increase market entry opportunities, including those of foreign companies, the Government of Japan reaffirms its commitment to enforce effectively the Anti-Monopoly Act and related Guidelines to address anti-competitive activities, if any, related to the distribution of goods and services, including medical technology products and services. The Government of Japan will encourage the private sector, including manufacturers and distributors of medical technology products and services, to establish internal Anti-Monopoly Act compliance programmes.

The Government of Japan recognizes that adequate budgets for the procurement of medical technology products and services are necessary to ensure fair and competitive procurements. To this end, my Government will request and, as a matter of policy, make maximum efforts in the future to obtain sufficient funds to enable public procurement of medical technology products and services based on prices for similar products and services in similar working environments in the private sector.

I understand that it is the policy of the Government of the United States to provide non-discriminatory, transparent, fair and open opportunities consistent with its obligations under the GATT Agreement on Government Procurement and, after entry into force for the United States, the new Agreement on Government Procurement. I also understand that the Government of the United States will consult, at the above-mentioned consultations, with my Government upon request concerning such policies, and areas of particular interest in this sector, and will consider the views of the Government of Japan. The Government of Japan welcomes these policies of the Government of the United States, and implements the Measures and Guidelines and the contents of this letter.

Sincerely,

Takakazu Kuriyama

- Appendix A: Measures Related to Japanese Public Sector Procurement of Medical Technology Products and Services
- Appendix B: Operational Guidelines with Respect to Measures Related to Japanese Public Sector Procurement of Medical Technology Products and Services
- Appendix C: Data Collection

APPENDIX A

MEASURES RELATED TO JAPANESE PUBLIC SECTOR PROCUREMENT OF MEDICAL TECHNOLOGY PRODUCTS AND SERVICES

I. GENERAL POLICIES

1. The purpose of these Measures Related to Japanese Public Sector Procurement of Medical Technology Products and Services (hereinafter referred to as the "Measures") is to ensure non-discriminatory, transparent, fair, competitive and open public sector procurement procedures. With the aim of achieving this purpose and significantly increasing access and sales of competitive foreign medical technology products and medical technology services (hereinafter referred to as "medical technology products and services") in the Japanese public sector procurement, the Government of Japan (hereinafter referred to as the "Government") will implement the Measures set out below.
2. The Government reaffirms its obligations to observe the provisions of the existing Agreement on Government Procurement and states its support of the new Agreement on Government Procurement, which is expected to come into effect on 1 January 1996. Prior to entry into force for Japan of the new Agreement on Government Procurement, the Measures will be implemented in addition to the requirements of the existing Agreement on Government Procurement, while ensuring consistency with it. After entry into force for Japan of the new Agreement on Government Procurement, the Measures will be implemented in addition to the requirements of the existing and new Agreements, while ensuring consistency with them. (The existing Agreement and the new Agreement are hereinafter referred to collectively as the "Code".)
3. The Measures will govern procurement by the entities, including all of their hospitals, specified in Annexes 1 and 2 (hereinafter referred to collectively as the "entities") of all medical technology products and services of not less than SDRs 100,000, or the Code threshold, whichever is lower, by any contractual means, such as purchase, lease, rental and hire purchase.

II. NATIONAL TREATMENT AND NON-DISCRIMINATION

1. With regard to procurement covered by the Measures, the Government will accord to foreign products and services and foreign suppliers of such products and services, treatment no less favourable than it accords to:
 - (1) domestic products, services and suppliers; and
 - (2) products, services and suppliers of any other foreign country.
2. With regard to procurement covered by the Measures, the Government will not:
 - (1) treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; or
 - (2) discriminate against a locally-established supplier on the basis that the products or services offered by that supplier for the particular procurement are foreign products or services.

III. POLICIES AND PROCEDURES APPLICABLE TO ALL PROCUREMENTS COVERED BY THE MEASURES

1. Future Procurement Plans

Entities will invite suppliers to submit comments on the following procurement plans by publishing in the Kanpo procurement information of medical technology products and services (the name and address of the entity, subject matter of the procurement such as its name and volume, planned date of the Notice of Procurement), covered by the Measures as early in the fiscal year as possible, and will make the information available for public perusal at a contact point in the entity, as provided for in Section VI(1). In the case that the notice of procurement or the Request for Comments set out in the sub-paragraph 5 below has been published, entities need not take the procedures to provide information set out in this paragraph.

2. General Requirements

2.1 Where an entity has a requirement for a medical technology product or service, it will undertake procurement planning and conduct market research, as necessary, in order to promote competition to the maximum extent possible, and to ensure that the entity meets its needs with the most appropriate medical technology product or service.

2.2 Information made available on a budget request to any suppliers will be made available on a non-discriminatory basis. No entity may provide advance knowledge to any supplier, if such knowledge would give that supplier an advantage over other suppliers, about pre-tender information, where available, at any stage of a procurement, from the formulation of a budget request and the beginning of specification development through issuance of tender documentation to award of a contract. Entities will accord equal access to all pre-tender information to all foreign and domestic suppliers and provide them with equal opportunities to participate in pre-tender activities. No entity may use information gathered during the pre-tender phase to exclude any supplier.

2.3 Entities will ensure that all suppliers are given the same opportunities to participate in technical reference committees, advisory groups, study councils, and any such groups, if established, that discuss the technology, budget, specifications, functions or any other aspect of procurements of medical technology products and services.

2.4 Qualification of Suppliers

- (1) Entities, in the process of qualifying suppliers in a tendering procedure, will not discriminate among foreign suppliers or between domestic and foreign suppliers.
- (2) Entities will limit any conditions for participation to those that are essential to ensure the supplier's capacity to fulfil the contract in question.
- (3) Entities will publish annually in the Kanpo an invitation to suppliers to qualify, which will set forth objective and specific qualification requirements for participation in tenders.
- (4) In determining whether a supplier is qualified, entities will consider net worth and business activities outside of Japan.

- (5) Entities will provide opportunities to suppliers to qualify at any time, including after a Notice of Procurement has been issued for a particular procurement. The qualification obtained will be effective until the next regular qualification. If qualified at a regular qualification, the qualification will be effective for at least two years.
 - (6) Entities will notify suppliers in writing of the results of the qualification. If the entity does not qualify a supplier, the entity will notify the supplier of the reasons for the disqualification and that it is entitled to request further explanation within seven days of receipt of the disqualification notice.
- 2.5 Entities will not award a contract for medical technology products or services to any supplier, or to its affiliates, if that supplier has provided research or design services for that procurement, and such involvement could result in an unfair competitive advantage, except to the extent such services are included in the contract for procurements requiring the Request for Comments procedures set out in the Measures.
- 2.6 Entities will treat follow-on contracts as separate procurements subject to the procedures set out in the Measures. Contracts awarded as the result of the exercise of options or renewal provisions in a contract awarded in accordance with the procedures set out in the Measures will not be considered "follow-on" contracts.
- 2.7 No entity may:
 - (1) prepare, design or otherwise structure any procurement with the intention of avoiding the application of the Measures or favouring any particular supplier; or
 - (2) divide a procurement with the intention of reducing the value of any resulting contracts below the threshold set out in Section I.
- 2.8 Entities will:
 - (1) determine the value of contracts consistent with the Code and the Measures, in determining whether a procurement is subject to the Measures;
 - (2) not select a valuation method for a proposed procurement with the intention of avoiding the application of the Measures.
- 3. Tendering Procedures
 - 3.1 Entities will use open tendering procedures, to the maximum extent possible, for the procurement of medical technology products and services.
 - 3.2 The Government will ensure that the tendering procedures of its entities:
 - (1) are applied in a non-discriminatory manner;
 - (2) do not provide any supplier with information on a specific procurement in a manner that would have the effect of diminishing competition; and
 - (3) are consistent with the provisions of the Measures.

4. Limitations on Single Tendering

4.1 Entities will reduce their use of single tendering.

4.2 Because competitive procurements are the foundation of the Government's procurement policies and practices, single tendering will be used only in exceptional cases, justified in accordance with Code procedures, and will not be used to favour or exclude domestic or foreign suppliers of medical technology products or services, or to contravene any provision, intent or purpose of the Measures.

4.3 Except in the cases that no tenders are submitted in competitive tendering or no successful tenders are re-submitted in the second tendering, or in cases of extreme urgency, entities will publish an announcement of a single tender procurement covered by the Measures in the Kanpo at least 40 days before the contract is awarded. The notice will contain:

- (1) a description of the procurement, including volume to be procured;
- (2) the planned contract date;
- (3) the Code justification for the single tender; and
- (4) the name of an intended supplier, in the case that discussions on the contract have begun with that supplier.

5. Request for Comments

5.1 Request for submission of materials

For the procurements in which entities face difficulties in developing appropriate specifications without requesting the submission of materials from suppliers, and the contract awards of which are expected to be greater than SDRs 800,000, entities will take the following at the beginning of the fiscal year or as early as possible before the beginning of the fiscal year, except in the case of urgency or in the case of single tendering provided for in the Code:

- (1) Entities will publish a notice in the Kanpo of their request for materials and other necessary information on basic needs of the planned procurement, and provide copies of the notice to suppliers upon request.
- (2) The notice in the Kanpo includes the following:
 - (a) the name and address of the entity;
 - (b) subject matter of the procurement (its name and volume, basic needs of the planned procurement);
 - (c) deadline of the submission of the materials; and
 - (d) notice of a conference for the planned procurement, if such a conference is held.
- (3) The deadline of (c) above will be, except in the case of urgency, at least 45 days after publication of the Request for submission of materials.

- (4) Where an entity amends or has additional information concerning an announced procurement set out in (2) above, it will simultaneously provide the amendment or additional information to all suppliers that have responded to the Request for submission of materials. If the amendment or additional information are concerning the subject matter of the procurement set out in (b) above, entities will allow at least 30 days for suppliers to consider and respond to the amendment or information.

5.2 Request for Comments on draft specifications

For (i) procurements of modified products or services or specially developed products or services, (ii) procurements of all off-the-shelf products or services with a value greater than SDRs 800,000, or (iii) other procurements for which entities acknowledge the need to use the Request for Comments, entities will take the following measures in order to ensure that interested suppliers submit their comments on draft specifications prepared by the entities. In the case of urgency, however, the entities may shorten the period to the extent that suppliers will be able to respond, by announcing specific reasons for the period reduction in the notice of the Request for Comments in the Kanpo. In the case of extreme urgency with which the entities will not be able to cope by the above period reduction, the entities may omit part or whole of the procedures set out below, provided that the entities announce specific reasons for the omission in the Notice of Procurement.

- (1) Entities will publish the notice of the completion of developing draft specifications in the Kanpo at least 45 days before the intended date of the Notice of Procurement, and will promptly send a copy of the Request for Comments to suppliers upon request.
- (2) Entities will announce the following in the notice of the completion of developing draft specifications:
 - (a) subject matter of the procurement (its name and volume);
 - (b) the addresses from which the draft specifications may be obtained;
 - (c) the deadline for the submission of comments;
 - (d) the name and address of the entity; and
 - (e) the date and location of the conference for draft specifications, if such conference is to be held.
- (3) The deadline for the submission of comments set out in (c) above will be at least 30 days after the day following the publications of the Request for Comments for draft specifications.
- (4) When entities recognize the need to improve their draft specifications announced in the notice of the Request and amend them as a result of the comments submitted from interested suppliers, the entities will notify all the domestic and foreign suppliers that have expressed interest in the procurement. In such a case, the entities will allow sufficient time for the deadline for the submission of comments in order for suppliers to consider and respond to the amendment or information prior to publication of the Notice of Procurement.

6. Technical Specifications

6.1 Any technical specification prescribed by an entity will be, where appropriate:

- (1) specified in terms of performance rather than design or descriptive characteristics; and
- (2) based on international standards, where such exist, and otherwise based on national technical regulations or recognized national standards.

6.2 Entities will prepare technical specifications with the minimum detail needed to define the performance criteria. Entities will not require features not essential to the performance criteria.

6.3 Entities will formulate specifications in an impartial manner. Entities will not prepare, adopt or apply any technical specification with the intent of creating obstacles to any supplier or class of suppliers, including foreign suppliers. If the procurement will replace or interconnect with an existing system, the specifications will not be designed to preclude competition.

6.4 Entities will not allow any supplier directly involved in the development of specifications in a procurement to participate in the tendering process, except where:

- (1) the supplier has provided comments in response to a Request for Comments, as provided for in Section III(5) and such participation would not result in an unfair competitive advantage for any supplier;
- (2) the supplier has provided information or assistance to an entity in preparing or refining specifications and the entity has controlled the process and conducted it in a fair and impartial manner and has provided the same opportunities to all suppliers to provide information and assistance; or
- (3) the supplier has provided, at the request of an entity, product specifications or data about a product it supplies and all suppliers are provided an equal and impartial opportunity to participate or provide product specifications or data.

6.5 Entities will not prescribe a technical specification that requires or refers to a particular trademark or brand name, patent, design or type, specific origin or producer or supplier unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.

7. Notice of Procurement

7.1 Entities will invite all suppliers to participate in the procurement by publishing in the Kanpo a Notice of Procurement at least 50 days, in principle, but in no case less than 40 days, prior to the deadline for the submission of tenders, unless justified by the Code.

7.2 Each entity will, after publishing the Notice of Procurement in the Kanpo, promptly make such Notice available for public perusal at a contact point in the entity, as provided for in Section VI(1).

- 7.3 The Notice of Procurement will include sufficient information for a supplier to make an informed decision as to whether to participate in the procurement, and will contain the following information:
- (1) subject matter of the procurement;
 - (2) method of evaluation of tenders;
 - (3) the addresses from which the tender documentation may be obtained;
 - (4) if a pre-tender conference is held, its date and location; and
 - (5) the deadline and address for the submission of tenders.
- 7.4 If after publication of the Notice of Procurement, but before the deadline for submission of tenders, the entity amends the Notice, it will publish the amendment in the Kanpo and make the information available for public perusal at a contact point in the entity, as provided for in Section VI(1).
8. Tender Documentation
- 8.1 Entities will use tender documentation to communicate their needs to suppliers and to solicit tenders from them.
- 8.2 Entities will prepare the tender documentation, including evaluation criteria when the overall greatest value methodology is used, in an impartial manner so as to ensure that equal opportunities are provided to all suppliers on a non-discriminatory basis.
- 8.3 In preparing tender documentation, no entity may accept the provision of any assistance from any supplier, which could give that supplier any advantage over other suppliers, other than in accordance with the procedures set out in the Measures.
- 8.4 Tender documentation provided to suppliers will contain all information necessary to permit them to submit responsive tenders, including information required to be published in the Notice of Procurement, except for the amount and terms of payment of any sum payable for the tender documentation, and the following:
- (1) the address of the entity to which tenders should be sent and the names of officers responsible for the procurement;
 - (2) the address to which requests for supplementary information should be sent;
 - (3) the language or languages in which tenders and other tendering documents must be submitted;
 - (4) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;
 - (5) the persons authorized to be present at the opening of tenders and the date, time and place of the opening;
 - (6) any economic and technical requirements, financial guarantees and other information required from suppliers;

- (7) a complete description of the products or services to be procured and requirements, including technical specifications, conformity certification and necessary plans, drawings and instructional materials;
- (8) all criteria that will be applied to determine the successful supplier that will be awarded the contract, including all evaluation factors and sub-factors, weighted in terms of importance to the evaluation and including any factors that are to be considered and the cost elements to be included in evaluating prices, such as transportation, insurance and inspection costs;
- (9) the terms of payment;
- (10) if a pre-tender conference is held, its date, time and location; and
- (11) any other terms or conditions.

8.5 Entities will:

- (1) make the tender documentation available at the time of publication of the Notice of Procurement;
- (2) send the tender documentation promptly to a supplier upon its request;
- (3) reply promptly to any reasonable request for information relevant to the tender documentation made by a supplier participating in the tendering procedures, on the condition that such information does not give that supplier an advantage over its competitors in the award of the contract;
- (4) promptly put in writing communications with suppliers, except when it imposes an unnecessary burden on the entity, concerning the preparation of tender documentation, including specifications, standards and other tendering terms.

9. Pre-Tender Conference

- 9.1 At least 30 days prior to the deadline set out in the Notice of Procurement for the submission of tenders, entities will hold a pre-tender conference with regard to any procurements for which Request for Comments procedures are to be taken as set out in Section III (5) and for any other procurement, as necessary. Such conferences will include the opportunity for direct discussions between suppliers and that entity on technical, administrative and any other aspect of the procurement, and for all suppliers to obtain information on tendering on an equal basis.
- 9.2 Entities will not make attendance at a pre-tender conference a prerequisite for tender submission or consider attendance in the evaluation of tenders.

10. Evaluation of Tenders

- 10.1 In evaluating tenders and selecting the successful supplier, entities will use a selection procedure designed to:
 - (1) maximize competition;

- (2) minimize the complexity of the tender documentation, the evaluation and the selection decision; and
 - (3) ensure impartial and comprehensive evaluation of tenders submitted by suppliers.
- 10.2 Entities will evaluate tenders in a transparent manner that ensures equal treatment of all suppliers submitting tenders. Where an entity conducts technical evaluations, it will conduct them under the same conditions for all suppliers in the tendering process and will apply the same testing criteria, which will be made immediately available to suppliers on request.
- 10.3 No entity will refuse to consider as a responsive tender any offer by a supplier to supply a product that is used, or accepted for use, in any Special Function hospital or other hospital or laboratory as part of the Highly-Advanced Medical Technology programme, if the product meets the specifications set out in the tender documentation.
- 10.4 Entities will evaluate tenders as follows:
 - (1) After a one-year preparation period following introduction of the Measures, entities will evaluate tenders and award contracts based on the overall greatest value for the entities, for (i) procurements of modified products or services or specially developed products or services; or (ii) procurements of off-the-shelf products or services with a value greater than SDRs 800,000. For other procurements, entities may use the overall greatest value methodology based on their own decision.
 - (2) Tenders will be evaluated on a pass/fail basis based upon the specific technical and other evaluation criteria stated in the specifications, and contracts will be awarded to the lowest-priced tender among those tenders which have met the evaluation criteria, unless the entity chooses the overall greatest value methodology as set out in subparagraph (1) above.
- 10.5 Where evaluation of tenders is conducted based on the overall greatest value methodology, the following procedures will apply:
 - (1) Entities will evaluate tenders based on overall greatest value to the entity, which is determined by considering functional and performance factors, price and other factors specified in the tender documentation. Entities will apply the relative weights set out in the tender documentation to the evaluation criteria. The price/cost evaluation may be based on the total life cycle cost of procurement.
 - (2) Entities may require clinical trials of prototypes as part of the evaluation process leading to the award of the contract, provided that this requirement is set out in the tender documentation and the clinical trials are conducted in a fair and impartial manner.
 - (3) When entities use the overall greatest value methodology, they may not change the evaluation factors and their relative importance for a specific procurement without formally amending the tender documentation and providing the amended tender documentation in the same manner to the same suppliers as the original tender documentation.
 - (4) Entities will make the award as soon as practicable after completion of the evaluation process.

- (5) Entities will put in writing promptly evaluation of tenders and the resulting selection decision, including the scoring of all factors and name of persons responsible for selection decisions.

10.6 No supplier will be allowed to modify the contents of a tender once submitted.

11. Contract Award Information

11.1 The entity will make the award as soon as practicable after completion of the evaluation process and will publish information on the contract award in the Kanpo and promptly notify all suppliers that submitted tenders of its selection and the award price, and will also, make the information available for public perusal at a contact point in the entity, as provided for in Section VI(1).

11.2 Upon request from an unsuccessful supplier, an entity will promptly provide such supplier with an explanation of the reasons for not being selected, the name of the selected supplier and the relative advantages of that supplier's tender where the overall greatest value methodology is used.

11.3 Including those cases in which entities provide information in accordance with paragraph 11.2, entities will not:

- (1) disclose to any third party a supplier's trade secrets, manufacturing process, intellectual property or other confidential business information provided by a supplier; or
- (2) supply to any third party information that would prejudice the legitimate commercial interest of a supplier or fair competition among suppliers.

12. Post-Award Contract Modifications

Any modification of the scope of a contract that would increase the value of the contract by more than 10 per cent of its value will be subject to the provisions of the Measures as if it were a new procurement.

IV. REGULATORY REQUIREMENTS

1. Entities will not impose restrictions, other than those based on laws and regulations, on a supplier in a procurement of medical technology products and services for the reason that it is government procurement.
2. The Measures are in addition to, and do not supersede, the measures described in the Market-Oriented, Sector-Selective Medical Equipment and Pharmaceutical Arrangement or its follow-up measures (hereinafter referred to collectively as the "MOSS measures"). In the event of a conflict between the Measures and the MOSS measures, the MOSS measures will be followed.

V. SUPPORTING MEASURES

1. Improvement of Methods to Provide Procurement Information

Entities will make the maximum possible use of procedures described in 6. of the Procedures for Government Procurement on Products (Operational Guidelines) to contribute to convenience for domestic and foreign suppliers that have expressed an interest in government procurement of medical technology products and services.

2. Follow-up of the Measures

To ensure effective implementation of the Measures, the Government will set up forum for follow-up to examine concrete steps including the following.

2.1 The Government will establish a committee to study standardized manual to develop non-discriminatory and simplified specifications for procurements of medical technology products and services procured by two or more entities.

2.2 The Government will establish a committee to develop a standardized format, consistent with the Measures, to be used by all entities, to the extent practicable, for tender documentation of medical technology products and services.

2.3 Training

The Government will establish a programme to provide training for entity procurement officials regarding the implementation of the Measures.

3. Procurement-related Groups

Where the Government establishes any committee or similar group, whether formal or informal, which includes only private sector or both public and private sector participation, primarily related to the public sector procurement of medical technology products or services, the Government will publish notice in the Kanpo of information related to the group's establishment.

VI. PROVISION OF INFORMATION FOR ALL PROCUREMENTS REGARDLESS OF VALUE

For all procurements of medical technology products and services by the entities, without regard to the value of the procurement, the Government will take the following actions:

1. Each entity will establish a central contact point to provide information about all procurements of medical products and services. The entity, in addition, will provide available information at other appropriate contact points of institutions of the entity.

2. Each entity will develop and publish a list of procurement officials responsible for the procurement of medical technology products and services and make it available for public perusal at a contact point in the entity, as provided for in Section VI(1).

3. Each hospital covered by the Measures will, on an annual basis, publish the outlook for the volume, or the value where expression by volume is not possible, of the top ten categories of medical technology products and services, both by consumables and non-consumables, that it expects to procure for that fiscal year, and will make the information available at its contact point, as provided for in Section VI(1). The Government will develop guidelines for category classifications to be used for this outlook.

4. Meetings

4.1 Each entity will conduct an annual conference for entity procurement officials and domestic and foreign suppliers to discuss information about the entities' major short-term procurement plans and, with budgetary reservations, their longer-term procurement outlook. This may be replaced by the entity's participation in a similar conference established by the Government or their entities.

- 4.2 Each entity conducting a procurement conference will publish notice of the conference in the Kanpo at least 30 days prior to the conference.
5. The entity will:
 - (1) advise officials involved in the implementation of procurement to meet with domestic and foreign suppliers, on request and to be responsive to their questions and concerns; and
 - (2) ensure that such officials do not provide preferential access to domestic or foreign suppliers.

VII. UNFAIR TENDERS

1. Given that it is the policy of the Government to procure medical technology products and services based on tenders that are consistent with the Anti-Monopoly Act, including the prohibition against unjust low-priced sales, entities will take appropriate action to address anti-competitive practices.
2. Where a supplier submits a tender that, because of its price or other terms, unlawfully impedes fair competition, the entity will deem the tender void in its entirety and will not consider that tender in awarding the contract.
3. Entities will deem any supplier that submits a tender referred to in paragraph 2 to be ineligible to re-submit a tender in that medical technology product or service procurement; and the entities will announce the name of that supplier publicly.
4. When entities obtain information indicating the existence of practices that may impede fair competition in relation to their procurement, including the formulation of their procurement specifications, the entities will provide such information on a timely basis to the Fair Trade Commission so as to enable the Commission to take such steps as it deems appropriate.
5. To this end, entities will provide the names of their contact persons to the Fair Trade Commission to facilitate procedures for the detection of, and exchange of information concerning, practices that may violate the Anti-Monopoly Act.

VIII. COMPLAINT MECHANISMS

Procedures of fair complaint mechanisms, described in Annex 4 of the Action Plan on Reform of the Bidding and Contracting Procedures for Public Works (hereinafter referred to as the "Action Plan"), will be applied to provide equitable, timely, transparent and effective complaint procedures for suppliers of medical technology products and services covered by the Measures, until the new Agreement on Government Procurement enters into force and Japan becomes a party to it. The title "construction procurement review board" will be replaced by "procurement review board". In light of the nature of medical technology products and services, the following modifications will be made. (For ease of reference, Annex 4 of the Action Plan, as amended by the following, is attached as Annex 3 of the Measures.)

1. Replace 2, 3, 4-(4) and 6-(2) of Annex 4 of the Action Plan respectively by 3-1, 3-8, 3-4 and 5-2 of Annex III of the measures related to Japanese Public Sector Procurements of Computer Products and Services. "Potential suppliers" in Annex 4 of the Action Plan will be replaced by "suppliers", whereas "commissioning entity" by "entity".

2. Change the duration for making a report (5-(1) of Annex 4 of the Action Plan) to 90 days.

IX. ENCOURAGEMENT TO PREFECTURAL GOVERNMENT AND DESIGNATED CITIES

The Government will encourage prefectural governments and Designated Cities to take, in principle, necessary measures similar to the Measures, for their procurement of not less than SDRs 200,000, taking into account local circumstances and the provisions of relevant laws and regulations.

The Government will encourage prefectural governments and Designated Cities to consider establishing a review mechanism with respect to their procurement of not less than SDRs 200,000.

X. TIME TABLE FOR IMPLEMENTATION

The Measures will be basically introduced to the maximum extent for procurement under the initial budget of FY 1994, and a system for procurement in accordance with the Measures will be established by the end of FY 1994.

XI. REVIEW OF THE IMPLEMENTATION OF THE MEASURES

The Government will hold a review to assess the extent that the Measures contribute to improvement of non-discriminatory nature, transparency, openness, competitiveness and fairness of procurement of medical technology products and services covered by the Measures and, in addition, to address specific issues in implementing the Measures. The review will be held annually, and as necessary, under the Committee for Drawing up and Promoting the Action Program. Administration relating to the review will be governed by the Cabinet Councillors' Office on External Affairs. At the review, implementation and utilization by suppliers of the Measures will be examined by using statistics and other relevant information. This will include the opportunity of listening to opinions of domestic and foreign companies and business associations.

XII. DEFINITIONS

For purposes of the Measures:

"Days" mean calendar days, except in the case of Annex 3, where reference to "days" means working days;

"Locally-established supplier" means a supplier that is established in Japan, without regard to the source of its capital;

"Medical technology products" means medical instruments and apparatus, medical supplies and dental materials, excluding these for animal use, listed in Annex 1 of the Enforcement Ordinance of the Pharmaceutical Affairs Law;

"Medical technology services" means design services of medical technology products, and design services of software which is solely used in medical technology products;

"Supplier" means a person that has provided or could provide products or services in response to a Notice of Procurement;

"Affiliates" means (a) companies which a supplier who has provided research or design services controls or are controlled by, or (b) other companies which are controlled by a company controlling a supplier who has provided research or design services, where control means ownership in excess of 50 per

cent of the issued stock if the affiliate is a stock corporation, and ownership in excess of 50 per cent of the capital if the affiliate is a limited company;

"Modified products or services" means medical technology products or services that exist in the international marketplace at the time the Request for Comments is published in the Kanpo but require modification to meet the legitimate requirements of the entity for the procurement that substantially transform their function or essential physical characteristic;

"Off-the-shelf products or services" means medical technology products or services that exist in the international marketplace at the time the Request for Comments or the Notice of Procurement is published in the Kanpo; and

"Specially developed products or services" means medical technology products or services that do not exist in a form that meets the performance requirements in the international marketplace and must be developed especially to meet the legitimate requirements of the entity for the procurement.

ANNEX I
CENTRAL GOVERNMENT ENTITIES

House of Representatives

House of Councillors

Supreme Court

Board of Audit

Cabinet

National Personnel Authority

Prime Minister's Office

Fair Trade Commission

National Public Safety Commission (National Police Agency)

Environmental Disputes Co-ordination Commission

Imperial Household Agency

Management and Co-ordination Agency

Hokkaido Development Agency

Defense Agency

Economic Planning Agency

Science and Technology Agency

Environment Agency

Okinawa Development Agency

National Land Agency

Ministry of Justice

Ministry of Foreign Affairs

Ministry of Finance

Ministry of Education

Ministry of Health and Welfare

Ministry of Agriculture, Forestry and Fisheries

Ministry of International Trade and Industry

Ministry of Transport

Ministry of Posts and Telecommunications

Ministry of Labour

Ministry of Construction

Ministry of Home Affairs

ANNEX 2

OTHER ENTITIES COVERED BY THE MEASURES

Hokkaido Railway Company
East Japan Railway Company
Central Japan Railway Company
West Japan Railway Company
Shikoku Railway Company
Kyushu Railway Company
Japan Freight Railway Company
Japan Tobacco Inc.
Nippon Telegraph and Telephone Corporation
People's Finance Corporation
Housing Loan Corporation
Agriculture, Forestry and Fisheries Finance Corporation
Small Business Finance Corporation
Finance Corporation of Local Public Enterprise
Hokkaido and Tohoku Development Corporation
Social Welfare and Medical Services Corporation
Small Business Credit Insurance Corporation
Environmental Sanitation Business Financing Corporation
Okinawa Development Finance Corporation
Japan Development Bank
Export-Import Bank of Japan
Labour Welfare Corporation

ANNEX 3

PROCUREMENT REVIEW BOARD

1. Board

- (1) The Board will have no substantial interest in the outcome of a procurement subject to its review.
- (2) The Board will receive complaints in writing, conduct investigations of the facts and make recommendations to an entity with respect to any aspect of a procurement by the entity.
- (3) The Board will be comprised of persons who have knowledge and experience related to public sector procurement. No member of the Board will participate in the review of a complaint in which that member has a conflict of interest.
- (4) Where necessary, the Board may hear opinions from technical experts who have in-depth knowledge and experiences related to the procurement subject to its review. None of those technical experts should have substantial interest in the outcome of the procurement.

2. Eligibility for Complaint

A supplier may file a complaint with the Board when it believes the procurement has been carried out in a manner inconsistent with the intent or any provision of the Measures. It may also file a complaint based upon the allegation that the contract was awarded to a supplier that had submitted a bid in violation of the Anti-Monopoly Act. Suppliers are encouraged to seek resolution initially with the entity of any alleged inconsistency with the Measures.

3. Participants

The entity and suppliers, whose direct economic interest would be affected by the award of, or the failure to award a contract, may participate in a complaint proceeding.

4. Procurement Review Process

- (1) A supplier, that believes a procurement covered by the Measures has been carried out in a manner inconsistent with the intent or any provision of the Measures, may file a complaint in writing with the Board, at any time during the procurement process, but no later than ten days after the basis of the complaint is known or reasonably should have been known. The supplier will submit a copy of the complaint to the entity within one working day of filing it with the Board. (Days will be considered calendar days unless otherwise specified.)
- (2) The Board may receive and consider a complaint which is not timely filed, if it finds that good cause is shown.
- (3) The Board will review a complaint within seven days of its filing, and may, in writing and with reasons given, dismiss any complaint found to be:
 - (a) not submitted in a timely manner;
 - (b) not subject to the Measures;

- (c) frivolous or trivial on its face;
 - (d) not submitted by a supplier; or
 - (e) otherwise inappropriate for review by the Board.
- (4) Where the Board determines that a complaint has been filed properly, it will notify in writing all suppliers within one working day of the complaint.
- (5) Suspension of Award of Contract or Contract Performance
 - (a) Within ten days of the filing of a pre-award complaint, the Board will promptly issue a written request for suspension of contract award pending resolution of the complaint.
 - (b) In the case of a post-award complaint, filed within ten days after the award, the Board will promptly request in writing suspension of the Contract Performance pending resolution of the complaint.
 - (c) The entity will suspend the award or the performance of the contract immediately after it receives the Board's request, unless the head of the entity determines that urgent and compelling circumstances do not allow the entity to follow the request, or that the award or the performance of the contract will be in the best interests of Japan, in which case he will immediately provide written notification to the Board of his determination and the factual circumstances on which it is based.
- (6) Investigation
 - (a) The Board will conduct an investigation of the complaint, which may include the filing of briefs, pleadings and other documentation by the complainant and entity.
 - (b) The Board may, on the request of the complainant or the entity or on the Board's own initiative, hold a hearing on the merits of complaints.
- (7) Report by the Entity
 - (a) Within 14 days after the day on which a copy of the complaint was sent to the entity, the entity will file with the Board a written report on the complaint, containing the following:
 - (i) relevant documentation for tender, including the specifications or portions thereof relevant to the complaint;
 - (ii) all other documents relevant to the complaint;
 - (iii) a statement that sets out all relevant facts, findings, actions and recommendations of the entity and responds fully to all allegations of the complaint;
 - (iv) any additional evidence or information that may be necessary in order to resolve the complaint.
 - (b) The Board will, forthwith after receiving the report referred to in paragraph (a) above, send a copy of the relevant material to the complainant and give the complainant an

opportunity, within seven days after it receives the relevant material, to file with the Board comments or request that the case be decided on the existing record. The Board will, forthwith after receiving the comments, send a copy to the entity.

5. Findings and Recommendations

- (1) The Board will make a report of its findings and recommendations to the entity within 90 days after the day on which the complaint is filed. Its findings, in which the Board will grant or deny the complaint in whole or in part, will specify whether the procurement process or award was inconsistent with the intent or specific provisions of the Measures.
- (2) Whenever the Board finds evidence of misconduct, actions or behaviour contrary to law, it will refer the matter to the appropriate enforcement authorities for action.
- (3) In making its findings and recommendations, the Board will consider all the circumstances surrounding the procurement process or award, including the seriousness of any deficiency in the procurement process, the degree of prejudice to any or all suppliers, the degree of impediment to the integrity and effectiveness of the Measures, the good faith of the participants, the extent of performance of the contract to which the procurement relates, the cost of the recommendation to the Government of Japan, the urgency of the procurement, and the impact of the recommendation on the business of the entity.
- (4) Where the Board finds that the intent or any provision of the Measures has not been followed, it will recommend an appropriate remedy, including one or more of the following:
 - (a) that a new tender documentation be issued;
 - (b) that new offers for the contract be sought;
 - (c) that the offers be re-evaluated;
 - (d) that the contract be awarded to another supplier;
 - (e) that the contract be terminated.
- (5) The Board will send its findings in writing with its recommendations to the complainant, the entity and any other participants, within one working day after issuance.
- (6) The entity will, in principle, and as its own decision, duly follow the findings of the Board on any complaint brought appropriately before the Board. The entity must report to the Board within 60 days of receipt of the Board's recommendation, if it has decided not to comply with the recommendation with the reasons for its decision.
- (7) The Board will respond to external inquiries concerning its findings.

6. Express Option

- (1) Where the complainant or the entity requests in writing an expeditious handling of a complaint, the Board will consider the feasibility of using the procedure set out in this section, referred to herein as the "express option".

- (2) The Board will determine whether to apply the express option within two working days after receiving a request therefor and will notify the complainant and entity as to whether the express option is to be applied.
- (3) Where the express option is applied, the time limits and procedures will be as set forth in this paragraph.
 - (a) The entity will, within six days after the day on which it is notified by the Board that the express option is to be applied, file with the Board a written report on the complaint, as specified in paragraph 4.(7) above. The Board will, forthwith after receiving the report, send a copy of the relevant material to the complainant and any other participants. The Board will give the complainant and any other participants five days to file with the Board comments on such material or request that the case be decided on the existing record. The Board will, forthwith after receiving the comments, send a copy to the entity.
 - (b) The Board will issue its findings and recommendations on the complaint in writing within 25 days after the day on which the complaint is filed.

7. Document Retention

To contribute to the above procedures, each entity will maintain complete documentation related to all procurement not less than the thresholds set forth in I.3 of the Measures, for five years from the date of the contract award, to allow verification that the procurement process was carried out in accordance with the Measures.

(APPENDIX 1) (MEDICAL TECHNOLOGY PROCUREMENT PROCEDURES)

- ☐ APPLIED TO ALL PROCUREMENT
- ☐ APPLIED TO IN PRINCIPLE PROCUREMENT OF MODIFIED OR SPECIALLY DEVELOPED PRODUCTS OR SERVICES AND OFF-THE-SHELF PRODUCTS OR SERVICES ABOVE 800 000 SDRs
- ☐ APPLIED TO IN PRINCIPLE PROCUREMENT ABOVE 800 000 SDRs THAT SPECIFICATION FORMULATION IS DIFFICULT WITHOUT INPUT FROM SUPPLIERS
- ☐ OTHERS

QUALIFICATION PROCEDURES

QUALIFICATION

PUBLISH ANNUALLY AN INVITATION FOR QUALIFICATION:
CONSIDER BUSINESS ACTIVITIES OUTSIDE OF JAPAN:
NOTIFY SUPPLIERS IN WRITING OF THE RESULTS

FUTURE PROCUREMENT PLANS

ANNOUNCEMENT IN KANPO AT THE BEGINNING OF FISCAL YEAR (ALL ABOVE THE THRESHOLD)

CONTACT POINTS

EACH HOSPITAL ANNUALLY PROVIDES INFORMATION INCLUDING ITS PROCUREMENT OUTLOOK FOR TOP 20 PROCUREMENT ITEMS REGARDLESS OF VALUE FOR THAT FISCAL YEAR

MEETING

DISCUSS MAJOR SHORT-TERM PLANS AND WITH BUDGETARY RESERVATIONS.
LONGER-TERM PLANS

REQUESTS FOR COMMENTS

REQUESTS FOR SUBMISSION OF MATERIALS

DEADLINE FOR COMMENTS

--- AT LEAST 45 DAYS

ANNOUNCEMENT OF DRAFT SPECIFICATION
AT LEAST 30 DAYS

DEADLINE FOR COMMENTS

--- AT LEAST 45 DAYS

OPEN/COMPETITIVE TENDERING,
IN PRINCIPLE

SINGLE-TENDERING

TENDERING PROCEDURES

NOTICE OF PROCUREMENT

PRE-TENDER CONFERENCE
AT LEAST 30 DAYS

DEADLINE FOR SUBMISSION OF TENDER

**EVALUATION ON
LOWEST PRICE**

**OVERALL-GREATEST
VALUE**

ADVANCE ANNOUNCEMENT OF SINGLE-TENDERING

--- 50 DAYS IN PRINCIPLE.
(IN NO CASE LESS THAN 40 DAYS)

AT LEAST 40 DAYS

AWARD

CONTRACT

POST-AWARD NOTICE

COMPLAINT MECHANISMS

PROCUREMENT REVIEW BOARD

PREVENTION OF UNFAIR TENDERS

APPENDIX B

[MEDICAL TECHNOLOGY]

OPERATIONAL GUIDELINES WITH RESPECT TO MEASURES RELATED TO
JAPANESE PUBLIC SECTOR PROCUREMENT OF MEDICAL
TECHNOLOGY PRODUCTS AND SERVICES

The Government of Japan has decided to issue and implement these Operational Guidelines to supplement and clarify the Measures Related to Japanese Public Sector Procurement of Medical Technology Products and Services (hereinafter referred to as "the Measures") which were decided by the Committee for Drawing Up and Promoting the Action Program on 28 March 1994, as follows. In carrying out the Measures, the Guidelines will be fully implemented and respected.

1. NOTICE

In carrying out the Measures, entities recognize that they should meet their needs with the most appropriate competitive medical technology products or services without regard to national origin. To this end, the head of each entity specified in Annexes 1 and 2 of the Measures will send a notice to all procurement officials within his or her authority, including those in hospitals, encouraging them to give fair, non-discriminatory and positive consideration in all procurements without regard to the threshold to the procurement of competitive foreign medical technology products and services, with the understanding that such procurements constitute positive and beneficial steps in implementing the Measures. The notice will, in this regard, also ask the hospitals and other subordinate organizations within his or her entity to assist foreign suppliers, on request, in appointments and contacts with procurement officials in those organizations.

2. SECTION III.1: FUTURE PROCUREMENT PLANS

When an entity publishes in the Kanpo procurement information on medical technology products and services covered by the Measures as set forth in Section III.1, the entity will invite suppliers to submit materials, comments and other necessary information on the procurement. Entities will give full consideration to any information submitted by suppliers.

3. SECTION III.5: REQUEST FOR COMMENTS

- (1) In the case of Request for Submission of Materials set forth in Section III. 5.1, suppliers can submit materials and comments on the entity's actual needs with regard to the procurement for which a Request for Submission of Materials has been issued.
- (2) With respect to Section III.5.1, all procurements in which the contract award is expected to be greater than SDRs 800,000 are deemed to be those in which entities face difficulties in developing appropriate specifications without requesting the submission of materials from suppliers.
- (3) For procurements in which the contract award is expected to be SDRs 800,000 or below, entities may use the Request for Submission of Materials procedures when they determine that they face difficulties in developing appropriate specifications without requesting the submission of materials from suppliers.
- (4) The phrase in Section III.5.2 of the Measures, which states "entities will take the following measures in order to ensure that interested suppliers submit their comments on draft specifications

prepared by the entities" is not intended to limit comments submitted to those on draft specifications. Suppliers can submit materials and comments on, in addition to draft specifications, other technical information or any other aspect of the procurement, including the supplier's view on the estimated cost of the procurement.

4. THRESHOLD FOR OVERALL GREATEST VALUE EVALUATION AND REQUEST FOR COMMENTS

- (1) With respect to the threshold that applies to overall greatest value evaluation and Request for Comments, as set out in Sections III.5.1, III.5.2 and III.10.4 of the Measures and paragraphs 3(2) and 3(3) of these Guidelines, the Government will lower the threshold from SDRs 800,000 to SDRs 600,000 on 1 April 1996, to SDRs 400,000 on 1 April 1997, and to SDRs 385,000 on 1 April 1998.
- (2) Off-the-shelf products or services with a unit value of SDRs 500 or below which are being procured in high volume may be exempted from the areas to which overall greatest value evaluation and Request for Comments procedures apply.

5. SECTION VI.4: MEETING

Entities which procured in the previous fiscal year a total of SDRs 2,000,000 or more of medical technology products and services covered by the Measures will hold their own meetings.

6. SECTION XII: DEFINITIONS

"Medical technology products" includes, in addition to those described in Section XII of the Measures, in-vitro diagnostic reagents stipulated in Article 56-2 of the Enforcement Regulations of the Pharmaceutical Affairs Law.

APPENDIX C

DATA COLLECTION

(MEDICAL TECHNOLOGY)

- I. The Government of Japan will report the following information and data annually, beginning with Calendar Year 1994, for procurements subject to the Measures:
 - 1.1 The total number and value of contracts awarded by all covered entities and by each such entity:
 - (1) in the aggregate for each of the four product categories specified in the Annex and each service category;
 - (2) in the aggregate for all products; and
 - (3) in the aggregate for all services.
 - 1.2 The total number and value of contracts awarded for foreign products and services by all covered entities and by each such entity:
 - (1) in the aggregate for each of the four product categories specified in the Annex and each service category;
 - (2) in the aggregate for all products; and
 - (3) in the aggregate for all services.
 - 1.3 The number and percentage of contracts that were single tender contracts, the value of such contracts, and the number and value of those contracts awarded for foreign products and services.
 - 1.4 The total number and value of contracts awarded by all covered entities and by each such entity:
 - (1) in the cases that only tenders of domestic products or services were submitted;
 - (2) in the cases that only tenders of foreign products or services were submitted; and
 - (3) in the cases that both tenders of domestic and foreign products or services were submitted, broken down by contracts awarded for domestic products or services and those awarded for foreign products or services.

NOTE: The above-referenced data by each entity covered by the Measures will most likely fluctuate year by year.

- II. The Government of Japan will report the following information and data annually, beginning with Calendar Year 1995, for Diagnostic X-ray apparatus (B2901), Artificial cardiac pacemakers (B2303), Nuclear magnetic resonance CT equipment (B2907), Testing apparatus for clinical chemistry (B2701), and Artificial joints and bones (A0105) procured by the entities covered by the Measures by:
 - 2.1 The total value of contracts awarded by all entities and by each entity; and

2.2 The total value of contracts awarded for foreign products by all entities and by each entity.

NOTE: Alphabet and Number in parentheses are the code used for categorization in the Survey of Pharmaceutical Industry Productions. Since the above-referenced data are for several selective categories of medical technology products, it does not necessarily reflect the general situation of all government procurement of medical technology products.

The above-referenced data by each category will most likely fluctuate year by year.

ANNEX

CATEGORIZATION OF MEDICAL TECHNOLOGY PRODUCTS

1. Medical Technology Products for Diagnosis, which consists of the following:
 - (a) products under codes B09, B11, B13, B15, B17, B27, B29, B31 and B37 in the Survey of Pharmaceutical Industry Productions, and
 - (b) in-vitro diagnostic reagents.
2. Medical Technology Products for Treatments (except for Surgery), which consists of the products under codes A01, A03, A05, B01, B05, B19, B23, B33 and B35 in the Survey of Pharmaceutical Industry Productions.
3. Medical Technology Products for Surgery, which consists of the products under codes B03, B21 and B25 in the Survey of Pharmaceutical Industry Productions.
4. Miscellaneous, which consists of the products under codes A07 (except for Sanitary Goods), A09 and B07 in the Survey of Pharmaceutical Industry Productions.

Dear Ambassador Kuriyama,

I am pleased to receive your letter of today's date concerning procurement of medical technology products and services in the Japanese public sector market and the "Measures Related to Japanese Public Sector Procurement of Medical Technology Products and Services" (hereinafter referred to as the "Measures") and "Operational Guidelines with Respect to Measures Related to Japanese Public Sector Procurement of Medical Technology Products and Services" (hereinafter referred to as the "Guidelines") attached thereto.

The Government of the United States reaffirms the Framework for a New Economic Partnership established by the "Joint Statement on the Japan-United States Framework for a New Economic Partnership" of the Heads of the Governments of Japan and the United States on 10 July 1993 (hereinafter referred to as the "Framework"). The goals of the Framework are to deal with structural and sectoral issues in order substantially to increase access and sales of competitive foreign goods and services through market-opening and macroeconomic measures; to increase investment; to promote international competitiveness; and to enhance bilateral economic cooperation between the United States and Japan.

I am pleased to learn that, to accomplish these goals with respect to Japanese public sector procurement of medical technology products and services, your Government has adopted the Measures and Guidelines with the aim of significantly increasing access and sales of competitive foreign medical technology products and services in the Japanese public sector procurement market.

I welcome your Government's decision to implement the Measures and Guidelines and willingness to keep the Measures and Guidelines under continual review. I would like to confirm that the Governments of Japan and the United States will meet in June 1995 and annually thereafter, or at any time upon the request of either Government, to discuss any matters related to the Measures and Guidelines, including assessment of implementation of the Measures and Guidelines and evaluation of progress achieved toward the goals of the Framework and the goals of this sector, as set forth above. I would like to confirm that such consultations will be held until the end of FY 2000, at which point the two Governments will decide whether or not to continue these consultations. Depending on the results of the consultations described above, the Government of the United States will, if necessary, further encourage U.S. firms to take advantage of opportunities created by the Government of Japan and, if appropriate, consider additional efforts.

Assessment of the implementation of the Measures and Guidelines, as well as the evaluation of progress achieved, will be based on the overall consideration of the following qualitative and quantitative criteria. These qualitative and quantitative criteria will be considered as a set, and no one criterion will be determinative of the assessment of the Measures and Guidelines, or the evaluation of progress achieved. These criteria do not constitute numerical targets, but rather are to be used for the purpose of evaluating progress achieved toward the goals of the Framework and the goals of this sector, as set forth above.

1. QUANTITATIVE CRITERIA

Annual evaluation of progress in the value and share of procurements of foreign telecommunications products and services covered by the Measures and Guidelines to achieve, over the medium term, a significant increase in access and sales of competitive foreign telecommunications products and services, by:

- 1.1 Annual value and share of procurements of foreign telecommunications products and services covered by the Measures and Guidelines, evaluated by reference to recent trends in the value, rate of growth and share of procurements of foreign telecommunications products and services, and the total value of procurements covered by the Measures and Guidelines;

NOTE: In the initial years of consultations (before multiple years of data have been collected) it will be necessary to consider recent GATT data.

- 1.2 Annual number of entities procuring foreign telecommunications products and services covered by the Measures and Guidelines, in relation to the total number of entities procuring telecommunications products and services covered by the Measures and Guidelines;
- 1.3 Annual number and value of contracts awarded as a result of a decrease in single tendering;
- 1.4 Annual number of tenders submitted by all suppliers and foreign suppliers; and
- 1.5 Relative competitiveness of foreign telecommunications products and services.

2. QUALITATIVE CRITERIA

- 2.1 Full and non-discriminatory access to procurement information by foreign suppliers at all stages of the procurement process, as provided in the Measures and Guidelines;
- 2.2 Improvement in subcontracting opportunities for foreign suppliers;
- 2.3 Full implementation of all requirements of the Measures, Guidelines and letters, in addition to those mentioned above;
- 2.4 Efforts by foreign suppliers to utilize procurement opportunities, including comments on draft specifications; and
- 2.5 Market conditions, including exchange rates.

In addition to the Measures which already have been implemented, the Guidelines will be implemented as of 1 November 1994, except for procurements in which a Notice of Procurement or a Request for Comments was published before 1 November 1994.

I also welcome your Government's reaffirmation with respect to distribution of telecommunications products and services, and hope that the maintenance of the Government of Japan's policy of promoting fair and free competition will further increase market entry opportunities, including those of foreign companies. I also welcome your Government's decision to encourage the private sector, including manufacturers and distributors of telecommunications products and services, to establish internal Anti-Monopoly Act compliance programmes.

I welcome your Government's intent to request and, as a matter of policy, to make maximum efforts in the future to obtain sufficient funds to enable the public procurement of telecommunications products and services based on prices for similar products and services in similar working environments in the private sector.

I am of the view that the Measures and Guidelines represent substantial progress toward resolving problems related to procurements by the Government of Japan of telecommunications products and services and are a major achievement of the Framework. I expect that the implementation of the Measures and Guidelines will give foreign telecommunications suppliers and service providers full

access to the public sector procurement market in Japan. We will continue to monitor this situation and, combined with efforts by U.S. firms, look forward to increased access and sales of competitive telecommunications products and services by U.S. and other foreign firms under the Measures and Guidelines.

The Government of the United States will encourage U.S. firms to take advantage of opportunities created by the Government of Japan. The Government of the United States reconfirms that it is the policy of the Government of the United States to provide non-discriminatory, transparent, fair and open opportunities consistent with its obligations under the GATT Agreement on Government Procurement and, after entry into force for the United States, the new Agreement on Government Procurement. My Government will consult with your Government upon request concerning such policies, and areas of particular interest. We are also prepared to provide the Government of Japan with necessary information as requested concerning our procurements.

Sincerely,

Ronald H. Brown