

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/3/Add.8

6 May 1981

Special Distribution

Committee on Government Procurement

Original: English

IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Addendum

Legislation of Norway

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 Norway hereby submits the following documents (unofficial English translation)*:

- (1) Royal Decree of 19 December 1980 entitled: "Implementation of the GATT Agreement on Government Procurement".
- (2) "Guidelines for the Implementation of the GATT Agreement on Government Procurement" laid down by the Ministry of Industry on 19 December 1980.

* English only. With letter of 19 January 1981 the Norwegian delegation submitted copies of the documents in Norwegian to the secretariat, where they are open for inspection.

IMPLEMENTATION OF THE GATT AGREEMENT ON GOVERNMENT
PROCUREMENT

As reported in Proposition to the Storting No. 25 (1979-80) negotiations on several trade policy issues have been carried out in the framework of GATT in order to facilitate international trade. The negotiations were conducted in Geneva during the period 1973-79. The negotiations resulted inter alia in an Agreement on Government Procurement. The Agreement was published as Annex 5 to the aforementioned Proposition to the Storting and was accepted by Norway 24 October 1980. The Agreement enters into force on 1 January 1981.

In accordance with the premises for the Storting's resolution it is a condition that the Agreement shall not enter into force before Norway's main trading partners have accepted it. On 16 December 1980 a number of countries have not yet unconditionally accepted the Agreement. According to the most recent information it is, however, reason to believe that those countries will unconditionally accept the Agreement by 30 December 1980. If it turns out that the acceptance by these countries has not taken place as expected by the end of the year, the Norwegian party will have to use the possibility which lies in Art. 9 section 9 of the Agreement in order to postpone the entry into force of the Agreement.

The Agreement has a limited coverage. The Agreement applies only to the entities which are listed in Annex 1 to the Agreement (13 civil and 6 military entities). Furthermore the Agreement covers only purchases by those entities at a value of 150,000 SDR (Special Drawing Rights) or more. According to the exchange rates in late November 1980 this corresponds to a value of approximately 1 million Norwegian Kroner. The Agreement also contains some other provisions which further restrict its application.

The Agreement states that the entities, for purchases falling under the Agreement's coverage, shall treat domestic and foreign tenderers equally. Furthermore the Agreement describes certain procedures for the collection and opening of tenders. The Agreement also contains provisions for the supply of information, collection and presentation of statistics and dispute settlement.

The Government is obliged to see to it that the obligations of the Agreement are carried out. Most practically this can be done by adding to section 1 of the present Regulation on Government Procurement provisions which:

1. state that the GATT Agreement on Government Procurement as well as the Regulation on Government Procurement shall apply to those entities and to those purchases which are covered by the Agreement.
2. give the Ministry of Industry the power to issue further guidelines for the implementation of the Agreement.

In order to avoid incompatibility between the provisions of the Regulation on Government Procurement and those of the Agreement some adjustments are also proposed in sections 8, 20, 21 and 24 of the Regulation.

The Ministry of Industry

r e c o m m e n d s t h a t

The Regulation on Government Procurement, laid down by Royal Decree of 17 March 1978, is amended in accordance with the draft annexed.

ANNEX

DRAFT

FOR THE AMENDMENT OF THE REGULATION ON GOVERNMENT
PROCUREMENT, LAID DOWN BY ROYAL DECREE OF 17 MARCH 1978

I.

The following amendments are made in the Regulation:

Section 1, the following is added:

The provisions of the Agreement on Government Procurement, entered into within the framework of the General Agreement on Tariffs and Trade, as well as this Regulation shall apply to those entities and purchases which are covered by the Agreement.

The Ministry of Industry can issue further guidelines for the implementation of the Agreement.

Section 8, new 3rd sentence:

The 2nd sentence do not apply to purchases which fall within the scope of the GATT Agreement.

The existing 3rd sentence now becomes the 4th sentence.

Section 20, the following is added:

Collection of tenders shall, as a general rule, be conducted by public notice for those purchases which fall under the GATT Agreement.

Section 21, new 2nd sentence:

For purchase falling under the GATT Agreement the provision that the entity shall inform the tenderers that public opening of the bids will not take place, does not apply.

The existing 2nd and 3rd sentences now become the 3rd and 4th sentences.

Section 24, new 3rd sentence:

For purchases which are falling under the GATT Agreement the opening of tenders shall be conducted in the presence of either the tenderers or their representatives, or an appropriate and impartial witness not connected with the procurement process. The provisions of section 14 are applied correspondingly as appropriate.

The existing 3rd sentence now becomes the 4th sentence.

II.

These amendments enter into force on 1 January 1981.

GUIDELINES FOR THE IMPLEMENTATION OF THE GATT AGREEMENT
ON GOVERNMENT PROCUREMENT.

Issued by the Ministry of Industry on 19 December 1980.

1. Introduction.

These guidelines are issued by the Ministry of Industry in pursuance of section 1 of the Regulation on Government Procurement (hereinafter referred to as "the Regulation"), issued by Royal Decree of 17 March 1978, amended by Royal Decree of 19 December 1980.

Norway has accepted the GATT Agreement on Government Procurement (hereinafter referred to as "the Agreement"). The Agreement will enter into force on 1 January 1981. In order to fulfill the provisions of the Agreement certain amendments have been made in the Regulation. Section 1 has been supplemented by a provision which states that the Agreement as well as the Regulation shall apply to those entities and to those purchases which are covered by the Agreement. Furthermore, in sections 8, 20, 21 and 24 certain amendments have been made. These amendments are explained in section-4 of these guidelines.

When drafting these guidelines for the implementation of the Agreement, the Ministry has not been able to draw on any practical experience. Therefore, it is possible that these guidelines will have to be revised when the Agreement has been in operation for some time. If the entities have questions on how to understand these guidelines, the Ministry of Industry may be contacted for further clarification.

2. The coverage of the guidelines.

In accordance with the Agreement the coverage of these guidelines are limited to:

- a) contracts of a value of more than 150000 SDR (Special Drawing Rights of the International Monetary Fund)
- b) the entities listed in Annex 1 to the Agreement, and
- c) countries which are parties to the Agreement.

The Agreement covers procurement of goods. Services are included only to the extent that they are linked to goods and that their value do not exceed that of the goods.

Thus, research and development contracts do not fall within the frame of the Agreement.

Special provisions apply to the procurement of goods that are the result of a research and development contract, see section 4 below.

The threshold value of SDR 150000 corresponds to about 1 million Norwegian Kroner according to the exchange rate prevailing in late November 1980, but the threshold value expressed in Norwegian Kroner may vary as a consequence of changing exchange rates. The Ministry of Industry stipulates the exact threshold value expressed in Norwegian Kroner which shall be applied for the following calendar year.

The Agreement also states that no procurement shall be divided with the intent of reducing the value of the resulting contracts to an amount which is lower than the threshold value. If a 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 value of these recurring contracts in the twelve months subsequent to the initial contract shall be the basis for the application of the Agreement.

The Ministry of Industry will inform the entities of the countries that are parties to the agreement.

Purchases of arms, ammunition or war materials, or procurement indispensable for national security or for national defense purposes are, according to article VIII of the Agreement, not covered by the Agreement. The same applies to any measures necessary to protect public morals, order or safety, human, animal or plant life or health, intellectual property, or relating to the products produced by handicapped persons, philanthropic institutions or by prison labour, provided 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.

The entities listed in Annex 1 to the Agreement and which are covered by the Agreement are the following:

1. National Road Services
2. Central Government Purchasing Office.
3. Postal Services Administration
4. State Hospital

5. University of Oslo
6. Police Services
7. Norwegian Broadcasting Corporation
8. University of Trondheim
9. University of Bergen
10. Coastal Directorate
11. University of Tromsø
12. State Pollution Control Authority
13. National Civil Aviation Administration
14. Ministry of Defence ¹⁾
15. Norwegian Defence Medical Service ¹⁾
16. Airforce Material Command ¹⁾
17. Army Material Command ¹⁾
18. Navy Material Command ¹⁾
19. Defence Combined Material Agency ¹⁾

The regional and local subdivisions of the entities listed are also covered by the Agreement.

For defence entities (marked with 1) the Guidelines apply only to procurement of the following products:

Replenishment material:

-office machines and equipment, furniture, material for education, sport, welfare, and other non-technical material

Running supplies:

-technical consumption material
-medical and dental supplies and dressings
-kitchen and mess inventory
-stationery and office supply
-publications
-musical instruments

Fuels:

-fuels, lubricants and other oil products

Motor vehicles:

-passenger car and transport vehicles
-ambulances
-fire engines
-aircraft service vehicles
-special purpose vehicles

Other technical equipment:

-pilot equipment
-parachute equipment
-rescue equipment
-photo equipment

- pyrotechnical equipment
- emergency electricity aggregates
- base, workshop, hangar and store equipment
- chemical/radiological equipment
- abc-safety protection equipment, workshops and stores

Medical and dental instruments

Catering equipment:

- permanent operational equipment for kitchens, canteens, conference rooms, catering workshops and stores.

3. National treatment and non-discrimination.

Article II of the agreement states that foreign and domestic tenders shall be treated equally without discrimination in any respect. This is a central principle of the Agreement and implies that a foreign supplier, if he gives a tender on a procurement falling under the Agreement, shall be given a treatment not less favourable than that accorded to domestic suppliers or that accorded to suppliers of any other Party.

However, according to a comment to the list of entities, Annex 1 to the Agreement, the principle of national treatment may be deviated from in singular procurement cases when a specific procurement decision may impair important national policy objectives. It is also a condition that a decision to this effect is to be taken at the Norwegian Cabinet level. Accordingly, an entity which wants to make use of this exception clause must submit a proposal to that effect to its superior authority.

4. The relationship to the Regulation on Government Procurement.

The Regulation on Government Procurement is applicable also to purchases which fall within the scope of the Agreement.

The Agreement contains provisions aiming at an increase of international trade and to secure that suppliers in each country party to the Agreement are guaranteed the possibility to take part in tendering in another country party to the Agreement. This general aim implies that the

provisions of the Agreement first and foremost are directed to those parts of the procurement process that comprises information on planned purchases, the procedures for inviting tenders and procedures necessary to secure that foreign and domestic tenderers may compete on an equal footing.

In most respects there is no contradiction between the rules of the Agreement and those of the Regulation, but on certain points it has been necessary to adapt the rules of the Regulation to those of the Agreement. This applies to sections 8, 20, 21 and 24 of the Regulation. We refer to the amendments that have been made to those sections. With these amendments the Regulation shall serve as the basis for procurement by Norwegian entities.

In addition to what is covered by the Regulation, the Agreement contains a certain number of supplementary provisions which must be observed when it comes to purchases which fall under the Agreement. The most important of these supplementary provisions are commented upon under each of the sections mentioned below:

Section 2 of the Regulation

Pursuant to the Regulation on Government Procurement purchase of goods and services shall take place by way of either:

- a) Open tendering,
- b) Negotiation, or
- c) Direct procurement.

Pursuant to article V section 1 of the Agreement a purchase is to take place in accordance with the following procedures:

- a) Open tendering,
- b) Selective tendering, or
- c) Single tendering.

There is no contradiction between the Regulation and the Agreement concerning tendering procedures. Purchases are to be made as stipulated in Section 2 of the Regulation also when they are falling under the Agreement.

However, the Agreement prescribes specific procedures for the invitation of tenders or offers. Especially for limited (selective) tendering these procedures differ from those of the Regulation, see comments under Section 8.

Section 3 of the Regulation.

Pursuant to section 3,4 of the Regulation the purchasing entity may when it finds it necessary, decide that only suppliers with specific qualifications may participate in the tendering.

Article V section 2 of the Agreement contains provisions concerning the qualification of suppliers. In addition to a general requirement that no qualification procedures may be used in a discriminatory way, the Agreement prescribes certain procedures to be followed. As such formal approval of the supplier's qualifications is normally not practised by Norwegian entities, it is not found necessary to cite these provisions of the Agreement. If an entity, as an exception, should wish to make such a formal approval, the provisions of article V section 2 of the Agreement must be observed.

Section 4 of the Regulation.

The Agreement contains more detailed provisions concerning technical specifications than those of the Regulation. Reference is made to article IV of the Agreement.

Section 5 of the Regulation.

Pursuant to section 5,1 of the Regulation the Ministry of Industry may in individual cases decide that the competition for a certain procurement may be limited "if this is not contrary to international agreements".

This provision is also applicable to purchases that fall under the Agreement. However, the relevant provisions of the Agreement must be observed. In this connection we refer to what has been said under heading 2 above (on general exceptions from the Agreement) and under heading 3 above (concerning the comment to the list of entities in Annex 1 to the Agreement).

Section 8 of the Regulation.

Pursuant to article V section 3 of the Agreement the entities shall publish a notice of each proposed purchase. This is in accordance with the main rule in section 8 of the Regulation. Article V section 4 of the Agreement specifies what information the notice to be published shall contain. The entities'

attention is drawn to the fact that a summary shall be published in one of the official languages of GATT (English, French or Spanish).

Pursuant to section 8, 2nd sentence of the Regulation selective tendering may be used by making a written invitation to a limited number of suppliers. Selective tendering is also allowed under the Agreement, but it is a condition that also under selective tendering, as is the case under open tendering, a notice about the proposed purchase shall be published. Therefore, it has been found necessary to add a new sentence to section 8 of the Regulation to the effect that the second sentence of section 8 shall not apply to purchases which fall under the Agreement.

Attention is drawn to the possibility which article 5, section 15 gives for addressing potential suppliers directly. When such single tendering takes place, a special report must be established, see article V section 16 of the Agreement.

The Agreement's provisions concerning selective tendering may seem quite complicated. The Ministry of Industry therefore supposes that selective tendering procedures will be used to a small extent by Norwegian entities when it comes to purchases which fall under the Agreement. It is assumed that by far the greater part of the purchases will be made by use of open tendering procedures.

Section 9 of the Regulation.

By and large there is conformity between section 9 of the Regulation and article V section 12 of the Agreement regarding the information to be included in the tendering documentation.

However, according to the Agreement the documentation is to contain the following information in addition to that which is mentioned in section 9 of the Regulation:

- a) the language or languages in which tenders and tendering documents must be submitted,
- b) the persons authorized to be present at the opening of tenders,
- c) the criteria for awarding of 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.

Section 10 of the Regulation

The Regulation stipulates that an ample time shall be set for the receipt of tenders. The Agreement contains a similar provision. Pursuant to article V section 10 of the Agreement the period for the receipt of tenders shall in no case be less than thirty days from the date of publication.

Section 15 of the Regulation

According to the Regulation the suppliers whose tenders have not been chosen, shall be informed. No time limit is given for such information. The Agreement stipulates a period of seven working days from the day the contract was awarded.

Section 17 of the Regulation

According to the main rule of the Regulation the tender which shows the lowest price in a tendering competition shall be chosen. This is in accordance with article V section 14f of the Agreement.

Sections 18 and 19 of the Regulation

The procedure "purchase by negotiation" may also be applied for purchases covered by the Agreement, but with those amendments which follow from the Agreement, see the comments below to sections 20, 21, 24 and 28 of the Regulation.

Section 20 of the Regulation

According to section 20, first sentence of the Regulation the invitation of tenders when using the negotiation procedure shall as a rule be conducted by direct inquiry addressed to the potential suppliers. This is not in accordance with the Agreement's rules on invitation of tenders. Therefore, it has been necessary to add a new sentence to section 20 of the Regulation. In this new sentence it is stated that for purchases which fall under the Agreement, the invitation of tenders shall as a general rule be made by public notice.

Exceptions from the requirement of public notice may be made in the cases covered by article V section 15 of the Agreement.

Section 21 of the Regulation

According to section 21 of the Regulation the entity shall, when

inquiring, inform the tenderers that public opening of the tenders will not take place. This is not in accordance with the Agreement's rules on opening of tenders. Therefore, it has been necessary to make an addition to section 21 of the Regulation to the effect that this rule does not apply to purchases which fall under the Agreement.

Section 24 of the Regulation

As far as the period for the receipt of tenders is concerned, reference is made to the comments to section 10.

In the Regulation there are no rules concerning public opening of tenders under the negotiation procedure.

Pursuant to article V section 14d of the Agreement the opening of tenders shall always be conducted under certain procedures. Therefore, it has been necessary to add a provision to this effect in section 24 of the Regulation. The Ministry has found it appropriate to use the Agreement's own language in this respect.

Section 28 of the Regulation

The main rule in the case of purchases by negotiation according to the Regulation is that, when selecting the supplier, the aim shall be to achieve the most advantageous purchase. This corresponds to article V section 14f of the Agreement. According to the Regulation, in the evaluation of bids due account shall be taken of price, quality and other relevant factors of importance for the purchase, such as operation and maintenance costs. According to the Agreement the entities shall make the award to "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." Thus, regarding purchases which fall under the Agreement, the entities must stick to the evaluation criteria set forth in the notices or tender documentation.

Section 30 of the Regulation

In principle direct procurement may be used also when it comes to purchases which fall under the Agreement, see Article V section 15 of the Agreement. However, as the Agreement only applies to purchases of a contract value of SDR 150000 or more, most direct purchases will fall outside the scope of the Agreement.

The entities shall make a written report on every purchase which is made under article V section 15 of the Agreement. Reference is made to Article V section 16 of the Agreement.

Section 44 of the Regulation

Research and development contracts fall outside the scope of the Agreement, as the Agreement does not cover services. This also includes limited production of a new product 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. Reference is made to heading 2 above and to the footnote to article V section 15e of the Agreement.

5. Information and Review

Article VI of the Agreement contains obligations to provide information so that it may, as far as possible, be verified that the non-discrimination principle is observed. Attention is notably drawn to the provisions concerning the establishment of a contact point which the unsuccessful tenderers may address in order to discuss the matter, as well as the provisions for the collection of statistics.

The entities shall compile statistics on their purchases. Within 1 May of each year the entities shall forward statistics to an authority to be appointed by the Ministry of Industry. The statistics shall cover:

- a) The value of contracts awarded, both above and below the threshold value.
- b) The number and total value of contracts awarded above the threshold value, broken down by 26 product categories and the country of origin of the product.¹⁾
- c) The total number and value of contracts awarded under each of the cases mentioned in article V section 15 (concerning single procurement cases)

A form to be used for the reporting will be worked out.

1) In some cases it may be difficult to identify the country of

origin of a given delivery. This may particularly be the case for deliveries which consist of several individual products. The entities should, in connection with the signing of the contract, request the supplier to give information about the country of origin of the product or products. If the supplier is foreign and the entity imports the product itself, the country of origin will be brought out by the customs documents.

In the case of a delivery consisting of products from different countries, the country from which the main component or the major part of the delivery originates can be considered the country of origin.