IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Addendum

Legislation of Finland

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 Finland hereby submits the following documents which relate to the implementation of the Agreement on Government Procurement in Finland:*  

- Decree on Government Procurement (1070/79)
- Decision of the Ministry of Trade and Industry concerning the Application of the Decree on Government Procurement and Establishing the General Terms of Government Procurement (1071/79)

The delegation of Finland wishes to point out that the Decree on Government Procurement and the Ministry of Trade and Industry Decision apply to all government procurement, whereas the Ministry of Trade Circular gives specific instructions to those entities covered by the Agreement in order that they comply with the provisions of the GATT Agreement. All translations are unofficial.

*English only
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No. 1070/79
DECREES ON GOVERNMENT PROCUREMENT

Given in Helsinki on 28 December 1979.

On the representation of the Minister in charge of affairs falling under the Ministry of Trade and Industry, the following provisions are established:

CHAPTER 1
General provisions

Art. 1 Unless elsewhere specifically otherwise provided, procurements to government entities shall be dealt with according to the procedure prescribed in this Decree.

In this Decree, procurement means purchasing or hiring of, or any similar act pertaining to, any materials or supplies, any semimanufactures or finished or custom-made goods, or any services.

The government entities are called in this Decree buyers and the other parties in procurements suppliers.

Art. 2 Procurements shall be effected advantageously to the Treasury. Whenever in an individual case deemed indispensable from the point of view of national interests, the needs of promoting domestic production and using domestic manpower shall, subject to Finland's agreements concerning foreign trade, be taken into account in procurements.

CHAPTER 2
Modes of procurement

Art. 3 Procurements shall be either closed, negotiated or direct ones.

A closed procurement implies that the contract is awarded on the basis of the responsive tenders received and that no negotiations take place before the awarding of the contract with the tenderers as to the terms of their tenders.

A negotiated procurement implies that the contract is awarded on the basis of the responsive tenders received and that negotiations are conducted with the tenderers as to the terms of their tenders.

A direct procurement implies that the contract is awarded on the basis of either a tender requested from one single supplier or a previous contract or without recourse to any tendering procedure at all.
Art. 4

Procurements shall be primarily effected by following the closed procedure.

Negotiated or direct procurement is allowed only if required by special reasons.

CHAPTER 3

Tendering procedure

Art. 5

To bring about competition among the interested suppliers, tenders shall be invited from a sufficient number of suppliers known as reliable and capable of performing their contracts. Should still other suppliers meeting these qualifications declare that they are willing to submit a tender for the procurement in question, they shall be given an opportunity to do so and shall be sent invitations to that effect. The closing date for tenders need not, however, be therefore changed.

Art. 6

The buyer shall treat the tenders and tenderers equitably 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 as to its total effects for the State.

Should all the tenders be found too expensive or otherwise disadvantageous or should the procurement turn out unnecessary, the buyer may reject all the tenders submitted.

Art. 7

A tender shall not be accepted:

(1) if the price requested or the criteria underlying it are dubious;

(2) if the supplier is deemed to lack the skill, experience or economic qualifications for the supply;

(3) if the tender price is so low that, seeing to the supplier's economic position, the procurement obviously could not be made in accordance with the contract;

(4) if the person submitting the tender for his own or another's account holds a position in which he might come to consider his own tender or award the contract;

(5) if the supplier in the course of the tendering procedure has acted unfairly or otherwise contrary to law or equitable business principles;

(6) if the supplier himself or anyone acting on his behalf has given, promised or offered consideration in the form of a gift or some other profit to any person participating in the consideration of tenders or award of the contract; or

(7) if the tender has been received after the closing date.
A belated tender which in any case is received before the meeting at which the tenders are opened shall be taken into account if it is evident that its belatedness cannot be imputed to the tenderer in question.

CHAPTER 4
Entering a contract or placing an order; prepayments and securities

Art. 8
After the decision to accept a tender has been taken, a written contract of supply or a written order shall be drawn up. In the case of procurements of minor value or urgent nature the order may be made even orally.

Art. 9
A prepayment may be made to the supplier if it from the point of view of public interest is appropriate or otherwise requisite.

The prepayment shall be agreed upon as constituting a final installment for the procurement, and an adequate security shall be required in respect of it.

Art. 10
A security shall be required for any materials or supplies made available to the supplier unless the small value of the property conveyed or some other specific cause make this unnecessary.

A security covering the contractual fulfillment of the supply shall also be required if it in view of the prevailing circumstances is deemed justified.

Art. 11
Acceptable securities are government bonds, sureties by financial or insurance institutions, and bank deposits. Even sureties by well-established companies, liens on real property, shares and bonds quoted in stock exchange, and shares in housing or other real property companies may be accepted as securities.

CHAPTER 5
Miscellaneous provisions

Art. 12
A person is not in a position to consider a tender, a contract of supply or a matter concerning the way a contract is to be construed, if the tenderer or the party contracting with the state is his spouse, his natural, adoptive or foster-child, either of his or his spouse's parents, his brother or sister, a child or the spouse of his brother or sister, or a corporation or institution under civil law in which he is member of the board of directors or the management or from which he or any of his above-mentioned relatives or kinsmen derive substantial profit, or an entrepreneur that pays him salary or fees.

A person that in the case of a procurement stands in any relationship described in the first paragraph of this article to the supplier shall not be appointed supervisor of that procurement.
Documents concerning procurements shall not be public before the contract has been made or the order has been placed. If requisite for public security or the proper fulfillment of a public or private transaction, the ban shall be in force even thereafter.

Exceptions from and moderations of the provisions of the present Decree may be granted by the Council of State.

Detailed instructions as to the application of this Decree will be issued by the Ministry of Trade and Industry, which also confirms the general terms involved by any contracts concerning government procurements.

This Decree enters into force on 1 March 1980 and replaces the Decree of 22 December 1965 concerning Procurements to the State (714/65) as subsequently amended, and the Decision of the Government relative to the application of the said Decree (715/65).
CHAPTER 1
General provisions

Art. 1

In government procurement, efforts shall be made to bring about competition among the interested suppliers and to make each procurement in as economic lots as possible by using the most advantageous channels of distribution available. The price reductions and other terms and conditions of purchase shall, where possible, be at least as favourable as those the supplier applies in respect of his most favoured customers.

To make for favourable terms and conditions and to lower the cost of procurement, the joint purchasing arrangements established by the State Purchasing Centre and other government entities performing centralized procurement shall be made use of. Where possible, co-operation shall be sought with buyers acting in the same region and using similar articles.

Art. 2

The requirements concerning the quality and performance of procured articles shall not be higher than is necessary in each individual case and they shall not have the effect of obviously restricting competition to the detriment of the State. The articles procured shall meet the standards in force, unless there should be special reasons for not complying with them.

Art. 3

Procurements shall be prepared carefully. Where possible, a plan of procurement shall be made, and especially in the case of machinery and technical equipment a special programme of procurement shall be drawn up, in which any basic data needed in view of the nature and volume of the procurement shall be included.

CHAPTER 2
Modes of procurement

Art. 4

The procedure implying negotiated procurement may be used if justified by one or more special reasons and if an acceptable solution obviously could not be found without negotiating with suppliers. Acceptable reasons are:
1) lack of adequate competition;
2) technical difficulties involved by, or exceptional nature of, the procurement;
3) novelty of the article to be procured in that it does not exist but must be specially worked out;
4) considerable uncertainty prevailing as to the cost of the procurement;
5) need for standardisation or uniformity of the goods;
6) the fact that the procurement is a continuation of a previous one; or
7) any other reason comparable with those mentioned above.

Art. 5

The negotiations conducted before awarding the contract shall be based on the tenders received and, in the case of a continuation procurement, also on the documents relating to the previous procurement. Negotiations shall be conducted with as many interested suppliers as is necessary in view of the competition aspects involved, the need of reaching a solution of maximum overall advantages, and the need of giving equitable consideration to the tenders.

If a negotiated procurement is decided to be made, the buyer shall inform the suppliers referred to in the first paragraph of this article accordingly before any negotiations are started.

The reasons for making a negotiated procurement as well as the record of negotiations shall be attached to the document by which the contract is awarded.

Art. 6

A direct procurement may be made if
1) the article to be procured is not available from other sources;
2) a particular type of goods has to be procured for reasons connected with maintenance, spareparts or other technicalities, or in the interest of national defence;
3) the procurement is one of exceptional urgency; or
4) the lot of goods to be procured is of small value and the quality and price are known on the basis of previous procurements, a fixed price list or an enquiry carried out.

The reason for making a direct procurement shall be stated in a special document accompanying the one by which the contract is awarded, unless the value of the procurement should be small.

CHAPTER 3
Tendering procedure

Art. 7

To bring about adequate competition, at least four suppliers should be invited to tender, except if the procurement is made as a direct one under article 6.

The procedure to be followed in procuring goods falling under the centralized government procurement system has been established separately.
Art. 8

According as the nature, value and urgency of the procurement require, the invitation to tender may be made by letter, telegram, telex or press advertisement. In the case of procurements of small value or urgent nature, it may also be made orally.

Tenders shall normally be requested to be dispatched in writing and in sealed envelopes. Where the buyer accepts the use of telegram, telex or a similar method, a subsequent confirmation in writing shall be required when necessary. In the case of procurements of small total value, the suppliers may be invited to tender orally.

Tenders shall be considered by the buyer even when submitted by suppliers not actually invited to tender.

Art. 9

The invitation to tender shall be worded clearly enough to provide a basis for mutually comparable tenders. Suppliers shall be given a reasonable time to submit their tenders.

Depending on the nature and value of the procurement, the invitation to tender shall state:

1) the amount, nature and quality of the goods to be supplied, by using the general trade names or the governmental nomenclature for materials or by appending a list of the requirements placed on the goods and, if necessary, the drawings and models to be complied with;
2) a recommendation of the terms of payment;
3) the time and mode of delivery;
4) the length of the time the tender shall hold good;
5) whether even partial tenders can be accepted; and
6) any other details as necessary.

In addition, the invitation shall include a mention of the fact that the general terms of government procurement shall be complied with and directions as to where, when and how the tenders must be submitted.

Art. 10

Written tenders shall be kept unopened in a locked place until they are opened. The time of arrival and the name of the receiver shall be marked on the envelope of each tender. Tenders transmitted by telegram, telex or similar method shall, immediately upon their arrival, be enclosed in an envelope, which shall likewise be furnished with the time of arrival and the name of the receiver.

If according to the invitation even oral tenders are accepted, all the tenders received shall be inserted in a specific list.

Art. 11

Closed tenders shall be opened upon the termination of the time fixed for their opening. The opening shall be performed by two or
more persons in charge designated by the buyer. One of the persons in charge shall act as chairman.

As soon as a tender has been opened, it shall be given a serial number which shall, together with the date and either the signature of the chairman or the stamp of the authority, be marked either on each page of the tender or in the sealed file of documents accrued. The process of opening the tenders shall be recorded in special minutes, which shall be signed by all the persons in charge designated as said above. Details to be recorded in the minutes are the time and place of the opening session, the names of the persons in charge, the deadline for the submission of tenders, the serial number of each tender, the names of the tenderers, the time of arrival of each tender, and any other details as necessary for the identification of the tenders. A copy of the invitation to tender and a list of the suppliers to which the invitation was sent shall be attached to the minutes.

Art. 12

The tenders submitted shall be processed so promptly that the successful supplier can be informed of the result within the period he has stated that his tender holds good. If necessary, the unsuccessful suppliers shall be informed of their failure.

Should the tenders submitted not be mutually comparable as such, they shall be processed on the basis of a special check-list which must include all the considerations judged essential in awarding the contract.

Art. 13

In considering how advantageous a procurement would be, sufficient attention shall be paid, besides to the considerations mentioned in article 2 of the Decree on Government Procurement, even to the supplier's reliability, the term and conditions of delivery and payment, the maintenance facilities available, the availability of spare parts, and the need of ensuring uniformity and standardisation of models and qualities.

CHAPTER 4
Drawing up a contract or placing an order

Art. 14

The contract about or the order for a procurement shall be made on the basis of the general terms of government procurement attached to the present Decision. The general terms can, according as is necessary in view of the nature of the procurement or the need of ensuring appropriate delivery or obviating a risk, be abridged as justified by the procurement in question, or in an individual case, be modified or supplemented by additional terms as deemed necessary.

In drawing up a contract with a foreign supplier the general terms of government procurement shall apply in appropriate points.
CHAPTER 5
Miscellaneous provisions

Art. 15 In receiving goods the amount and quality of the same shall be checked immediately.

Art. 16 If the price has to be paid in more than one lot, the sums to be paid under the contract shall be limited to correspond to the progress of the actual deliveries.

Art. 17 If the supplier in his tender stipulates a prepayment to be made, the interest on the prepayment shall, in comparing the tenders received, be regarded as a price-increasing element.

Art. 18 This Decision enters into force on 1 March 1980.
GENERAL TERMS OF GOVERNMENT PROCUREMENT
FOR FINLAND (1980)

1. Scope

1.1. In procurements of offices and institutions under the Government of Finland the following General Terms of Government Procurement shall be observed unless otherwise specifically agreed in writing in individual cases.

1.2. In these Terms, Buyer means the government entity that undertakes the procurement, Supplier means the other party to the procurement, and Goods mean the object of the procurement.

2. Tenders

2.1. A tender shall correspond to the invitation. In a tender not conforming to this requirement, the deviations from the invitation shall be stated.

2.2. A tender shall be submitted in the manner and before the deadline indicated in the invitation.

2.3. A tender shall be binding and open for acceptance two months from the deadline for tenders, unless some other period of validity was indicated in the invitation.

2.4. The Buyer shall have the right to accept the tender or any part of it, unless otherwise specified in the tender.

2.5. The Supplier assumes all cost and expenses of making and submitting his tender.

2.6. A tender must include the following minimum information:

a) a detailed description of the Goods (quantity, quality etc.);

b) the total price as composed of specified unit prices and applicable price variations due to quantity ordered, and, if the price is not fixed, an unequivocal base for price adjustment;

c) terms of payment;

d) terms of guarantee;

e) time and terms of delivery (in accordance with internationally approved terms of trade);

f) country of origin;

g) packaging: number, size, standards observed and allowance, if any, of returnable transport covering;

h) period of validity of the tender.

3. Contract of procurement

3.1. A contract between Buyer and Supplier shall be deemed concluded when

a) both parties have signed a written contract; or

b) the Buyer has notified the Supplier in writing that the tender has been accepted (order); or

c) the Supplier has confirmed the order in writing without alterations upon the request of the Buyer (confirmation of order).

3.2. The Supplier must confirm the order as specified in 3.1. c) within 14 days of receipt of the order.

3.3. Any terms or conditions in the Supplier's confirmation of order which change or alter the terms of the order shall be valid only if approved in writing by the Buyer.

3.4. Any amendments to the contract shall be agreed upon in writing by both parties.

4. Prices

4.1. Unless otherwise agreed in writing, the contract price is a fixed total price.

4.2. The contract price shall include

a) any indirect duties and taxes payable by the Supplier and applicable at the deadline for tenders;

b) the cost of packaging required for normal transport and storage;

c) any documents needed for the proper installation, use and servicing of the Goods, customary manuals pertaining to use, service, spare parts and repairs, and similar information.

4.3. If the contract price is wholly or partly tied to changes in a specific index or to an exchange rate, the price shall be adjusted only if the change in the index or variation of exchange rate effects a minimum change of two per cent in the tied price due. If a base index or exchange rate was not given in the tender, it shall be calculated as from the values known at the date of the tender. The base index or rate will be compared with the index published by or currency selling rate applicable at the date of delivery. A price reservation is valid only in respect of the part of procurement cost actually affected by a change in the agreed price criterion.

4.4. If a delivery is delayed for any reason other than those given in paragraph 11 below and if the application of price adjustment would result in a price increase due to the delay, this increase shall not be effected. If the price adjusted as per date of delivery is lower, the adjustment of price shall be effected.
5. Payments

5.1. Payments shall be made only against an invoice. Payment terms are thirty (30) days net after completion of delivery and receipt of invoice.

5.2. Any advance payment made shall constitute a fixed part of the contract price and is therefore not subject to any price adjustment effected after payment.

6. Securities

6.1. If the contract stipulates an advance payment by the Buyer or if the Buyer has to furnish the Supplier with raw materials or accessories, the Supplier shall, prior to the advance payment or the furnishing of the raw materials or accessories, provide the Buyer with a security. Such security may be a guarantee issued by a bank or insurance company in Finland or such other security as the Buyer may specify or approve. The security must be equivalent to the amount of the advance payment or the value of the raw materials or accessories furnished plus fifteen per cent (15%).

6.2. The security shall cease to be valid when the Supplier has fulfilled all his obligations under the contract; however, under no circumstances earlier than one month after the contractual time of delivery.

7. The required condition of goods

7.1. Every part of the Goods delivered has to comply with the requirements stated by Finnish legislation and official regulations in effect at the time of delivery regarding structure, accessories, labour and fire safety and similar requirements.

7.2. At the time of delivery the Goods shall be in the condition envisaged in the contract and be accompanied by all such certificates, permits and other documents needed for the direct use of the Goods and customarily or contractually provided by the Supplier.

8. Documents and property rights

8.1. Any drawings and technical documents needed for the manufacture of the Goods that Buyer and Supplier provide each other with before or after the conclusion of the contract remain the property of the providing party. The party receiving such documents is not entitled to use, copy, duplicate or dispose of them or disclose facts included in them to a third party, unless the providing party gives his consent. The documents shall be returned to the providing party upon his request and at his expense.

8.2. The Supplier shall provide the Buyer in good time with any drawings, instructions and other data and documents subject to the contract which the Buyer needs for installation, repairs, service or use of the Goods. The documents thus given are retained by the Buyer.

8.3. Both parties shall be held responsible for the veracity of any designs and documents they provide and of any data these are based upon.

8.4. The Supplier shall meet any claims and obligations concerning patents and other industrial property rights so that the Buyer incurs no expenses, damages or inconvenience.

9. Acceptance inspection and delivery control

9.1. The Buyer is entitled to carry out acceptance inspections and, in the case of custom-made Goods, observe and inspect the manufacture of the Goods at the Supplier's premises during regular working hours.

9.2. The Supplier shall at his own expense place at the Buyer's disposal any premises, facilities and personnel needed for normal inspections.

9.3. Any deficiencies and omissions detected shall be remedied by and at the expense of the Supplier.

9.4. Both parties shall bear the expenses for their respective representatives attending an inspection. Should an item or consignment of Goods inspected not meet the requirements set for it, the Supplier shall bear all the expenses that a renewed inspection, handling or transport may involve.

9.5. The observation and inspection of the manufacture of the Goods effected by the Buyer do not in any way limit the Supplier's responsibilities and liabilities.

10. Delivery time and delays

10.1. The delivery time shall be counted from the date on which the contract was concluded. Goods or any part thereof shall not, without the Buyer's consent in writing, be delivered before the contractual time of delivery.

10.2. If the Supplier finds it impossible to comply with the contractual delivery time or expects delays to occur, he shall immediately notify the Buyer to that effect, stating the reasons for the delays and giving a new time of delivery.
10.3. Delays in delivery shall render the Supplier liable to an immediate deduction from the contract price as liquidated damages without the Buyer having to prove he has suffered any loss or damage. The liquidated damages shall be calculated on the price of the Goods or that part of the Goods the intended use of which the delays have impeded. The liquidated damages shall be 0.5 per cent for each commenced period of seven days by which the Supplier exceeds the contractual delivery time, but it shall not be charged for more than 20 weeks. The Buyer shall be entitled to deduct the liquidated damages from any payment to be made to the Supplier.

10.4. In determining the liquidated damages any delays in the supply of drawings and data needed for the installation, operation or use of Goods shall constitute delay in delivery.

10.5. If the delay is due to negligence on the part of the Supplier, the Buyer is entitled to obtain recovery from the Supplier for any direct expenses and damages in excess of the liquidated damages under 10.3. above.

10.6. If the delay is due to any other cause than the Buyer's negligence, the Supplier has to pay for the period of the delay an annual interest of 12 per cent on that part of any advance payment received corresponding to the value of Goods delayed according to 10.3. above. The Buyer shall be entitled to deduct the interest from any payment to be made to the Supplier.

11. Release from obligations

11.1. A case for release from obligations (force majeure) is deemed to be caused by overwhelming and abnormal impediment or occurrence that prevents the fulfillment of the contract and which neither party had reason to take into account when entering into the contract and which is independent of any action by either party and could not be averted or prevented without unreasonable expense or loss of time. Such cases may result from war, mutiny, internal unrest, expropriation or confiscation for public needs, embargo, act of God, discontinuation of public transportation or supply of energy, major labour conflict or fire or some other unusual event with equally drastic effects beyond both parties' control.

11.2. Delays on the part of a sub-contractor constitute a case for release from obligations only when caused by force majeure as set-out in 11.1. above and when the Supplier is unable to engage another sub-contractor without unreasonable loss of time or expense.

11.3. If the delays in a delivery are due to any cause given in 11.1 or 11.2 above or to an act or omission by the Buyer, the delivery time shall be extended by a period which taking into account all relevant circumstances is deemed reasonable.

11.4. Should the Supplier fail to give notice of the extension of delivery time as set out in 11.3. above within 14 days of the emergence of force majeure or after knowledge of the Buyer's act or omission, he shall forfeit his right of extension. The Supplier has to inform the Buyer in writing within an equal period of the termination of the force majeure, whereupon the Supplier shall without delay prove the duration of the force majeure and the parties shall agree upon its effect on the delivery.

12. Transfer of risk and ownership; Insurance

12.1. Risk is transferred to the Buyer when the Goods are delivered in accordance with the terms and conditions of the contract.

12.2. Ownership is transferred to the Buyer upon transfer of risk at the latest.

12.3. If according to the contract the risk is carried by the Buyer, the Goods shall not be insured at his expense.

13. Guarantees, spare parts and service

13.1. The guarantee period is 12 months, unless otherwise agreed in writing by virtue of established practice. The guarantee period shall be counted from the date on which the goods were delivered as per the contract.

13.2. The Supplier shall, at his own risk and expense, repair, replace or otherwise make good faults and defects detected in the Goods during the guarantee period as soon as he has been informed of them. The Supplier's liability does not extend to deficiencies due to normal wear and tear or to negligence or willfulness on the part of the Buyer.

13.3. If on the basis of the guarantee the Goods are exchanged or a part thereof is repaired or replaced, the Goods or parts repaired or supplied in exchange or as replenishment shall be similarly guaranteed from the date of installation or repair. The initial guarantee period shall be extended by the period during which the Goods could not be used on account of the fault or defect.

13.4. If the fault detected during the guarantee period is obviously due to defective design or construction and it is obvious that
similar faults will occur also after the guaran-
tee period, the Supplier must remove the defi-
cency in all the Goods delivered under the
contract.
13.5. If the Supplier fails to fulfil any
obligation under the guarantee, the Buyer may
after notification have the necessary repairs
performed at the Supplier's risk and expense.
13.6. In the case of machinery and equip-
ment, the Supplier shall warrant an appropriate
supply of spare parts and appropriate service
in Finland during the normal lifetime of the
Goods.

14. Sub-contracting and transfer
of contract
14.1. The Supplier is not entitled to trans-
fer the contract, wholly or in part, to a third
party without the Buyer's consent. This does
not, however, prevent the Supplier from using
subcontractors.
14.2. Should an essential change take place
in the person of the Supplier, the Buyer shall
be informed without delay, whereby it shall
be proved that the prerequisites for fulfilling
the contract have not ceased to exist.

15. Cancellation of contract
15.1. Either party is entitled to cancel the
contract if a case for release from obligations
would postpone the delivery essentially or by
more than 12 months.
15.2. The Buyer is entitled to cancel the
contract as far as it concerns Goods which
could not be taken into intended use, if
a) the Supplier's performance does not meet
the contract and the deficiency is not removed
despite of the Buyer's notice,
b) the Supplier fails to fulfil the contract
within the contractual time and does not prove
that the nonfulfilment is due to a case for re-
lease from obligations or to a fault on the part
of the Buyer, and the delays have exceeded
one-third of the contractual delivery time but
have not been less than 14 days or, if the
delivery time is longer than one year, that they
have exceeded five months,
c) the Supplier is found to be in such a
financial position or the fulfilment of the con-
tract to be at such a stage that the Supplier
cannot be expected to meet his contractual
obligations.
15.3. If the contract is cancelled in cases
other than those referred to in 15.1 above,
the Buyer is entitled, in addition to the liquid-
dated damages specified in 10.3 above, to be
recompensed by the Supplier for any direct
expenses and damage incurred on account of
the non-fulfilment of the contract.
15.4. If the Buyer has made an advance
payment or furnished the Supplier with raw
materials or accessories, the Supplier shall
upon cancellation of the contract refund the
prepaid amount plus an annual interest of 12
per cent from the date on which the advance
payment was made to the date on which it
was refunded and return the raw materials and
accessories that he had been furnished with or
refund the Buyer their value according to
current prices and in all cases pay interest as
above.

16. Settlement of disputes
16.1. The contract shall be deemed to be
a contract made in Finland and all rights and
obligations and all provisions of the contract
shall be interpreted and construed in accord-
ance with the national laws enacted by Finland
and in force in Finland at the conclusion of the
contract.
16.2. All disputes arising out of the con-
tract which cannot be solved by amicable
means shall be submitted to arbitration and
finally settled under the rules of the Board of
Arbitration of the Central Chamber of Com-
merce of Finland. Each party shall nominate
one arbitrator within thirty (30) days from
the day notice was first given by the other
party of that party's intention to have the
matter submitted to arbitration together with
his nomination of an arbitrator. Failing a
nomination of an arbitrator by one or both
of the parties within the time specified, the
Board of Arbitration of the Central Chamber
of Commerce of Finland shall nominate an
arbitrator or arbitrators. The Board of Arbitra-
tion of the Central Chamber of Commerce
of Finland shall nominate a third arbitrator as
chairman of the panel.
16.3. The arbitration shall be conducted
in English in the city of Helsinki, Finland. The
award shall be final and binding on the per-
rson.

17. General provisions
17.1. The contract concluded between the
parties shall, together with any annexes,
constitute the sole mutually recognized docu-
ment expressing the sole and exclusive under-
standing between the parties.
17.2. Any notices given by any party shall
be made in writing, by telegram or by telex.
17.3. All correspondence, invoices and
deliveries shall include the identifying number
or other symbol of the contract and the name
of the Buyer; invoices and deliveries also
include a description of the Goods and the delivery
address.
ON THE IMPLEMENTATION OF THE GATT AGREEMENT ON GOVERNMENT PROCUREMENT

As a result of the multilateral trade negotiations conducted within GATT, Finland became a party to the international Agreement on Government Procurement. By virtue of § 15 of the Decree on Government Procurement issued previously, on 28 December 1979 (1070/79), and the Decree issued on the operation of the above-mentioned Agreement, the Ministry of Trade and Industry hereby prescribe that the procurement entities comprised by the Agreement and listed at the end of this decision shall, from 1 January 1981, observe in their procurement procedures not only the regulations in the above-mentioned Decree No. 1070/79 and the Ministry's statutory order No. 1071/79 but also the special procedures stipulated in the Agreement:

(Art. I) A. SCOPE

Countries becoming parties to the Agreement shall undertake to observe in respect of the public purchases undertaken by the stated entities acting in their territory specific regulations in the case of all those procurement contracts the value of which is SDR 150,000 (i.e. Fmk 740,000 at the present moment) or more. The Ministry of Trade and Industry will for each year in advance inform the entities of the threshold value in Finnmarks that shall be applied. Services directly related to deliveries of merchandise also fall under the Agreement if their value does not exceed that of the merchandise. Service contracts proper are, however, excluded.

(Art. II) B. NATIONAL TREATMENT AND NON-DISCRIMINATION

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by the Agreement, the parties shall provide immediately and unconditionally to the products and suppliers of other parties offering products originating within the customs territories (including free zones) of the parties treatment no less favourable than:
   (a) that accorded to domestic products and suppliers; and
   (b) that accorded to products and suppliers of any other party.

2. The provisions of paragraph 1 shall not apply to customs duties and charges of any kind imposed on or in connexion with importation, the method of levying such duties and charges, and other import regulations and formalities.
3. The parties shall not apply rules of origin to products imported for purposes of government procurement covered by the Agreement from other parties, which are different from the rules of origin applied in the normal course of trade and at the time of importation to imports of the same products from the same parties.

C PERFORMANCE OF GATT PURCHASES

In their procurement procedures the government entities shall bear in mind especially the following provisions of the Agreement:

(Art. IV) Technical specifications

(Para. 1) 1. Technical specifications laying down the characteristics of the products to be purchased shall not have the effect of creating unnecessary obstacles to international trade.

(Para. 2) 2. Each technical specification shall preferably be in terms of performance and be based on international standards.

(Para. 3) 3. There shall be no requirement or reference to a particular trade mark or name etc., unless there is an intelligible way of otherwise describing the procurement requirements.

(Art. V) Tendering procedures - publication of invitations to tender

(Para. 1) GATT purchases may be performed by using one of the following three procedures:

(a) A so-called open tendering procedure implies that all interested suppliers may submit a tender. The nearest counterpart of this procedure in Finland is the closed procurement procedure and, under certain conditions, also the negotiation procedure, both defined in § 3 of the Decree on Government Procurement.

(b) Under a so-called selective tendering procedure, the buyer invites tenders only from all or some of the suppliers previously qualified. At the same time, all the suppliers have to be provided the opportunity to be considered in terms of the acceptance procedure. The Finnish practice lacks an exact counterpart of this procedure, but the negotiation procedure could, under certain conditions, be made into a practical equivalent.

(c) In a so-called single tendering procedure, the alternatives are: the buyer is in contact with a single supplier at a time and the buyer invites a tender from a single supplier, whereby the conditions laid down in article V:15 of the Agreement shall exist. They correspond to the direct procurement defined in the Finnish Decree on Government Procurement.
A notice shall be published of each proposed purchase in the Official Gazette of Finland (Virallinen lehti).

Such notice 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 submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, 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 requirements, financial guarantees and information required from suppliers;
(g) the amount and terms of payment of any sum payable for the tender documentation.

A summary in English of the notice containing an invitation to tender shall be published in the same issue of the Official Gazette, indicating at least the following:
- subject matter of the contract;
- time-limits set for the submission of tenders or an application to be invited to tender; and
- addresses from which documents relating to the contracts may be requested.

The interval between the publication of a notice in the Official Gazette of Finland and the closing date for tendering shall be at least 30 days.

Tender documentation shall contain:
(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 should 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 specification, 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; and

(i) the terms of payment.

(Para. 13) Attention of the entities is also drawn to paragraph 13 of the Agreement, concerning response to the requests that may be made by suppliers.

(Para. 14) Opening of tenders

The opening procedure laid down in the Finnish market legislation corresponds to that described in the Agreement. 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. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of the Agreement. To this effect, and in connexion with open procedures entities shall establish provisions for the opening of tenders in the presence of either tenderers or their representatives, or an appropriate and impartial witness not connected with the procurement process. A report on the opening of the tenders shall be drawn up in writing. This report 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 under the procedures of Articles VI and VII of the Agreement.

(Para. 15) Use of single tendering

The procedures envisaged in paragraphs 1 - 14 of article V of the Agreement need not in the following conditions, be used
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 do not conform to the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with the Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;

(b) when, for works of art 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;

(e) when an entity purchases prototypes or a first product which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent purchases of products shall be made by using the normal procedure.

(Para. 16) Report in writing on the use of the single tendering procedure

Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 15 of Article V. Each report shall contain the name of the purchasing entity, value and kind of goods purchased, country of origin, and a statement of the conditions in the above-mentioned paragraph 15 which prevailed. This report 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 under the procedures of Articles VI and VII of the Agreement.
(Art. VI) Information

The entities shall be prepared to provide information as follows:

(Para. 1) - to the suppliers, upon their request, about the tendering procedure used for a given purchase;

(Para. 3) - to the unsuccessful tenderers promptly, and in no case later than seven (7) working days from the date of the award, of a contract, by written communication or publication that a contract has been awarded;

(Para. 4) - to an unsuccessful tenderer, upon his request, pertinent information concerning the reasons why the tender was not selected, including information on the characteristics and the relative advantages of the tender selected as well as the name of the winning tenderer.

(Para. 9) Annual statistics on purchases made

The entities mentioned in the Agreement shall collect and provide to the Ministry of Trade and Industry on an annual basis statistics on their purchases. Such reports shall contain the following information:

(a) global statistics on estimated value of contracts awarded, both above and below the threshold value;

(b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products and either nationality of the winning tenderer or country of origin of the product, according to a recognized trade or other appropriate classification system;

(c) statistics on the total number and value of contracts awarded under each of the cases of Article V, para. 15.

The Ministry of Trade and Industry will give detailed instructions as to the actual compilation of required statistics by the beginning of 1981.

Ulf Sundqvist
Minister of Trade and Industry

Teuvo Airas
Senior Ministerial Secretary

ANNEXES

Distribution and Note
ANNEX

DISTRIBUTION

1. Agricultural Research Centre
2. National Board of Navigation
3. Institute of Meteorology
4. Government Printing Centre
5. Ministry of Justice
6. Finnish Mint
7. National Board of Aviation
8. National Board of Forestry
9. National Water Administration Board
10. National Board of Vocational Education
11. Government Fuel Centre
12. Government Margarine Factory
13. Government Nutrition Centre
14. Government Purchasing Centre
15. Government Technical Research Centre
16. General Headquarters *

(Note 3) NOTE

Procurement by defence entities (marked with *) covers the following products:

Motor vehicles
   delivery cars
   light trucks
   motorcycles
   buses
   ambulances

Spare parts

Foodstuffs
   coffee, tea
   rice
   frozen fish
   dried fruits
   spices

Machines
   office machines
   laundry manchines

Miscellaneous.