

Committee on Government Procurement

DECISIONS ON PROCEDURAL MATTERS UNDER THE AGREEMENT
ON GOVERNMENT PROCUREMENT (1994)

Addendum

PROCEDURES FOR THE NOTIFICATION OF NATIONAL
IMPLEMENTING LEGISLATION

Decision of the Committee of 4 June 1996

1. Parties shall submit the complete texts of their basic legislation (laws and regulations) on government procurement in the original language to the Secretariat where these texts will be open for inspection by Parties. These would include the basic legal instruments pursuant to which effect is given to the provisions of the Agreement. Each Party shall provide a summary of that legislation in a WTO language.
2. In addition, each Party shall describe in a WTO language what other legislation giving effect to the Agreement on Government Procurement exists. This need not take the form of a listing of individual texts but should include sufficient information on the nature of legislation relevant to each category of entities to facilitate another Party requesting a text of interest to it.
3. Each Party shall supply, in response to a request from another Party, a copy of any law, regulation, final judicial decision, administrative ruling or other measure relevant to the Agreement. Each Party shall notify the Committee of the coordinates of a contact point established for that purpose. Through its contact point, a Party from which a text has been requested, shall use its best endeavours to assist the requesting Party with any translation into a WTO language necessary.
4. Each Party shall provide responses to the attached checklist of issues.
5. The notifications shall be made as soon as possible, but in no case later than 31 December 1996.

ATTACHMENT
CHECKLIST OF ISSUES

I. GENERAL ELEMENTS

1. Has the Agreement been transposed into national law and/or does it apply directly?
2. In the case that entities below the federal or central state level are covered: are these categories of entities autonomous from federal or central state level government in the implementation of the Agreement?
3. In the case that Annex 3 entities are covered: are these categories of entities autonomous in the implementation of the Agreement or do they apply the legislation provided by the federal/central or sub-central level?
4. Which main differences (if any) exist between the implementing laws at the federal or central level, the sub-central level and for Annex 3 entities?
5. To what extent is information technology used in the process of government procurement?

II. SPECIFIC ELEMENTS

6. Identify the specific provisions in your legislation which reflect the national treatment and non-discrimination commitments of Article III of the Agreement.
7. Article IX:2 of the Agreement foresees that the invitation to participate may take the form of a notice of proposed procurement. If your implementing legislation provides for this opportunity, give details.
8. Article IX:3 of the Agreement foresees that entities at the sub-central level as well as Annex 3 entities may use a notice of planned procurement or a notice regarding a qualification system as an invitation to participate. If your implementing legislation provides for this opportunity, give details.
9. In the case of selective tendering procedures: to what extent are entities allowed to use permanent lists of suppliers or is there a requirement for lists of suppliers to be selected on a contract-by-contract basis?
10. Article XIV of the Agreement allows for negotiation under certain conditions. Are entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?
11. Article XI contains the time-limits for tendering and delivery. Time-limits shall normally be "not less than X days". Does the domestic legislation reflect the various minimum time-limits as set out in the Agreement? If not, give information on any longer time limits which have been established.

12. To what extent does the implementing legislation allow entities, in pursuance of Article XII:1, to permit tenders to be submitted in several languages (one of which has to be a language of the WTO)? To what extent do entities use this flexibility?

III. CHALLENGE PROCEDURES - ARTICLE XX

13. Paragraph 3 of Article XX requires each Party to provide its challenge procedures in writing and make them generally available. Please provide this information.

14. To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so.

- (i) The time-limit to launch a complaint contained in the Agreement is "not less than 10 days". What are the limits in domestic legislation?
- (ii) What body is responsible for the challenge procedures? Is this a "court" or an "impartial and independent review body"? If the latter:
 - How are its members selected?
 - Are its decisions subject to judicial review?
 - If not, how are the requirements of paragraph 6 of Article XX taken into account?
- (iii) What is the applicable law by reference to which the challenge body will examine complaints?
- (iv) Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial opportunities?
 - Do these measures include the possibility to suspend the procurement process? On what conditions?
- (v) How do challenge procedures provide for correction of the Agreement? What types of compensation for loss or damages suffered can the challenge body order?
- (vi) Give any available information on the time periods for the stages of the challenge process, including to obtain interim measures and a final decision.
- (vii) What are the usual costs to conduct a challenge procedure? Are there possibilities foreseen to do so free of charge?