

GENERAL AGREEMENT ON
TARIFFS AND TRADE

Committee on Government Procurement

ARTICLE IX:6(b) NEGOTIATIONS

Information Concerning Rules of Origin and the
Treatment of High-Priced Bids

Note by the Secretariat

Addendum

In addition to the replies by Sweden, contained in GPR/W/59, Finland, Japan, Norway, Switzerland, the United Kingdom for Hong Kong and the United States submitted replies by 20 July 1984 to the following agreed questions, as set out below.

For the convenience of delegations, the replies by Sweden are incorporated in the present addendum. Replies from other Parties will be circulated in a further addendum.

I. RULES OF ORIGIN

- (a) What origin rules are presently applied by the Parties in the context of government procurement?

FINLAND No national legal statutes on rules of origin exist in Finland other than for the purposes of origin marking of clothing, goods subjected to import and export restrictions and the collection of trade statistics.

HONG KONG Hong Kong's practice is to ask suppliers to state the country of origin of goods they are supplying; Hong Kong does not specify any rules as regards claim of origin.

JAPAN (To be provided later)

NORWAY Country of production or origin is for raw materials defined as the country where the goods are produced, and for processed goods, including refined products, as the country of final processing, not counting repacking, sorting and blending (except blending of tea). As from 1972 the country of production for assembled vehicles is the country where the vehicles have been assembled.

SWEDEN No national legal statutes on rules of origin exist in Sweden other than for the purposes of origin marking of clothing, goods subjected to import and export restrictions and the collection of trade statistics. Separate rules of

origin apply for the purpose of determining preferential treatment within the framework of the Swedish GSP system and the Free Trade Agreement with the EC and within the EFTA framework. (Protocol No. 3 to the FTA between Sweden and the EC and Annex B to the EFTA Convention.) Thus no rules of origin exist for the single purpose of government procurement.

SWITZERLAND

In general, purchasing entities accept the origin declared by the vendor as being the origin of the goods. In the event that the purchasing entity carries out the import, that declaration is verified by the customs administration in order to calculate the customs duties applicable.

UNITED STATES

The United States uses the following definition in determining whether a product originates in a country or instrumentality (e.g. the EC) which is eligible for the benefits of the Government Procurement Code under United States law: "An article is a product of a country or instrumentality only if (1) it is wholly the growth, product, or manufacture of that country or instrumentality, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed to a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) How do the Parties treat products originating in non-Parties to the Agreement?

FINLAND

Products originating in non-Parties to the Agreement are given non-discriminatory treatment under the National decree in Government procurement (1070/79).

HONG KONG

Hong Kong does not adopt any differential treatment between products claimed to be originating from non-Parties and from Parties to the Agreement.

JAPAN

An entity shall not discriminate any products in terms of their origins in their purchases under the Japanese Government Procurement Laws and Ordinances.

NORWAY

Norwegian entities treat tenders as well as products originating in non-Parties to the Agreement in accordance with Article XVII in the General Agreement; that is on a non-discriminatory basis. In general, Norwegian entities award contracts to the most advantageous tender being submitted.

SWEDEN

Products originating in non-Parties to the Agreement are given non-discriminatory treatment under the Swedish Government Procurement Ordinance.

SWITZERLAND The origin of the goods serves only for statistical purposes and for determination of customs duties. The origin plays no rôle in the award of contracts: the most advantageous tender is accepted, regardless of whether the goods originate in a signatory or non-signatory country. On the other hand, the other provisions of the Code, in particular those concerning information and dispute settlement, apply only to signatory countries.

UNITED STATES The United States only provides Code benefits, including waiver of Buy America restrictions, to Parties to the Code and least-developed countries.

II. TREATMENT OF HIGH-PRICED BIDS

What are the modalities in national laws and practices to deal with situations in which all bids are regarded by an entity as unreasonably high?

FINLAND According to the Decree in government procurement art. 6 "The buyer shall treat the tenders and tenderers equally and confidentially. Among the tenders received that one shall be accepted which, all the relevant aspects of the case considered, must be regarded as having advantage over the other tenders considering its total effects for the State. Should all the tenders be found too expensive or otherwise disadvantageous or should the procurement turn out to be unnecessary, the buyer may reject all the tenders submitted".

HONG KONG If all bids are considered to be too high and exceed the approved budget, Hong Kong's normal practice is to issue a fresh tender, if necessary, with revised specifications; suppliers having responded to the original tender will also be invited to submit fresh offers.

JAPAN 1. An entity is to re-open the tender for all the first bidders, where all offered prices exceed the pre-determined provisional value (i.e. where the basic requirements are not fulfilled), so as to provide them with an opportunity to reconsider their bid price. An entity normally re-opens the tender twice or three times, if it cannot find any contractor. (Article 82, of the Cabinet Order concerning the Budget, Auditing and Accounting.)

2. The entity shall not conclude a contract, if it cannot find a tender offering a price lower than the above-mentioned provisional value in spite of re-tendering procedures. (Article 29, paragraph 6 of the Accounts Law)

3. Where there is no successful bidder in re-tendering procedures, the entity may adopt a single tendering procedure in order to speed-up and facilitate their contracting process. (Article 99, paragraph 2 of the above-mentioned Cabinet Order.)

In general, the entity enters into negotiations with the lowest price bidder, and then with the next lowest, progressively, until it finds a supplier offering a price lower than the provisional value.

NORWAY

The general practice in situations where all bids are regarded as unreasonably high is to publish a notice for a new tendering procedure.

SWEDEN

Entities shall accept the tender which, having regard to all the commercial circumstances, can be regarded as the most advantageous. If all the tenders quote too high a price, or if they are otherwise disadvantageous, or if there are grounds for not carrying out the procurement, the agency may reject all the tenders. These are the general rules contained in Article 15 of the Swedish Government Procurement Ordinance (circulated in GPR/3/Add.2/Suppl.2). There is no set system for determining high-priced bids or for deciding on other commercial factors that could be the basis for rejection of a bid.

SWITZERLAND

In cases where all tenders are manifestly high, the purchasing entity first tries to negotiate a lower price in accordance with the provisions of Article V:14(g). In the event that, notwithstanding negotiation, tenders exceed the amount available in the budget, the purchasing entity may request a supplementary credit in urgent cases, in accordance with domestic procedures. If the request for supplementary credit is refused or if the purchase is less urgent, the purchasing entity can postpone acquisition and re-open the contract award procedures at a later juncture.

UNITED STATES

Under the United States procurement system, Contracting Officers are required to ensure that prices paid on government contracts are reasonable. Nevertheless, the United States has not found a need to use single tendering in dealing with cases where all bids on a given contract appear to be unreasonably high.

The competitive nature of the procurement process normally ensures that bids on government contracts are reasonable. However, on occasion a Contracting Officer may find that all bids on a contract are unexpectedly high in light of previous prices paid by the government and his or her knowledge of the market. In such cases, the Contracting Officer attempts to determine whether his or her expectation regarding price was unrealistic or whether the bids are unreasonably high. This includes looking at whether the bids reflect an increase in the general market prices for the product or its key components. Similarly, the Contracting Officer will examine whether the bids might be high because of peculiarities in the invitation for bids. For instance, the government may be purchasing in uneconomic quantities or the purchase specifications may be drawn too narrowly. If, after a thorough review, it is determined that all bids on a contract are unreasonably high, the

Contracting Officer may cancel the purchase, resolicit bids, or negotiate. It should be noted that Contracting Officers do not use predetermined "maximum prices" in determining whether bids are unreasonably high.

In the case of negotiation, all bidders are provided an equal opportunity to participate. The Contracting Officer meets individually with each bidder. In these meetings, each bidder is informed that all bids appear to be unreasonably high and is provided an opportunity to explain why his or her price should be considered reasonable. For instance, the bidder may defend his or her price on the basis of market factors of which the Contracting Officer is unaware. The bidder is also given an opportunity to offer a lower price. However, Contracting Officers are prohibited from indicating what may be considered to be a reasonable price.

In some instances, bidders may indicate that they can submit a lower bid if changes are made in the conditions of the purchase such as an extension of the required delivery date. Under such circumstances, the Contracting Officer is permitted to modify purchase terms provided that the change is minor and that all bidders are notified of the change and invited to revise their bids. Changes are not considered to be minor if they are so substantive that they would influence a potential offerer's decision to bid. Substantive changes in the conditions for a bid are only permitted if the contracting officer re-advertizes the procurement and allows all interested firms to bid.

Once discussions have been completed with each bidder, the Contracting Officer must award the contract to the firm with the most advantageous bid or cancel the purchase. The purchase will be cancelled if all bids are considered to be unreasonably high or if the bids are determined to be reasonable but exceed available funds.