

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## DRAFT INTEGRATED TEXT FOR NEGOTIATION ON GOVERNMENT PROCUREMENT

In accordance with paragraph 7 of the Chairman's summing-up of the last meeting of the Sub-Group (MTN/NTM/42), the following suggestions concerning the draft integrated text (MTN/NTM/W/133/Rev.1) have been put together by a number of delegations.

### PART IV

#### TENDERING PROCEDURES

1. Signatories shall ensure that the tendering procedures of their entities are consistent with the provisions below. They shall use either open or selective tendering procedures, unless the conditions specified in paragraph 14 below apply.

#### 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 required from suppliers, including financial guarantees, technical qualifications, 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;

(c) the process of, and the time required for, qualifying suppliers shall not be used to keep foreign suppliers off a suppliers' list or from being considered for a particular proposed purchase. Entities shall recognize as qualified suppliers such domestic or foreign suppliers which meet the conditions for participation in a particular proposed purchase. Suppliers requesting to participate in a particular proposed purchase who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;

(d) entities maintaining permanent lists of qualified suppliers shall ensure 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 of the decision of the entities concerned as to whether or not he has been recognized as a qualified supplier. 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) nothing in sub-paragraphs (a) to (e) 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.

Notice of proposed purchase and tender documentation

3. (a) Entities shall publish a notice of each proposed purchase in the appropriate publication listed in Annex ... Such notice shall constitute an invitation to tender in the case of open tendering procedures and an invitation /to submit an application to be invited/ to tender /or to qualify for the suppliers' lists, / in the case of selective tendering procedures.

(b) Notwithstanding the provisions of the preceding sub-paragraph, in the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers may select suppliers to be invited from among those listed in the lists on the following conditions:

(i) they shall publish annually in one of the publications listed in Annex ..., a notice of the following:

a. the enumeration of the lists maintained;

- b. their headings, in relation to the products or categories of products to be purchased through the lists;
- c. 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 might be verified by the entity concerned;
- d. the period of validity of the lists, and the formalities for their renewal.

(ii) Entities maintaining permanent lists of suppliers shall, /as a general rule, for each proposed purchase, send a notice to all suppliers on the list inviting them to tender. Where this creates an undue administrative burden, the entities may/ send a notice /to the maximum number of qualified domestic and foreign suppliers, consistent with efficient operation of the procurement system;/ to a selected number of suppliers listed on the relevant list, inviting them to tender; this selection shall be carried out in a fair and non-discriminatory manner which allows for equitable /rotation/ /selection/ of the suppliers on the list.

(iii) at the time of sending the notices, entities shall publish in one of the relevant publications listed in Annex ..., a notice indicating their intention to purchase and containing the information described in paragraph 4.

(iv) if, after publication of the notice under (iii) above, a supplier who has not been qualified requests to participate in a particular tender, the entity shall promptly start the procedure of qualification.

4. Each notice of proposed purchase shall contain the following information: (a) the nature and quantity of the products to be supplied, or envisaged to be purchased in the case of contracts of a recurring nature; (b) whether the procedure is open or selective; (c) any delivery date; (d) the address and final date for receiving tenders or /for submitting an application to be invited to tender/ /for qualifying for the suppliers' lists/, 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 requirement, financial guarantees and information required from suppliers; (g) the amount and terms of payment of any sum payable for the tender documentation.

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

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

/5. Entities maintaining permanent lists of qualified suppliers for specific products or groups of products, shall be deemed to have met the provisions of paragraphs 3 and 4 above providing they publish /notice of each proposed purchase and/ the existence of their specific or grouped product lists in the relevant publications in Annex ... including additions to and deletions from such lists, together with sufficient information to enable potential suppliers to initiate the qualification process./

6. To ensure optimum effective international competition under selective tendering procedures, entities shall send invitations to tender to /the maximum number of/ /all/ qualified domestic and foreign suppliers, consistent with efficient operation of the procurement system. They shall select the suppliers to be invited to tender from among those who meet the conditions for participation as stated in the notices or in compliance with paragraph 3(b). /All suppliers who request to participate in a particular proposed purchase shall be permitted to submit a tender and be considered, provided in the case of those who have not been qualified, there is sufficient time to complete the qualification procedure./

7. If after publication of a notice to purchase 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 reissue the notice, the amendment or the reissued 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 purchase 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.

8. 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 purchase, the extent of sub-contracting anticipated, and the normal time for transmitting tenders by mail from foreign as well as domestic points.

9. (a) In open procedures the period for the receipt of tenders shall in no case be less than X days from the date of publication referred to in paragraph 3(a).  
  
(b) In selective procedures the period for the receipt of tenders or /for submitting an application to be invited to tender/ /for qualifying for the suppliers' lists/ shall in no case be less than Y days from the date of publication referred to in paragraph 3(a) and (b).  
  
(c) The periods referred to in (a) and (b) above may be reduced either where a state of urgency duly substantiated by the entity renders impracticable the final dates referred to in (a) and (b) above or in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 4.
10. 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. /In selective procedures, requests to participate in a particular proposed purchase may be sent to an entity in either the language used by that entity or one of the official languages of the GATT./
11. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including 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 would 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;
12. (a) In open procedures, entities shall /forward/ /make available/ 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/ /make available/ the tender documentation at the request of any /interested/ supplier /allowed to submit a tender/, and shall reply promptly to any 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 /and to the extent that entities consider that such notification is not detrimental to the proper functioning of the procedure/.

Submission, receipt and opening of tenders and awarding of contracts

13. 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 documents 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. /To this effect, and in connexion with open /and selective/ procedures, entities shall establish provisions for the public opening of tenders, where tenders are opened in the presence of the tenderers or their representatives, and for the disclosure of the names of the tenderers and prices of tenders. If tenderers are not present, the opening must be conducted in the presence of an appropriate witness or witnesses; /

A report on the opening of the tenders shall be drawn up in writing. This document need not be published. It 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 at the bilateral phase of the settlement of disputes. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions 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;

(f) Unless in the public interest all tenders are rejected, entities 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) In no case shall the award of a contract be made on the condition that the supplier license the technology involved, provide offset procurement opportunities, or on any other condition inconsistent with the provisions of national treatment and non-discrimination.

Except in the case of international collaborative projects, the award of contracts shall not be made on the condition that the supplier license the technology involved to another firm or provide offset procurement opportunities, or on any similar conditions, if these conditions are inconsistent with the principle of non-discrimination.

#### Use of single tendering

14. The provisions of paragraphs 1-13 above governing open and selective tendering procedures need not apply in the following conditions, provided 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 irregular or not conforming 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, in such cases as for works of art for technical reasons 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 purchase equipment not meeting requirements of interchangeability with already existing equipment, /and provided that highly specialized technical requirements make it impossible to resort to open or selective procedures; //

/(e) When a prototype is developed in the course of research, experiments, study, or development. /

/Where the products concerned are purchased in connexion with or following research, experiments, study, design or development, and it is impracticable to seek competition. /