INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Addendum

Note Received from the Delegation of Japan

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 Japan has submitted the note which is reproduced hereunder.

LEGISLATION ON GOVERNMENT PROCUREMENT

I. Law and regulations applicable to government procurement within the scope of the Agreement on Government Procurement (hereinafter referred to as the "Special Procurement")

The following law and regulations provide for the main and essential part of the procedures for Special Procurement by the Ministries and agencies.

- Accounts Law (Law No. 35, 1947)

- Cabinet Order concerning the Budget, Auditing and Accounting (Imperial Edict No. 165, 1947) (hereinafter referred to as the "Order of 1947")

- Special Provisions for the Cabinet Order concerning the Budget, Auditing and Accounting (Imperial Edict No. 558, 1946) (hereinafter referred to as the "Special Provisions of 1946")

These texts in Japanese have been submitted to the secretariat where they are open for inspection.
II. Main features

The main features of the procedures applicable to the Special Procurement by the Ministries and agencies are as follows:

1. General

Prior to 1 January 1981, the Order of 1947 and the Special Provisions of 1946 with the Accounts Law as their legal basis had governed government procurement in Japan and they had nothing contradictory against the spirits and basic principles of the Agreement on Government Procurement (hereinafter referred to as the "Agreement"). They included, however, some provisions which bore procedures not identical to those set out in the Agreement and required some adjustments. The Special Cabinet Order and the Ordinance of 1980 have thus been issued to provide for special procedures and necessary matters to the aforementioned Order and Special Provisions so that the procedures applicable to the Special Procurement be in full compliance with the requirements of the Agreement. The Agreement itself has thus been incorporated into domestic law.

2. Tendering procedures

(1) Qualifications required for suppliers

In most cases entities maintain permanent lists of qualified suppliers, which are valid for one or two years. Qualifications required for suppliers include past business performance in construction, production or sales, etc., number of employees, capital authorized and other matters relating to the scale and state of an organization's operations, in accordance with the nature of contracts. The official concerned shall verify whether suppliers who have requested verification possess the relevant qualifications. Such verification shall take place either periodically or as necessary. The basic criteria relating to necessary qualifications together with the time and method for submitting the request for verification shall be published in the Kanpō for each fiscal year (Articles 72 and 95 of the Order of 1947, Article III of the Special Cabinet Order).
(2) Notice of proposed purchase and tender documentation

The notice of proposed purchase by means of open or selective tendering procedures is required to be published in the Kanpō at least thirty days prior to the date for submitting tenders (Article 74 of the Order of 1947, Articles IV and VI of the Special Cabinet Order).

Entities shall forward tender documentation at the request of any supplier wishing to participate in open or selective tendering procedures (Article IX of the Special Cabinet Order).

(3) Open and selective tendering procedures

Open and selective tendering procedures are adopted in accordance with the provisions of the Agreement. Where selective tendering procedures are adopted, the invitation for participation in the tendering shall be issued on the same date as the publication of notice for the tendering.

(4) Use of single-tendering procedures

Use of single-tendering procedures is limited to those cases which are permitted under the Agreement (Article 29-3 of the Accounts Law, Articles X and XI of the Special Cabinet Order).

(5) Opening of tenders and awarding of contracts

Entities shall open tenders in the presence of tenderers. In the absence of tenderers, entities shall secure the presence of an official (or officials) not connected with the tendering procedures (Article 81 of the Order of 1947).

Entities shall compile and keep a record on each tendering (Articles VIII and IX of the Ordinance of 1980).

Entities shall award a contract to the supplier submitting the tender offering the lowest price within the limits of the provisional value of the contract. Entities may, because of the nature or objective of the contract, award a contract to the supplier submitting the most advantageous tender in respect of price and other factors (Article 29-6 of the Accounts Law).

3. National treatment and non-discrimination

The principle of equal treatment to domestic and foreign suppliers forms one of the bases of the present procedures for Special Procurement in Japan and this principle has been confirmed in the Directive by the Minister of Finance "with regard to the implementation of the Cabinet Order stipulating special procedures for government procurement of goods" issued on 27 December 1980.
It shall also be noted that the Agreement, which provides for the principle of non-discrimination, serves as a source of interpretation of the procedures for Special Procurement.

4. **Threshold**

When an entity adopts tendering procedures for a proposed purchase, the entity shall calculate and determine beforehand the provisional value for that purchase (Article 80 of the Order of 1947). Whether or not that purchase shall be subject to the Agreement will automatically be determined on the basis of the provisional value: if the provisional value is equal to, or exceeds, the threshold value, that purchase shall be subject to the requirements of the Agreement, and vice versa.

Proposed purchases under the Agreement shall be published in the Kanpō with their summaries in English or French or Spanish (Article IV of the Ordinance of 1980). Proposed purchases not subject to the Agreement are seldom published in the Kanpō and even then no English or French or Spanish summaries are given.

**Note:** The provisional value shall be calculated taking into account such objective factors as the cost of an actual similar transaction, the supply and demand situation, etc. Therefore, there is no room for entities to determine the provisional value arbitrarily in order to preclude the purchase from the scope of the Agreement.

5. **Permanent lists of suppliers**

As mentioned in II.2(1) above

6. **Publication of legislation**

The Special Cabinet Order and the Ordinance of 1980 were published in the Kanpō of 18 November 1980.

The regulations concerning contract procedures for each entity were published in the Kanpō of 10 December 1980, 23, 30 January and 7 February 1981.

III. **Other information**

1. **Information Centre**

GATT Information Centre,
First International Organizations Division,
Economic Affairs Bureau,
Ministry of Foreign Affairs,
2-2-1, Kasumigaseki, Chiyoda-ku,
Tokyo, Japan.
2. Technical assistance

When specific requests for technical assistance are received from developing countries, sympathetic consideration will be given to them.

3. Publication of notice concerning the drawing up of permanent lists of qualified suppliers

Entities shall publish in the Kanpō for each fiscal year a notice containing all the essential details of the qualifications and the time and method, etc. for the verification procedures, together with the kinds of lists to be maintained (Article III of the Special Cabinet Order).

Entities shall enumerate in the aforementioned notice (a) categories of products to be procured and (b) the periods of the validity of the qualifications and the formalities for renewal of the lists (Article III of the Ordinance of 1980).

4. Contact points

Each entity shall designate an official charged with receiving and studying complaints and other matters made by unsuccessful tenderers relating to the Special Procurement (Article X of the Ordinance of 1980).

5. Hearing and reviewing of complaints

The official designated mentioned in III.4 shall deal with the hearing and reviewing of complaints.

6. Local governments

The Ministry of Foreign Affairs and the Ministry of Home Affairs sent to all the prefectural governments together with municipal or local governments and some city authorities on 23 January 1981 a joint letter describing the contents of the Agreement with particular reference to paragraph 2 of Article I of the Agreement.

7. Date of the first notice of a proposed purchase

19 January 1981

Subject of the contract: Multiple tie tamper

Time-limits for the submission of tenders: 19 February 1981

Contracting entity: Japanese National Railways