

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Committee on Government Procurement

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Addendum

Note Received from the Delegation of the European Communities

In accordance with the decision of the Committee on Government Procurement at its first meeting on 15 January 1981, that each Party would describe the main elements of its legislation in a Note, and in response to the checklist subsequently issued for this purpose in GPR/4, the delegation of the European Communities has submitted the Note which is reproduced hereunder.

I. COMMUNITY LEVEL

1. The Council of the European Communities, by Decision 80/271/EEC of 10 December 1979, approved the Agreement on Government Procurement.
2. As regards question 2(f) the Commission of the European Communities has officially drawn the attention of the member States to the requirements set out in Article I:2 of the Agreement and has requested that the entities concerned in each member State be likewise advised.

II. MEMBER STATE LEVEL

BELGIUM

1(a) Acceptance of the Agreement by the European Communities carries acceptance of the Agreement by Belgium. The few provisions to be incorporated in domestic law on government procurement have been drawn up, and the Council of State is expected to give its opinion on them shortly. After that opinion has been studied, the texts will be submitted to the Council of Ministers and to the Head of State for signature before being published.

The reply to the following points of the questionnaire is based on the draft texts.

(b) By Royal Order introducing, for contracts covered by the Agreement, certain provisions stricter than the general legislation on government procurement.

(c) Non-discrimination being a basic principle of the legislation, it is mentioned in the draft texts.

(d) The amount of SDR 150,000 corresponds to ECU 140,000 and the exchange value of the ECU in Belgian francs is 40.0739; accordingly, the threshold will be set at BF 5.6 million.

Any contract publication in the context of the Agreement will stipulate clearly that the Agreement is applicable.

(e) They are selected for each contract.

(f) Act of 14 July 1976 concerning public works, supplies and services contracts.

Royal Order of 22 April 1977 concerning public works, supplies and services contracts.

2(a) Administration Logistique - Marchés publics - Rue de la Loi 16 - 1000 Bruxelles.

(b) The nature and scope of technical assistance to developing countries Parties to the Agreement and to least-developed countries will be determined in the light of requests received.

(c) See reply to 1(e). There are no permanent lists of suppliers. Contract notices are published in accordance with Article 9 of directive 77/62/EEC of 21 December 1976.

(d) The relevant information will be included in contract notices.

(e) The normal procedures in regard to government procurement, i.e. the Council of State and the civil courts for judicial complaints, and the superior authorities and the "Comité Supérieur de Contrôle" for administrative complaints.

(f) Entities not covered by the Agreement will be informed in accordance with Article I:2.

(g) 10 January 1981 in the Supplement to the Official Journal of the European Communities.

DENMARK

1(a) The Agreement is incorporated into Danish administrative law by Ministerial Order of 18 December 1980.

(b) The procedures of Article V are included in the Order mentioned, which also refers to the requirements of EEC Directive 77/62 of 21 December 1976.

(c) The provisions of Article II:1 are incorporated in the Order.

(d) The threshold in national currency is 980,000 Danish Crowns, based on the equivalent of SDR150,000 to ECU140,000. The rate of exchange is DKr 7.12547 (see EEC Journal C 1/1 of 1 January 1981). The threshold given is thus well below the requirements of the conversion factor. Tenders covered by the Agreement are identified as such in a special section of the Supplement to the Official Journal of the EEC.

(e) No permanent list of supplies exists. Suppliers are selected on a contract-by-contract basis.

(f) The Order implements the MTN Agreement and underlines that the provisions of the Agreement are part of the administrative legislation to be followed by Danish purchasing entities, mentioned in Annex I to the Agreement. The Order combines and explains on an operational basis the elements of the regulations mentioned. The publications of the Order takes place in "Ministerialtidende", see Annex IV to the GATT Agreement.

2(a) The State Purchasing Department, Bredgade 20, 12 0 Copenhagen K serves as the information centre under Article III:10.

(b) Technical assistance according to Article III:8 and 9, as well as assistance according to Article III:11 and 12, will be given by or through the State Purchasing Department.

(c) No such publication takes place, see under 1(e) above.

(d) and (e) According to the Ministerial Order, purchasing entities will contact the State Purchasing Department in case of hearings and complaints. The cases will be examined by the Department, which is the contact point referred to in Article VI:5.

(f) Entities not covered by the MTN Agreement (Local authorities etc.) are covered by the EEC legislation on public tendering. For the time being these entities are informed of the MTN Agreement but are not obliged to follow the specific rules. The question is being examined by the Department.

(g) See Supplement to the EEC Official Journal of 18 February 1981 (by mistake placed in Section A instead of Section B).

FEDERAL REPUBLIC OF GERMANY

1. The Federal Republic of Germany adopted administrative provisions that took effect on 1 January 1981 in order to transpose into domestic law the Agreement on Government Procurement.

(a) The transposition measures have the character of administrative provisions.

(b) In the context of the transposition measures, separate account has been taken of the requirements of Article V to the extent that these are not already fulfilled by provisions already in force, in particular as regards the regulations on government procurement contracts other than those for public works (VOL/A, see under (f)).

(c) The principle of non-discrimination in respect of foreign tenderers has been applied in the Federal Republic of Germany since 1960.

(d) The threshold can only be determined on the basis of estimates since the exact amount of the contract is known only once it has been awarded. In case of doubt, purchasing entities are required to select the highest estimate.

(e) Under the open and selective procedures, suppliers are selected on a contract-by-contract basis. The existence of lists of qualified suppliers would not be consistent with a system under which contracts are awarded on a competitive basis.

(f) Government procurement transactions are regulated by "VOL/A". This text was published in the Annex to the Official Gazette of the Federal Republic (Bundesanzeiger) No. 105 of 2 June 1960.

Contracts are awarded in accordance with the following principles:

- non-ambiguity of tender specifications;
- like treatment for domestic and foreign candidates;
- award is made to the most advantageous offer, not the lowest offer.

2(a) Because of the fact that in the Federal Republic of Germany the procurement system is decentralized, the purchasing entity concerned acts in the first place as the information centre. In case of doubt, the Federal Minister for the Economy, Vilemomblerstrasse 76, 5300 Bonn 1, can be consulted.

(b) The extent and scope of technical assistance can be determined only in the light of concrete requests. Assistance will be furnished by the purchasing entity concerned.

- (c) There are no lists of qualified suppliers, and purchasing entities publish a notice of each proposed purchase in the OJEC.
- (d) Each purchasing entity designates the competent service for its own administration. Enquiries should be addressed to the purchasing entity itself.
- (e) Each purchasing entity has procedural provisions for dealing with any complaints. In such case, the purchasing entity concerned is responsible for contacts with the complainants.
- (f) Purchasing entities not covered by the Agreement, in particular the Länder and communes, have already been informed orally and in writing of the objectives and provisions of the Agreement, through existing consultation bodies.
- (g) The first notice published under the GATT Agreement on Government Procurement appeared on 14 January 1981 in the OJEC, Supplement S, No. 8, page 24.

FRANCE

- 1(a) The Agreement on Government Procurement was incorporated in French domestic law under Decree No. 79-98 of 12 January 1979 as amended, currently in course of signature.
- (b) The procedural requirements of Article V were already largely consistent with French national regulations of the Government Procurement Code. Any new provisions or those amending existing provisions are included in statutory amendments to that decree or amendments to its implementing provisions.
- (c) The government procurement regulations do not make provision for any discrimination by reason of the contractor's nationality.
- (d) The threshold for publication of notices has been set at ECU 140,000 net of tax by Directive No. 80/767 of the Council of the European Communities, dated 22 July 1980. Since the exchange value of the ECU in French francs has been set at F 5.82252, the threshold for publication will probably be rounded to F 800,000 net of tax by order of the Ministry for the Economy.

Notices regarding contracts covered by the Agreement are published individually in the OJEC by the Commission of the European Communities. Notices published in the B.O.A.M.P (official bulletin announcing public supply contracts) are only identified by the notice format which is that required under the above-mentioned Community Directive.

(e) Restricted procedures are preceded by a public invitation to suppliers to indicate an interest in each contract. There is no system of permanent lists of suppliers under the French regulations.

(f) The basic regulations governing government procurement procedures are those of the Government Procurement Code established by Decree No. 64-729 of 17.7.1964 as amended. Special regulations resulting from the Agreement were established by Decree No. 79-98 of 12.1.1979 currently being amended and by its implementing provisions and orders of the same date, likewise in course of amendment.

Under those regulations, contracts for the supply of public services covered by the Agreement must be published, in accordance with a model Community notice, either in the OJEC and the B.O.A.M.P. when the estimated amounts, net of tax, exceed F 1,100,000, or in the B.O.A.M.P. only when they exceed F 800,000.

The minimum time-limits for submitting candidatures or tenders are 42 days for open tenders, and 42 days and 30 days for restricted tenders. In this latter case, the time-limits are reduced to 12 days and 10 days in case of urgency. These time-limits are calculated as from the date on which notices are sent to the periodical which is to publish them. Tenderers not selected are informed within 7 days after their bids have been rejected.

2(a)-(b) The "Commission Centrale des Marches, 41, Quai Branly, Paris" has been entrusted by the Minister for the Economy with the task of informing developing countries and giving them such assistance as may be needed.

(c) There are no permanent lists of suppliers. Notices are published under the provisions of Article 9 of Directive 77/62 of 21.12.1976.

(d)-(e) The contact point is designated in the notice under the heading "Service responsible for the contract". Any interested supplier can request from it information concerning rejection of his tender. In the case of complaint to higher authority, the Minister competent to hear a complaint in non-contentious matters is the Minister responsible for the service that published the notice. If the complainant does not obtain satisfaction, he can then approach the appropriate administrative court.

(f) No particular provisions are necessary in this respect since local authorities are subject to the Government Procurement Code which does not contain any discriminatory provision based on the tenderer's nationality.

(g) The first publication of notices was in the OJEC No. S.2 of 6 January 1981.

IRELAND

1(a) Legislation is not required to implement the Agreement in Ireland. The Agreement has been implemented by way of a Department of Finance circular issued on 31 December 1980 to the entities covered by the Agreement. (The circular also implemented Council Directive 80/767/EEC.)

(b) The procedural requirements of Article V have direct application for the entities concerned in accordance with the terms of the circular referred to above implementing the Agreement.

(c) No specific provision has been made in respect of Article II:1 of the Agreement regarding national treatment and non-discrimination, but this Article along with the Agreement as a whole has direct application in accordance with the terms of the circular referred to above.

(d) An estimate of the value of each contract is established beforehand by the contracting officer concerned based on his best estimate of its value; if this estimate exceeds the threshold, the contract is advertised in accordance with the procedure under the Agreement. Notices of contracts covered by the Agreement in the Official Journal of the European Communities are identified as such.

(e) Suppliers are selected on a contract-by-contract basis (see 2(c) below).

(f) As already indicated, no legislation is required for the implementation of the Agreement and the circular implementing the Agreement is not a published document.

2(a) The information centre for Ireland is as follows:

Secretary,
Government Contracts Committee,
Department of Finance,
Upper Merrion Street,
Dublin 2,
Ireland.

(b) The nature and scope of technical assistance to developing country parties and for the least-developed countries will be determined in the light of the requests received.

(c) A notice of each contract arising under the selective tendering procedure is published separately in accordance with the requirements of Article 9 paragraph 1 of Council Directive 77/62/EEC.

(d) The contact point (which generally will be the address of the entity itself) will be notified under each notice placed in accordance with the advertising procedures.

(e) The purchasing entities concerned already have procedures (which entail referral to a senior officer in the Department concerned or, exceptionally, to the Minister) for the hearing and review of complaints arising in respect of contracts covered by the Agreement.

(f) The entities and authorities concerned will be advised in accordance with Article 1:2 of the Agreement.

(g) No notice of a proposed purchase has as yet been published as no contracts of the purchasing entities concerned have reached the threshold.

ITALY

Information on the implementation and administration of the Agreement in Italy will be provided separately in due course.

LUXEMBOURG

1(a) Yes, through administrative channels, by circular.

(b) By circular. Nevertheless the procedural rules are already incorporated in our domestic law (see below, 1(f)).

(c) No.

(d) The threshold is calculated in accordance with the provisions of Article 5 of Directive 77/62/EEC. Contract notices published in the OJEC in accordance with the Agreement are identified as such.

(e) There is no permanent list; suppliers are selected on a contract-by-contract basis.

(f) Act of 4.4.1974 concerning public works and supplies contracts, Memorial A 1974, page 1401, Grand-ducal regulation of 6.1.1974 concerning:

1. Establishment of general tender specifications for public works and supplies contracts for the account of the State;
2. Establishment of responsibilities and operational procedures for the "Commission des Soumissions" (tendering committee)

Memorial A 1974, page 1660.

2(a) Ministère des Affaires étrangères, rue Notre Dame, Luxembourg, telex AFFETRA 1702 or Ministère des Travaux publics, 4, Bld. Roosevelt, Luxembourg, tel.478475.

(b) The nature and scope of technical assistance to developing countries Parties to the Agreement and to least-developed countries will be determined in the light of requests received.

(c) See reply to 1(e).

(d) Ministère des Travaux publics, 4, Bld. Roosevelt, Luxembourg, tel.478475 or 478512.

(e) id.

(f) By circular as referred to under 1(a).

NETHERLANDS

1(a) As already indicated, the GATT Agreement on Government Procurement is directly applicable in the Netherlands without any other legislative action being necessary.

(b) It follows from the foregoing that no supplementary legislation is needed to implement the procedural requirements of Article V. Purchasing entities have been informed and instructed regarding implementation of the Code, and in particular Article V.

(c) Since the Code has force of law in the Netherlands, no supplementary provision is necessary. In the Netherlands, no provision exists or has existed guaranteeing preferential treatment for Netherlands undertakings in this regard.

(d) The amount of the threshold is determined under Article 5 of Directive 77/62/EEC. Tenders published under the Agreement are identified as such.

(e) The Netherlands has no permanent list of suppliers in terms of Article V:6 of the Code.

(f) The Netherlands has practically no legislation regarding delivery of products beyond the EEC directives and the implementing provisions for those directives. In this respect, when a differentiation is made between:

- (a) the pre-contractual phase;
- (b) the contractual phase;
- (c) and the organization of purchasing entities,

in case (a) only the above-mentioned EEC directives are to be applied (77/62/EEC and 80/767/EEC and the implementing laws which constitute our basic texts);

in case (b), the general conditions applicable to government procurement (algemene rijksinkoopvoorwaarden - ARIV);

in case (c):

- the regulations on the operation of the Netherlands Government Purchasing Office (regeling werking RIB)
- the regulations of the Governmental Centre for Office Mechanization and Automation (regeling rijks kantoormachinecentrale)
- the decree establishing the Governmental Motor Vehicle Department (instellingsbesluit rijksautomobielcentrale)
- the regulations for the State Printing and Publishing Office (reglement voor het staatsdrukkerij en uitgeverijbedrijf).

These regulations include some supplementary provisions that can also be relevant for phases (a) and (b). For the rest, the Netherlands has no general regulations regarding government procurement. Naturally, the purchasing entities have more detailed internal provisions but these are not published.

2(a) Centrum voor de bevordering van import uit ontwikkelingslanden (CBI) (centre for the promotion of imports from developing countries), Coolsingel 58, 3011 AE Rotterdam, telex 27151.

(b) The nature and scope of technical assistance to developing countries Parties to the Agreement and to least-developed countries will be determined in the light of requests received.

(c) See reply to question 1(e).

(d) The purchasing entities will act individually as contact points.

(e) As regards the principal purchasing entity, the Netherlands Government Purchasing Office (Rijksinkoopbureau RIB), it is intended that complainant undertakings can appeal to the Council (Raad van advies) of the RIB. The competent minister will decide in the last resort.

In general, in any case of dispute with the purchasing service, the matter can be brought before the competent minister. In parallel, it is naturally possible to bring before the court any infringement of the Code.

- (f) A circular consistent with Article I:2 is currently being distributed.
- (g) 7 January 1981.

UNITED KINGDOM

1(a) The provisions of the Agreement as such have not been incorporated into United Kingdom legislation as the Agreement has been specified as a Community Treaty by statutory instrument.

(b) United Kingdom entities subject to the Agreement have been instructed by administrative circular to comply with the Agreement.

(c) See 1(b) above. United Kingdom entities have been advised as to which countries have signed the Agreement.

(d) The threshold is calculated in accordance with the procedures laid down in Article 5 of Directive 77/62/EEC. Contracts advertised under the Agreement are separately identified in the EEC Official Journal.

(e) United Kingdom entities conform with Community procedures when selecting tenderers (cf. Article 19 of Directive 77/62/EEC).

(f) See 1(a) above.

2(a) Still under discussion.

(b) The nature and scope of technical assistance for developing country Parties and for least-developed countries will be determined in the light of the requests received.

(c) See 1(e) above.

(d) Entities will state in tender documentation the address to which enquiries should be sent.

(e) The United Kingdom will conform with Community procedures for hearing and reviewing complaints, taking national action as necessary.

(f) United Kingdom local authorities will be advised in accordance with Article 1(2) of the Agreement.

(g) 8 January 1981.