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# AGREEMENT ON GOVERNMENT PROCUREMENT

Revised text  
1988

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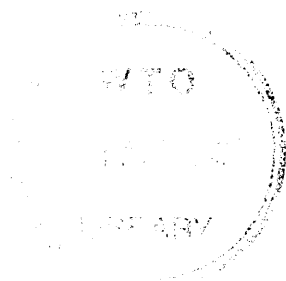
GENERAL AGREEMENT ON TARIFFS AND TRADE

GENEVA, 1988

WTO / OMC

# **AGREEMENT ON GOVERNMENT PROCUREMENT**

**Revised text  
1988**



**GENERAL AGREEMENT ON TARIFFS AND TRADE  
GENEVA, 1988**

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## INTRODUCTION

This booklet reproduces the revised text of the *Agreement on Government Procurement*, incorporating a Protocol of Amendments done at Geneva on 2 February 1987 and entered into force on 14 February 1988.

The Agreement is one of the multilateral agreements, or codes, resulting from the Tokyo Round of multilateral trade negotiations within GATT. One of the major aims of these negotiations was to “reduce or eliminate non-tariff measures or, where this is not appropriate, to reduce or eliminate their trade restricting or distorting effects, and to bring such measures under more effective international discipline”.

In most countries the government, and the agencies it controls, are the largest customers of goods, ranging from farm products to simple manufactures and high technology equipment. The *Agreement on Government Procurement* aims to secure greater international competition in the government procurement market. The Agreement contains detailed rules on the way in which tenders for government procurement contracts opened by entities listed in one of the Annexes to the Agreement should be invited and awarded. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent, and to ensure that they do not protect domestic products or suppliers, or discriminate among foreign products or suppliers. The Agreement also makes provision for special and differential treatment for developing countries, including the least developed among them, to take into account their particular development, financial and trade needs.

The most significant provisions of the adopted Protocol of Amendments are: the lowering of the threshold (minimum value of contracts) from SDR 150,000 to SDR 130,000; the inclusion of leasing contracts under the coverage of the Agreement; increased transparency through improvements in the exchange of information; the closing of several perceived loopholes; and, in general, bringing the Agreement more up-to-date with current procurement practices.

*Note:* The Annexes to the Agreement are not included in this publication, but may be ordered from the GATT Secretariat, Centre William Rappard, 154 rue de Lausanne, 1211 Geneva 21, Switzerland or from the accredited Sales Agents. Price : SwF 30.00.

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\*The Annexes are *not* included in this publication.

# AGREEMENT ON GOVERNMENT PROCUREMENT

## *PREAMBLE*

Parties to this Agreement (hereinafter referred to as “Parties”),

*Considering* that Ministers agreed in the Tokyo Declaration of 14 September 1973 that comprehensive Multilateral Trade Negotiations in the framework of the General Agreement on Tariffs and Trade (hereinafter referred to as “General Agreement” or “GATT”) should aim, *inter alia*, to reduce or eliminate non-tariff measures or, where this is not appropriate, their trade restricting or distorting effects, and to bring such measures under more effective international discipline ;

*Considering* that Ministers also agreed that negotiations should aim to secure additional benefits for the international trade of developing countries, and recognized the importance of the application of differential measures in ways which will provide special and more favourable treatment for them where this is feasible and appropriate ;

*Recognizing* that in order to achieve their economic and social objectives to implement programmes and policies of economic development aimed at raising the standard of living of their people, taking into account their balance-of-payments position, developing countries may need to adopt agreed differential measures ;

*Considering* that Ministers in the Tokyo Declaration recognized that the particular situation and problems of the least developed among the developing countries shall be given special attention and stressed the need to ensure that these countries receive special treatment in the context of any general or specific measures taken in favour of the developing countries during the negotiations ;

*Recognizing* the need to establish an agreed international framework of rights and obligations with respect to laws, regulations, procedures and practices regarding government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade ;

*Recognizing* that laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and to foreign or domestic suppliers so as to afford protection to domestic products or suppliers and should not discriminate among foreign products or suppliers ;

*Recognizing* that it is desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement ;

*Recognizing* the need to establish international procedures on notification, consultation, surveillance and dispute settlement with a view to ensuring a fair, prompt and effective enforcement of the international provisions on government procurement and to maintain the balance of rights and obligations at the highest possible level ;

*Hereby agree* as follows :

## *Article I*

### *Scope and Coverage*

1. This Agreement applies to :

(a) any law, regulation, procedure and practice regarding any procurement of products, through such methods as purchase or as lease, rental or hire-purchase, with or without an option to buy, by the entities<sup>1</sup> subject to this Agreement. This includes services incidental to the supply of products if the value of these incidental services does not exceed that of the products themselves, but not service contracts *per se* ;

(b) any procurement contract of a value of SDR 130,000 or more.<sup>2,3</sup> No procurement requirement shall be divided with the intent of reducing the value of the resulting contracts below SDR 130,000. If an individual requirement for the procurement of a product or products of the same type results in the award of more than one contract or in contracts being awarded in separate parts, the basis for application of this Agreement shall be either the actual value of similar recurring contracts concluded over the previous fiscal year or twelve months adjusted, where possible, for anticipated changes in quantity and value over the subsequent twelve months, or the

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<sup>1</sup> Throughout this Agreement, the word entities is understood to include agencies.

<sup>2</sup> For contracts below the threshold, the Parties shall consider, in accordance with paragraph 6 of Article IX, the application in whole or in part of this Agreement. In particular, they shall review the procurement practices and procedures utilized and the application of non-discrimination and transparency for such contracts in connexion with the possible inclusion of contracts below the threshold in this Agreement.

<sup>3</sup> This Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article V:4.

estimated value of recurring contracts in the fiscal year or twelve months subsequent to the initial contract. The selection of the valuation method by the entity shall not be used with the purpose of circumventing the Agreement. In cases of contracts for the lease, rental, or hire-purchase of products, the basis for calculating the contract value shall be :

- (i) in the case of fixed-term contracts, where their term is twelve months or less, the calculation should be based on the total contract value for its duration, or, where their term exceeds twelve months, its total value including the estimated residual value ;
- (ii) in the case of contracts for an indefinite period, the monthly instalment multiplied by forty-eight ;
- (iii) if there is any doubt, the second basis of calculation, namely (ii), is to be used.

In cases where a proposed procurement specifies the need for option clauses, the basis for application of this Agreement shall be the total value of the maximum permissible purchases, lease, rentals or hire-purchases, inclusive of optional purchases ;

- (c) procurement by the entities under the direct or substantial control of Parties and other designated entities, with respect to their procurement procedures and practices. Until the review and further negotiations referred to in the Final Provisions, the coverage of this Agreement is specified by the lists of entities, and to the extent that rectifications, modifications or amendments may have been made, their successor entities, in Annex I.

2. The Parties shall inform their entities not covered by this Agreement and the regional and local governments and authorities within their territories of the objectives, principles and rules of this Agreement, in particular the rules on national treatment and non-discrimination, and draw their attention to the overall benefits of liberalization of government procurement.

## *Article II*

### *National Treatment and Non-Discrimination*

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, the Parties shall



provide immediately and unconditionally to the products and suppliers of other Parties offering products originating within the customs territories (including free zones) of the Parties, treatment no less favourable than :

(a) that accorded to domestic products and suppliers ; and

(b) that accorded to products and suppliers of any other Party.

2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, the Parties shall ensure :

(a) that their entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership ;

(b) that their entities shall not discriminate against locally established suppliers on the basis of the country of production of the good being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of paragraph 4 of this Article.

3. The provisions of paragraph 1 shall not apply to customs duties and charges of any kind imposed on or in connexion with importation, the method of levying such duties and charges, and other import regulations and formalities.

4. The Parties shall not apply rules of origin to products imported for purposes of government procurement covered by this Agreement from other Parties, which are different from the rules of origin applied in the normal course of trade and at the time of importation to imports of the same products from the same Parties.

### *Article III*

#### *Special and Differential Treatment for Developing Countries*

##### *Objectives*

1. The Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing countries, in particular the least-developed countries, in their need to :

- (a) safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development ;
- (b) promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural or backward areas ; and economic development of other sectors of the economy ;
- (c) support industrial units so long as they are wholly or substantially dependent on government procurement ;
- (d) encourage their economic development through regional or global arrangements among developing countries presented to the CONTRACTING PARTIES to the GATT and not disapproved by them.

2. Consistently with the provisions of this Agreement, the Parties shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of the least-developed countries and of those countries at low stages of economic development.

### *Coverage*

3. With a view to ensuring that developing countries are able to adhere to this Agreement on terms consistent with their development, financial and trade needs, the objectives listed in paragraph 1 above shall be duly taken into account in the course of the negotiations with respect to the lists of entities of developing countries to be covered by the provisions of this Agreement. Developed countries, in the preparation of their lists of entities to be covered by the provisions of this Agreement shall endeavour to include entities procuring products of export interest to developing countries.

### *Agreed exclusions*

4. Developing countries may negotiate with other participants in the negotiation of this Agreement mutually acceptable exclusions from the rules on national treatment with respect to certain entities or products that are included in their lists of entities having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in paragraph 1(a)-(c) above shall be duly taken into account. Developing countries participating in regional or global arrangements among develop-

ing countries referred to in paragraph 1(d) above, may also negotiate exclusions to their lists, having regard to the particular circumstances of each case, taking into account, *inter alia*, the provisions on government procurement provided for in the regional or global arrangements concerned and taking into account, in particular, products which may be subject to common industrial development programmes.

5. After entry into force of this Agreement, the developing country Parties may modify their lists of entities in accordance with the provisions for modification of such lists contained in paragraph 5 of Article IX of this Agreement, having regard to their development, financial and trade needs, or may request the Committee to grant exclusions from the rules on national treatment for certain entities or products that are included in their lists of entities, having regard to the particular circumstances of each case and taking duly into account the provisions of paragraph 1(a)-(c) above. The developing country Parties may also request, after entry into force of this Agreement, the Committee to grant exclusions for certain entities or products that are included in their lists in the light of their participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of paragraph 1(d) above. Each request to the Committee by a developing country Party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.

6. Paragraphs 4 and 5 above shall apply *mutatis mutandis* to developing countries acceding to this Agreement after its entry into force.

7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 above shall be subject to review in accordance with the provisions of paragraph 14 of this Article.

#### *Technical assistance for developing country Parties*

8. Developed country Parties shall, upon request, provide all technical assistance which they may deem appropriate to developing country Parties in resolving their problems in the field of government procurement.

9. This assistance which shall be provided on the basis of non-discrimination among the developing country Parties shall relate, *inter alia*, to:

- the solution of particular technical problems relating to the award of a specific contract ;
- any other problem which the Party making the request and another Party agree to deal with in the context of this assistance.

10. Technical assistance referred to in paragraphs 8 and 9 above would include translation of qualification documentation and tenders made by suppliers of developing country Parties from a GATT language designated by the entity, unless developed country Parties deem translation as burdensome, and, in that case, explanation shall be given to developing country Parties upon their request addressed either to the developed country Parties or to their entities.

#### *Information centres*

11. The developed country Parties shall establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating to, *inter alia*, laws, regulations, procedures and practices regarding government procurement, notices about proposed procurements which have been published, addresses of the entities covered by this Agreement, and the nature and volume of products procured or to be procured, including available information about future tenders. The Committee may also set up an information centre.

#### *Special treatment for least-developed countries*

12. Having regard to paragraph 6 of the Tokyo Declaration, special treatment shall be granted to the least-developed country Parties and to the suppliers in those countries with respect to products originating in those countries, in the context of any general or specific measures in favour of the developing country Parties. The Parties may also grant the benefits of this Agreement to suppliers in the least-developed countries which are not Parties, with respect to products originating in those countries.

13. Developed country Parties shall, upon request, provide assistance which they may deem appropriate to potential tenderers in the least-developed countries in submitting their tenders and selecting the products which are likely to be of interest to entities of developed countries as well as to suppliers in the least-developed countries and likewise assist them to comply with technical regulations and standards relating to products which are the subject of the proposed procurement.

#### *Review*

14. The Committee shall review annually the operation and effectiveness of this Article and after each three years of its operation on the basis of reports to be submitted by the Parties shall carry out a major review in

order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Article II, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 to 6 of this Article shall be modified or extended.

15. In the course of further rounds of negotiations in accordance with the provisions of Article IX, paragraph 6, the developing country Parties shall give consideration to the possibility of enlarging their lists of entities having regard to their economic, financial and trade situation.

#### *Article IV*

##### *Technical Specifications*

1. Technical specifications laying down the characteristics of the products to be procured such as quality, performance, safety and dimensions, testing and test methods, symbols, terminology, packaging, marking and labelling, and conformity certification requirements prescribed by procurement entities, shall not be prepared, adopted or applied with a view to creating obstacles to international trade nor have the effect of creating unnecessary obstacles to international trade.
2. Any technical specification prescribed by procurement entities shall, where appropriate :
  - (a) be in terms of performance rather than design ; and
  - (b) be based on international standards, national technical regulations, or recognized national standards.
3. There shall be no requirement or reference to a particular trade mark or name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as “or equivalent” are included in the tenders.
4. Procurement entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.

*Article V*

*Tendering Procedures*

1. The Parties shall ensure that the tendering procedures of their entities are consistent with the provisions below. Open tendering procedures, for the purposes of this Agreement, are those procedures under which all interested suppliers may submit a tender. Selective tendering procedures, for the purposes of this Agreement, are those procedures under which, consistent with paragraph 8 and other relevant provisions of this Article, those suppliers invited to do so by the entity may submit a tender. Single tendering procedures, for the purposes of this Agreement, are those procedures where the entity contacts suppliers individually, only under the conditions specified in paragraph 16 below.

*Qualification of suppliers*

2. Entities, in the process of qualifying suppliers, shall not discriminate among foreign suppliers or between domestic and foreign suppliers. Qualification procedures shall be consistent with the following :

- (a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures ;
- (b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to foreign suppliers than to domestic suppliers and shall not discriminate among foreign suppliers. The financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity as well as its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organizations ;
- (c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep foreign suppliers off a suppliers' list or from being considered for a particular proposed procurement.

Entities shall recognize as qualified suppliers such domestic or foreign suppliers who meet the conditions for participation in a particular proposed procurement. Suppliers requesting to participate in a particular proposed procurement who may not yet be qualified shall also be considered, provide there is sufficient time to complete the qualification procedure ;

- (d) entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time ; and that all qualified suppliers so requesting are included in the lists within a reasonably short time ;
- (e) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them ;
- (f) the Parties shall ensure that
  - (i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for different procedures ;
  - (ii) efforts be made to minimize differences in qualification procedures between entities ;
- (g) nothing in sub-paragraphs (a) to (f) above shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.

3. Entities shall not provide to any potential supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.

*Notice of proposed procurement and tender documentation*

4. Entities shall publish a notice of each proposed procurement in the appropriate publication listed in Annex II. Such notice shall constitute an invitation to participate in either open or selective tendering procedures.

5. Each notice of proposed procurement shall contain the following information :

- (a) the nature and quantity, including any options for additional quantities, of the products to be supplied and, if possible, an estimate

of the timing when such options may be exercised ; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products to be procured ;

- (b) whether the procedure is open or selective ;
- (c) any delivery date ;
- (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted ;
- (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents ;
- (f) any economic and technical requirements, financial guarantees and information required from suppliers ;
- (g) the amount and terms of payment of any sum payable for the tender documentation ;
- (h) whether the entity is inviting offers for purchase, lease, rental or hire-purchase, or more than one of these methods.

The entity shall publish in one of the official languages of the GATT a summary of the notice of proposed procurement containing at least the following :

- (i) subject matter of the contract ;
- (ii) time-limits set for the submission of tenders or an application to be invited to tender ; and
- (iii) addresses from which documents relating to the contracts may be requested.

6. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each proposed procurement, invite tenders from the maximum number of domestic and foreign suppliers, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

7. (a) In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Annex III, a notice of the following :



- (i) the enumeration of the lists maintained, including their headings, in relation to the products or categories of products to be procured through the lists ;
  - (ii) the conditions to be filled by potential suppliers in view of their inscription on those lists and the methods according to which each of those conditions be verified by the entity concerned ;
  - (iii) the period of validity of the lists, and the formalities for their renewal.
- (b) Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.
- (c) If, after publication of the notice under paragraph 4 above, a supplier not yet qualified requests to participate in a particular tender, the entity shall promptly start the procedure of qualification.

8. Suppliers requesting to participate in a particular proposed procurement shall be permitted to submit a tender and be considered provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under paragraphs 2-7 of this Article. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

9. If after publication of a notice of a proposed procurement but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular proposed procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

10. (a) Any prescribed time-limit shall be adequate to allow foreign as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the proposed procurement, the extent of sub-contracting anticipated, and the normal time for transmitting tenders by mail from foreign as well as domestic points.

(b) Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the

proposed procurement, the extent of sub-contracting anticipated, and the realistic time required for production, de-stocking and transport of goods from the points of supply.

11. (a) In open procedures, the period for the receipt of tenders shall in no case be less than forty days from the date of publication referred to in paragraph 4 of this Article.
  - (b) In selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall in no case be less than twenty-five days from the date of publication referred to in paragraph 4 of this Article; the period for receipt of tenders shall in no case be less than forty days from the date of issuance of the invitation to tender.
  - (c) In selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall in no case be less than forty days from the date of the initial issuance of invitations to tender. If the date of initial issuance of invitations to tender does not coincide with the date of the publication referred to in paragraph 4 of this Article, there shall in no case be less than forty days between those two dates.
  - (d) The periods referred to in (a), (b) and (c) above may be reduced in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 5 of this Article. In this case, the period for the receipt of tenders shall in no case be less than twenty-five days. The second or subsequent publication should include a reference to permit the identification of the first publication.
  - (e) The periods referred to in (a), (b), (c) and (d) above may be reduced where a state of urgency duly substantiated by the entity renders impracticable the periods in question but shall in no case be less than ten days from the date of the publication referred to in paragraph 4 of this Article.
  - (f) The Parties shall ensure that their entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.
12. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the GATT.
  13. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including

information required to be published in the notice of proposed procurement, except for paragraph 5(g) of this Article, and the following :

- (a) the address of the entity to which tenders should be sent ;
  - (b) the address where requests for supplementary information should be sent ;
  - (c) the language or languages in which tenders and tendering documents must be submitted ;
  - (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance ;
  - (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening ;
  - (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers ;
  - (g) a complete description of the products required or of any requirements including technical specifications, conformity certification to be fulfilled by the products, necessary plans, drawings and instructional materials ;
  - (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of foreign products, customs duties and other import charges, taxes and currency of payment ;
  - (i) the terms of payment ;
  - (j) any other terms or conditions.
14. (a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.
- (b) In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate and shall reply promptly to any reasonable request for explanations relating thereto.
- (c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

*Submission, receipt and opening of tenders and awarding of contracts*

15. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following :

- (a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or telecopy are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or telecopy. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or telecopy shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit ; requests to participate in selective tendering procedures may be submitted by telex, telegram or telecopy ;
- (b) the opportunities that may be given to tenderers to correct unintentional errors between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice ;
- (c) a supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide ;
- (d) all tenders solicited under open and selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings as well as the availability of information from the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. To this effect, and in connexion with open procedures, entities shall establish provisions for the opening of tenders in the presence of either tenderers or their representatives, or an appropriate and impartial witness not connected with the procurement process. A report on the opening of tenders shall be drawn up in writing. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles VI and VII of this Agreement ;

- (e) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from suppliers which comply with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract ;
- (f) unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic or foreign products, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous ;
- (g) if it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation, the entity shall, in any subsequent negotiations, give equal consideration and treatment to all tenders within the competitive range ;
- (h) entities should normally refrain from awarding contracts on the condition that the supplier provide offset procurement opportunities or similar conditions. In the limited number of cases where such requisites are part of a contract, Parties concerned shall limit the offset to a reasonable proportion within the contract value and shall not favour suppliers from one Party over suppliers from any other Party. Licensing of technology should not normally be used as a condition of award but instances where it is required should be as infrequent as possible and suppliers from one Party shall not be favoured over suppliers from any other Party. In the limited number of cases where offset procurement opportunities or similar conditions are required, these requirements shall be included in the notice of proposed procurement and tender documentation ;
- (i) option clauses shall not be used in a manner which circumvents the provisions of the Agreement ;
- (j) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.

### *Use of single tendering*

16. The provisions of paragraphs 1-15 above governing open and selective tendering procedures need not apply in the following conditions, pro-

vided that single tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among foreign suppliers or protection to domestic producers :

- (a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been either collusive or do not conform to the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded ;
- (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, the products can be supplied only by a particular supplier and no reasonable alternative or substitute exists ;
- (c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products could not be obtained in time by means of open or selective tendering procedures ;
- (d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies or installations, or as the extension of existing supplies or installations where a change of supplier would compel the entity to procure equipment not meeting requirements of interchangeability with already existing equipment ;<sup>4</sup>
- (e) when an entity procures prototypes or a first product which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of products shall be subject to paragraphs 1-15 of this Article.<sup>5</sup>

17. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 16 of this Article. Each report shall contain the name of the procuring entity, value and kind of goods pro-

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<sup>4</sup> It is the understanding that "existing equipment" referred to in Article V:16(d) includes software to the extent that the initial procurement of the software was covered by the Agreement.

<sup>5</sup> Original development of a first product may include limited production in order to incorporate the results of field testing and to demonstrate that the product is suitable for production in quantity to acceptable quality standards. It does not extend to quantity production to establish commercial viability or to recover research and development costs.

cured, country of origin, and a statement of the conditions in paragraph 16 of this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles VI and VII of this Agreement.

## *Article VI*

### *Information and Review*

1. Entities shall publish a notice in the appropriate publication listed in Annex II not later than sixty days after the award of a contract(s) under Article V:15 or 16. These notices shall contain<sup>6</sup>:

- (a) nature and quantity of products in the contract award(s);
- (b) name and address of the entity awarding the contract;
- (c) date of award;
- (d) name(s) and address(es) of winning tenderer(s);
- (e) value of winning award(s) or the highest and lowest offer taken into account in the award of the contract;
- (f) where appropriate, means of identifying the notice issued under Article V:4;
- (g) the type of procedure used;
- (h) where appropriate, justification according to Article V:16 for the use of such procedure.

2. Any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, shall be published promptly by the Parties in the appropriate publications listed in Annex IV and in such a manner as to enable other Parties and suppliers to become acquainted with them. The Parties shall be prepared, upon

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<sup>6</sup> It is understood that certain information on the contract award may not be published in cases of those contracts where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

request, to explain to any other Party their government procurement procedures. Entities shall be prepared, upon request, to explain to any supplier from a country which is a Party to this Agreement their procurement practices and procedures.

3. Entities shall, upon request by any supplier, promptly provide pertinent information concerning the reasons why that supplier's application to qualify for the suppliers' list was rejected, or why that supplier was not invited or admitted to tender.

4. Entities shall promptly, and in no case later than seven working days from the date of the award of a contract, inform the unsuccessful tenderers by written communication or publication that a contract has been awarded, the value or values of the tenders and the name and address of the winning tenderer. It is understood that the criteria contained in paragraph 9 of this Article are also applicable to the information requirements above.

5. Upon request by an unsuccessful tenderer, the procuring entity shall promptly provide that tenderer with pertinent information concerning the reasons why the tender was not selected, including information on the characteristics and the relative advantages of the tender selected, as well as the name of the winning tenderer.

6. Entities shall establish a contact point to provide additional information to any unsuccessful tenderer dissatisfied with the explanation for rejection of his tender or who may have further questions about the award of the contract. There shall also be procedures for the hearing and reviewing of complaints arising in connexion with any phase of the procurement process, so as to ensure that, to the greatest extent possible, disputes under this Agreement will be equitably and expeditiously resolved between the suppliers and the entities concerned.

7. The government of the unsuccessful tenderer, which is a Party to this Agreement, may seek, without prejudice to the provisions under Article VII, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.



8. Available information concerning individual contract awards shall be provided, upon a request, to any other Party.

9. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers, shall not be revealed without formal authorization from the party providing the information.

10. The Parties shall collect and provide to the Committee on an annual basis statistics on their procurements covered by this Agreement. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement :

- (a) statistics on estimated value of contracts awarded, both above and below the threshold value on a global basis and broken down by entities ;
- (b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products according to a uniform classification system to be determined by the Committee, and country of origin of the product ;
- (c) statistics, broken down by entity, and by category of product, on the number and total value of contracts awarded under each of the cases of Article V, paragraph 16 showing country of origin of the product ;
- (d) statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in Annex I.

## *Article VII*

### *Enforcement of Obligations*

#### *Institutions*

1. There shall be established under this Agreement a Committee on Government Procurement (referred to in this Agreement as “the Committee”) composed of representatives from each of the Parties. This Committee shall elect its own Chairman and Vice-Chairman and shall meet as

necessary but not less than once a year for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.

2. The Committee may establish *ad hoc* panels in the manner and for the purposes set out in paragraph 8 of this Article and working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.

### *Consultations*

3. Each Party shall afford sympathetic consideration to, and shall afford adequate opportunity for consultations regarding, representations made by another Party with respect to any matter affecting the operation of this Agreement.

4. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, by another Party or Parties, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultations. The Parties concerned shall initiate requested consultations promptly.

5. The Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall provide information concerning the matter subject to the provisions of Article VI, paragraph 9, and attempt to conclude such consultations within a reasonably short period of time.

### *Dispute settlement*

6. If no mutually satisfactory solution has been reached as a result of consultations under paragraph 4 between the Parties concerned, the Committee shall meet at the request of any party to the dispute within thirty days of receipt of such a request to investigate the matter, with a view to facilitating a mutually satisfactory solution.

7. If no mutually satisfactory solution has been reached after detailed examination by the Committee under paragraph 6 within three months, the Committee shall, at the request of any party to the dispute establish a panel to :

- (a) examine the matter ;
- (b) consult regularly with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution ;
- (c) make a statement concerning the facts of the matter as they relate to application of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

8. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of governmental officials experienced in the field of trade relations. This list may also include persons other than governmental officials. In this connexion, each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two persons whom the Parties would be willing to make available for such work. When a panel is established under paragraph 7, the Chairman, within seven days, shall propose to the parties to the dispute the composition of the panel consisting of three or five members and preferably government officials. The parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as governmental representatives nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

9. Each panel shall develop its own procedures. All Parties, having a substantial interest in the matter and having notified this to the Committee, shall have an opportunity to be heard. Each panel may consult with and seek information from any source it deems appropriate. Before a panel seeks such information from a source within the jurisdiction of a Party it shall inform the government of that Party. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the government or person providing the information, will be provided.

Where a mutually satisfactory solution to a dispute cannot be found or where the dispute relates to an interpretation of this Agreement, the panel

should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee. Where an interpretation of this Agreement is not involved and where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution had been reached.

10. The time required by panels will vary with the particular case. Panels should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, taking into account the obligation of the Committee to ensure prompt settlement in cases of urgency, normally within a period of four months from the date the panel was established.

### *Enforcement*

11. After the examination is complete or after the report of a panel, working party or other subsidiary body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to these reports, the Committee shall take appropriate action normally within thirty days of receipt of the report unless extended by the Committee, including:

- (a) a statement concerning the facts of the matter;
- (b) recommendations to one or more Parties; and/or
- (c) any other ruling which it deems appropriate.

Any recommendations by the Committee shall aim at the positive resolution of the matter on the basis of the operative provisions of this Agreement and its objectives set out in the Preamble.

12. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

13. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

### *Balance of rights and obligations*

14. If the Committee's recommendations are not accepted by a party, or parties, to the dispute, and if the Committee considers that the circumstances are serious enough to justify such action, it may authorize a Party

or Parties to suspend in whole or in part, and for such time as may be necessary, the application of this Agreement to any other Party or Parties, as is determined to be appropriate in the circumstances.

### *Article VIII*

#### *Exceptions to the Agreement*

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.
2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures necessary to protect public morals, order or safety, human, animal or plant life or health, intellectual property, or relating to the products of handicapped persons, of philanthropic institutions or of prison labour.

### *Article IX*

#### *Final Provisions*

1. *Acceptance and accession*
  - (a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community whose agreed lists of entities are contained in Annex I.
  - (b) Any government contracting party to the GATT not a Party to this Agreement may accede to it on terms to be agreed between that government and the Parties. Accession shall take place by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

- (c) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession, and whose agreed lists of entities are contained in Annex I.
- (d) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.
- (e) In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

## 2. *Reservations*

Reservations may not be entered in respect of any of the provisions of this Agreement.

## 3. *Entry into force*

This Agreement shall enter into force on 1 January 1981 for the governments<sup>7</sup> which have accepted or acceded to it by that date. For each other government, it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

## 4. *National legislation*

- (a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by the entities contained in its list annexed hereto, with the provisions of this Agreement.

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<sup>7</sup> For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Economic Community.

- (b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

5. *Rectifications or modifications*

- (a) Rectifications of a purely formal nature and minor amendments relating to Annexes I-IV to this Agreement shall be notified to the Committee and shall become effective provided there is no objection within thirty days to such rectifications or amendments.
- (b) Any modifications to lists of entities other than those referred to in sub-paragraph (a) may be made only in exceptional circumstances. In such cases, a Party proposing to modify its list of entities shall notify the Chairman of the Committee who shall promptly convene a meeting of the Committee. The Parties shall consider the proposed modification and consequent compensatory adjustments, with a view to maintaining a comparable level of mutually agreed coverage provided in this Agreement prior to such modification. In the event of agreement not being reached on any modification taken or proposed, the matter may be pursued in accordance with the provisions contained in Article VII of this Agreement, taking into account the need to maintain the balance of rights and obligations at the highest possible level.

6. *Reviews and negotiations*

- (a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the periods covered by such reviews.
- (b) Not later than the end of the third year from the entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to broadening and improving this Agreement on the basis of mutual reciprocity, having regard to the provisions of Article III relating to developing countries. In this connexion, the Committee shall, at an early stage, explore the possibilities of expanding the coverage of this Agreement to include service contracts.

7. *Amendments*

The Parties may amend this Agreement having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with the procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

8. *Withdrawal*

Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.

9. *Non-application of this Agreement between particular Parties*

This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

10. *Notes and Annexes*

The notes and annexes to this Agreement constitute an integral part thereof.

11. *Secretariat*

This Agreement shall be serviced by the GATT secretariat.

12. *Deposit*

This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy thereof, of each rectification or modification thereto pursuant to paragraph 5 and of each amendment thereto pursuant to paragraph 7, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 1 and of each withdrawal therefrom pursuant to paragraph 8, of this Article.



13. *Registration*

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

*Done* at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the lists of entities annexed hereto.

## NOTES

### *Article I, paragraph 1*

Having regard to general policy considerations relating to tied aid, including the objective of developing countries with respect to the untying of such aid, this Agreement does not apply to procurement made in furtherance of tied aid to developing countries so long as it is practised by Parties.

### *Article V, paragraph 15(h)*

Having regard to the general policy considerations of developing countries in relation to government procurement, it is noted that under the provisions of paragraph 15(h) of Article V, developing countries may require incorporation of domestic content, offset procurement, or transfer of technology as criteria for award of contracts. It is noted that suppliers from one Party shall not be favoured over suppliers from any other Party. When known, these requirements shall be specified in the notice of proposed procurement and tender documentation.