

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Committee on Government Procurement

IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Addendum

Legislation of Sweden

In accordance with Article IX:4 of the Agreement on Government Procurement, the Committee on Government Procurement agreed at its first meeting on 15 January 1981 to invite the Parties to submit as soon as possible the complete texts of their national laws, regulations and procedures on government procurement to the secretariat where the texts would be open for inspection. In addition, the basic documents relating to the implementation of the Agreement should be submitted for information in a GATT language and would be circulated to the Committee.

With reference to these procedures, the delegation of Sweden hereby submits an unofficial translation into English of the Swedish Government Procurement Ordinance (SFS 1980:850). A translation of the guidelines to this Ordinance, issued by the Swedish National Audit Bureau, will follow later.

*English only/anglais seulement/inglés solamente.

Unofficial translation of the Swedish Government
Procurement Ordinance (SFS 1980:850)

General Provisions

Article 1. This Ordinance shall apply to procurements by Government agencies unless the Government directs otherwise.

In certain cases, procurement is also subject to the Ordinance (1980:849) on the application of the GATT Agreement on Government Procurement.

Article 2. The term "procurement" is taken to cover the purchasing or ordering of goods, of building, civil-engineering or other works, or of services.

The term "supplier" is taken to cover anyone who provides goods or who performs work or services.

Article 3. When procuring the agency shall take advantage of the opportunities arising from competition and shall, in other respects as well, adhere to commerciality and shall deal objectively with tenders and tenderers.

The agency shall in particular make certain

that there is collaboration with other agencies in the interests of the State,

that the requirements as to quality and performance are not set any higher than is necessary in each individual case,

that use is made of current standards as regards goods, packaging units and so on, unless there are special reasons for doing otherwise.

The agency shall further ensure

that complete and clear tender documentation is drawn up in the form of descriptions, written programmes, specifications, etc.

that the procurement is so planned as to permit manufacture and delivery to be timed where possible to yield the most advantageous price,

that the tenderers are given reasonable time within which to submit their tenders.

Forms of Procurement

Article 4. Procurement shall take the form of straight-tender procurement, negotiated procurement or direct procurement.

Article 5. Straight-tender procurement proceeds by the invitation of tenders and the consideration and acceptance of tenders without any prior negotiation with tenderers.

In the case of any obvious error in writing or in calculation or any other obvious mistake, the agency may permit the tenderer to make a correction. Where special considerations apply, the agency may also request the tenderer to submit such clarifications or additions as may be needed to make his tender compar-

able with others.

Article 6. Negotiated procurement proceeds by the invitation, consideration and acceptance of tenders, it being permissible in this case for decisions to be preceded by negotiations with tenderers.

Negotiations pursuant to the foregoing paragraph shall be conducted with as many tenderers as is necessary to comply with the requirements in respect of competition, other aspects of commerciality, and objective treatment.

Article 7. Direct procurement proceeds by purchasing or ordering on the open market without any invitation to tender in a prescribed order.

Article 8. In each individual case, the agency shall select that form of procurement that is judged to be appropriate with due consideration to the requirement as to commerciality.

Invitation and Opening of Tenders, etc.

Article 9. Tenders are invited by advertisement or by letter.

In the case of negotiated procurement, however, tenders may be invited in other ways. This does not apply to procurement pursuant to the Ordinance (1980:849) on the application of the GATT Agreement on Government Procurement.

Where tenders are invited by advertising, an advertisement shall be inserted in the Tidning för Leveranser till Staten (Gazette of Government Contracts), a supplement to Post- och Inrikes Tidningar (the Official Gazette), and insofar as this furthers the

aim of the advertising, in one or more other newspapers.

Where tenders are invited without advertising, they shall be requested from as many suppliers as necessary with regard to the nature and scope of the proposed procurement and to the possibility of generating adequate competition.

Article 10. The invitation to tender shall state the closing date for submission of tenders and the date up to which tenders are to remain binding. It shall further be stated that tenders must be submitted either by sealed letter or by telecopy, telegram or telex, in which latter cases the contents must be promptly confirmed by the submission of written tender documents.

In the case of negotiated procurement, however, the invitation to tender may state that tenders may be submitted by other means as well. This does not apply to procurement pursuant to the Ordinance (1980:849) on the application of the GATT Agreement on Government Procurement.

The invitation to tender shall also state the regulations and other items of information that pertain to the proposed procurement. The form of procurement must always be stated.

If a tender is invited from a tenderer who is not liable to tax under the Act on Value-Added Tax (1968:430), it shall be stated in the invitation to tender that the tenderer must also indicate the tender amount that he would have quoted if he had been liable to such tax.

Article 11. As soon as possible after the expiry of the

closing date for receipt of tenders, tenders shall be opened at a proceeding attended by at least two persons appointed by the agency. Where a tenderer so requests, an impartial person appointed for the purpose by the appropriate chamber of commerce may be present at the proceeding if this can be arranged without charge to the public purse. The tenders shall be entered in a schedule that must be verified by the persons attending the proceeding.

In the case of negotiated procurement, however, tenders may be opened and recorded without such formal proceeding as is described in the foregoing paragraph, being dealt with either all at the same time or - if there are special grounds for so doing - in the order of receipt. The provisions of this paragraph do not apply to procurement pursuant to the Ordinance (1980:849) on the application of the GATT Agreement on Government Procurement.

Tenders submitted in accordance with the second paragraph of Article 10 shall be recorded upon receipt.

Article 12. The agency shall ensure that tenders, with the pertinent descriptions, models, drawings and samples, along with tender schedules, collations, etc., are kept in a safe place.

Consideration of Tenders

Article 13. Tenders shall be considered within such time that a notification of the acceptance of a tender can be transmitted to the tenderer within the period during which the tender is binding upon the tenderer.

Article 14. Consideration must also be given to tenders submitted by tenderers who have not been specifically asked to do so.

Special regulations apply to procurement pursuant to the Ordinance (1980:849) on the application of the GATT Agreement on Government Procurement.

Article 15. Subject to the provisions of Article 17, the agency shall accept the tender which, having regard to all the commercial circumstances, can be regarded as the most advantageous.

If two or more tenders are on a par with each other, the agency may make its own choice between them or else invite the relevant tenderers to submit differentiating tenders.

If all the tenders quote too high a price, or if they are otherwise disadvantageous, or if there are grounds for not carrying through the procurement, the agency may reject all the tenders.

Article 16. For the purpose of comparison between a tenderer who is liable to tax under the Act on Value-Added Tax (1968:430) and a tenderer who is not so liable, the quotation submitted by the latter tenderer must be calculated so as to include an amount equal to the value-added tax the tenderer would have had to pay if he had been so liable.

Article 17. A tender cannot be accepted if it has been submitted by a person who, being employed by a Government agency, is dealing with matters concerning Government procurement.

It is incumbent upon the agency to decide whether a tender is acceptable;

if it has been submitted by a Government employee other than is stated in the first paragraph of this Article,

if the tenderer, or anyone acting on his behalf, has handed over, promised or offered a gift or other improper benefit in connection with a procurement matter to any civil servant or other person who is concerned in the processing of such a matter on behalf of the State,

if it has come in after the closing date for receipt of tenders and it is obvious that the delay cannot be blamed on the tenderer, or

if there is reason to believe that competitive tendering has been prevented by a tendering cartel or other agreement concluded between suppliers.

Article 18. The agency shall keep on file a document setting forth the grounds on which a tender has been accepted and recording any other events of significance during the consideration of the tenders.

Article 19. When a tender has been accepted the agency shall notify the tenderer thereof in writing as soon as possible and at the latest within the period for which the tender is binding upon the tenderer. To save time, however, the notification may be effected by other means. In such cases, the notification must be confirmed in writing without delay. If the agency accepts the tender subject to additions, deletions or reservations not provided for in the tender, the agency shall request written confirmation from the tenderer as to whether such additions, deletions or reservations are accepted.

Tenderers whose tenders have not been accepted shall be advised thereof without unreasonable delay.

Special Provisions

Article 20. An agency may grant a supplier a reasonable

advance payment if the supplier requested an advance at the time when the tender was submitted. Failing this, the agency may grant the supplier such an advance if there are strong grounds for so doing. In the latter case, however, the supplier shall be liable to pay interest at a rate three percentage points above the discount rate fixed by the Bank of Sweden.

The agency shall require security to be pledged and maintained in respect of advances and interest.

The agency may, at its discretion request security to be pledged covering materials, etc., provided by the agency.

Article 21. The agency may agree with a supplier on an amendment to contract conditions. In so doing, the agency shall take due account of commerciality.

Article 22*. The agency may sanction the transfer of the contract by the supplier to a third party if this can be regarded as compatible with the agency's interests.

Article 23. If the agency proposes to conclude a contract on procurement which, from considerations of national security, should be kept secret, it is incumbent upon the agency to conclude with the supplier a written agreement covering the security provisions that are needed in the individual case. In so doing, the agency shall comply with the provisions and instructions issued by the National Swedish Police Board in consultation with the Supreme Commander of the Swedish Armed Forces.

The present Ordinance cancels the former Article 23. The latest wording will be found in 1975:788.

The foregoing paragraph is valid in applicable parts when the agency invites tenders for procurement that is covered by the said paragraph.

Any agency which, in the course of its duties, has to conclude contracts that come under the first or second paragraphs of this Article shall appoint an official who, subordinated directly to the head of the agency, will have charge of matters covered by this Article.

Article 24. Decisions on procurement matters in accordance with this Ordinance are final.

Article 25. Instructions governing the application of this Ordinance are issued by the Swedish National Audit Bureau.