1. The present fifth revision of document GPR/W/56 has been prepared by the secretariat as requested by the Committee at its meeting on 12 December 1985. It contains the proposals as they are presently categorized and formulated by the Informal Working Group. The full text of the Informal Working Group's report to the Committee on 12 December 1985, is incorporated in L/5942, Annex I.

2. The proposals are listed in the left column and the relevant provisions of the Agreement in the right column.

3. The contents and lay-out of this note, including the categorization of proposals, are without prejudice to the position of any delegation in the overall Article IX:6(b) negotiations.
A. DRAFTING PROPOSALS THAT ARE CLEARLY UNDERSTOOD BY EVERY DELEGATION AND FULLY DISCUSSED BY THE INFORMAL WORKING GROUP

1. The Threshold Value

   Article I:1(b): Redraft first sentence:

   (This Agreement applies to:)
   "any procurement contract of a value of SDR75,000 or more."  
   
   PRESENT TEXT
   "any procurement contract of a value of SDR150,000 or more."

2. Estimated Value/Actual Value

   Article I:1(b): Add additional footnote to first sentence (present footnote 2 being kept):

   "The Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed [SDR150,000] [SDR75,000] at the time of publication of the notice in accordance with Article V:3."

3. Recurring Contracts

   Article I:1(b): Redraft third sentence:

   "If an individual requirement for the procurement of a product or products of the same type results in the award of more than one contract or in contracts being awarded in separate parts, the basis for application of this Agreement shall be either the actual value of similar recurring contracts concluded over the previous fiscal year or twelve months adjusted, where possible, for

   PRESENT TEXT
   "If an individual requirement for the procurement of a product or products of the same type results in the award of more than one contract or in contracts being awarded in separate parts, the value of these recurring contracts in the twelve months subsequent to the initial contract shall be the basis for the application of this Agreement."
anticipated changes in quantity and value over the subsequent twelve months, or the estimated value of recurring contracts in the fiscal year or twelve months subsequent to the initial contract. The selection of the valuation method by the entity shall not be used with the purpose of circumventing the Agreement."

4. Rules of Origin

- Article II:3: Replace by the following:

  "For the purposes of application of this Agreement, a product will be considered to have originated in a Party to the Agreement if such product is wholly the growth, product, or manufacture of a Party or if it is manufactured in a Party and the cost of its component materials mined, produced, or manufactured in such Party exceeds 50 per cent of the cost of all its component materials."

"The Parties shall not apply rules of origin to products imported for purposes of government procurement covered by this 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."

5. Languages

- Article III:8 and 9

  "Technical assistance referred to in Article III, paragraphs 8 and 9, would include translation from a GATT official language designated by the entity of pre-qualification documentation and bids made by suppliers from developing Parties."

"8. Developed country Parties shall, upon request, provide all technical assistance which they may deem appropriate to developing country Parties in resolving their problems in the field of government procurement.

9. This assistance which shall be provided on the basis of non-discrimination among the developing country Parties shall relate, inter alia, to:

- the solution of particular technical problems relating to the award of a specific contract;
Article V: Redraft as follows:

"Entities shall allow pre-qualification documentation and, unless undue burden can be demonstrated on request, allow tenders to be submitted in an official GATT language designated by the entity."

Technical Specifications

Article IV: Add the following as paragraph 4:

"4. Should a procurement entity seek or accept advice which may be used in the preparation of specifications for a specific projected purchase, the entity shall not seek or accept such advice from a firm that may have a commercial interest in the procurement in a manner that has the effect of precluding competition."

Variety of Qualification Procedures

Article V: Add new paragraph 3:

"Parties shall ensure that

(a) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for different procedures;

(b) differences between the qualification procedures of separate entities are minimized."

any other problem which the Party making the request and another Party agree to deal with in the context of this assistance.

"If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the GATT."
Note: Japan's understanding is that this provision would not change its basic qualification system as such, and that changes in practice might require some time to be implemented in cases of duly substantiated need.

8. Information Prior to Notice of Proposed Purchase

   Article V:2: Add the following new paragraph:

   "Entities shall not provide to any potential supplier information with regard to a specific future purchase which would have the effect of precluding competition."

9. Prior Notice concerning Recurring Purchases

   "Article V:4(a): Redraft as follows:

   "the nature and quantity of the products to be supplied, and in the case of recurring contracts the nature, quantity and if possible an estimate of the subsequent publishing date of the tender notice for the products to be purchased;"

10. Timing in Qualification Procedures

    Article V:2(d):

    Redraft the existing provision:

    (... Qualification procedures shall be consistent with the following:)

    "entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time."

    "entities maintaining permanent lists of qualified suppliers shall ensure that all qualified suppliers so requesting are included in the lists within a reasonably short time;"
11. Separate Publication

- Article V:3: Redraft second sentence:

(Entities shall publish a notice of each proposed purchase in the appropriate publication listed in Annex II.)

"Such notice, constituting an invitation to participate in either open or selective tendering procedures, shall be published under a separate heading referring explicitly to this Agreement."

- Article V:3: Add new sub-paragraph (d):

"Entities shall take due account of publication delays where setting the final date for receipt of tenders or of applications to be invited to tender." 

12. Delivery Times

- Article V:9 (b): Redraft as follows:

"Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the proposed purchase, the extent of sub-contracting anticipated, and the realistic time required for production, de-stocking and transport of goods from the points of supply."

"9(b) Consistent with the entity's own reasonable needs, any delivery date shall take into account the normal time required for the transport of goods from the different points of supply."

Note: Japan's understanding is that decisions can be taken on a case-to-case basis since delivery times constitute an important element in the administration of an entity's business and may also be related to the price of a contract; the understanding of Canada is that entities will not be required to carry out any extensive research to take into account the various factors listed in the proposal.

13. Publication Delays

- Article V:10: Add new sub-paragraph (d):

"Entities shall take due account of publication delays where setting the final date for receipt of tenders or of applications to be invited to tender."
Former sub-paragraph (d) to become sub-paragraph (e).

14. Offset Procurement and Technology Transfer

   - Article V:14(h): to be replaced with the following:

     "Entities shall not require that the supplier provide offset procurement opportunities, that it license technology, or that it be subjected to similar requirements as a basis for awarding the contract."

     The note regarding Article V:14(h) should be eliminated.

     "Entities should normally refrain from awarding contracts on the condition that the supplier provide offset procurement opportunities or similar conditions. In the limited number of cases where such requisites are part of a contract, Parties concerned shall limit the offset to a reasonable proportion within the contract value and shall not favour suppliers from one Party over suppliers from any other Party. Licensing of technology should not normally be used as a condition of award but instances where it is required should be as infrequent as possible and suppliers from one Party shall not be favoured over suppliers from any other Party."

     The note: "Having regard to the general policy considerations of developing countries in relation to government procurement, it is noted that under the provisions of paragraph 14(h) of Article V, developing countries may require incorporation of domestic content, offset procurement, or transfer of technology as criteria for award of contracts. It is noted that suppliers from one Party shall not be favoured over suppliers from any other Party."

15. Information to Unsuccessful Tenderers

   - Article VI:3: Redraft as follows:
"Entities shall promptly and in no case later than seven working days from the date of the award of a contract, inform the unsuccessful tenderers by written communication or publication that a contract has been awarded, the value of the winning bid and the name and address of the winning bidder."

16. Global Statistics

Article VI:9(a):

- Redraft as follows:

"(a) statistics on estimated value of contracts awarded, both above and below the threshold value on a global basis and broken down by entities;"

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

17. Statistics under Article VI:9(b)

Article VI:9(b):

- Redraft as follows:

"(b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products according to a uniform classification system to be determined by the Committee, and country of origin of the product;"

"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;"

Note: The understanding is that this text does not change the Parties' interpretation of origin.

18. Statistics on the Use of Single Tendering

Article VI:9(c):

- Redraft as follows:
"(c) statistics, broken down by entity, and by category of product, on the number and total value of contracts awarded under each of the cases of Article V, paragraph 15 showing country of origin of the product."

"statistics on the total number and value of contracts awarded under each of the cases of Article V, paragraph 15."

Note: The understanding is that this text does not change the Parties' interpretation of origin.

19. Statistics on the Use of Derogations

- Article VI:9

Add new subsection (d):

"(d) statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement listed in Annex I."

Note: Japan's understanding is that its derogation is Note 3 to its entity list.

20. Use of Derogations

- Article VI - add new section 10:

"Each case in which derogations to the Agreement are made use of shall be reported to the Committee through the GATT secretariat within thirty days of the award of the contract."

21. Statistical Information

- Article VI:9: add a new paragraph:

"The Committee shall determine the details of presentation of the information mentioned above. It may, if need be, agree on an exchange of additional statistical information."
22. Vice-Chairman

- Article VII: Redraft second sentence as follows:

"This Committee shall elect its own Chairman and Vice-Chairman ..."

B. DRAFTING PROPOSALS ON WHICH THE INFORMAL WORKING GROUP CONSIDERS THAT FURTHER WORK SHOULD BE DONE

23. Leasing

- Article I: Redraft first sentence:

(This Agreement applies to:)

"any law, regulation, procedure and practice regarding any procurement, through such methods as purchase, lease, rental or hire-purchase [of products], with or without an option to buy, by the entities subject to the Agreement."

- Article I: Add new sentence after first sentence:

(This Agreement applies to ... (b) any procurement contract of a value of SDR150,000 or more.)

"For leasing, rental or hire-purchase contracts the value of the contract for purposes of determining whether or not it exceeds SDR150,000 (or some new value of) SDR's, shall be the sum of the total payments plus [where appropriate] the estimated residual value, [regardless of whether or not there is a change of ownership]."
Explanatory Note to Article I:1(b):

"With regard to the basis of calculation to be used for the purposes of Article I:1(b):

(a) in the case of fixed-term contracts, the total contract value during the year following its entry into force, or, where its term exceeds twelve months, its total value;

(b) in the case of contracts concluded for an indefinite period, the monthly instalment under the contract multiplied by forty-eight;

(c) if there is any doubt, the second basis of calculation is to be used, namely forty-eight months.

- Article V:4: Add new sub-section (h):

(Each notice of proposed purchase shall contain the following information:)

"whether the entity is inviting offers for purchase, lease, rental or hire-purchase, or more than one of these methods."

- Article VI:9: Amend first sentence:

"The Parties shall collect and provide to the Committee on an annual basis their statistics on procurements covered by this Agreement."

"The Parties shall collect and provide to the Committee on an annual basis statistics on their purchases."

24. Treatment of Options Clauses

- Article I:1(b): Delete the semi-colon at the end and add the following new sentence:
"In cases where a procurement contract includes an option, or options, for the procuring entity to purchase additional goods, the basis for application of this Agreement shall be the total value of the maximum permissible purchase, inclusive of optional purchases;"

- Add the following new paragraph after Article V:11:

"Contract provisions permitting entities the option to purchase additional goods shall not be used in a manner which discriminates against or among foreign suppliers. A contract subject to this Agreement may include an option for the purchase of additional goods only (1) in cases where there is a foreseeable future need for the exercise of such an option and (2) where such option provision does not permit substantive changes in the original terms of the contract."

25. Definition of Single Tendering

- Article V:1, last sentence, should be replaced with the following:

"Single tendering procedures, for the purpose of this Agreement, are any procedures other than the procedures defined for purposes of the Agreement as open [or], selective tendering [or negotiated] procedures. Single tendering may only be used under the conditions provided for in paragraph 15 below."

26. Information on the Use of Single Tendering

- Article V:3: Redraft first sentence:

"Single tendering procedures, for the purposes of this Agreement, are those procedures where the entity contacts suppliers individually, only under the conditions specified in paragraph 15 below."
"Entities shall publish a notice of each proposed purchase, including purchases to be procured through single tendering, in the appropriate publication listed in Annex II."; ["such notice shall constitute an invitation to participate in either open or selective tendering procedures"];

- **Article V:4:** Add new subparagraph (h):

  (Each notice of proposed purchase shall contain the following information:)

  "In the case of single tendering, the notice shall state the reason under Article V:15 for doing so."; and

- **Article V:15:** Modify first line to conform to these other changes by changing the reference "paragraphs 1-14" to "paragraphs 5-14."

27. **Qualification Conditions**

**Article V:2(b):**

- Add new clause at the beginning of the existing provision:

  "Conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfill the contract in question."; and

- Add new clause to the end of the existing provision:

  "2. Entities, in the process of qualifying suppliers, shall not discriminate among foreign suppliers or between domestic and foreign suppliers. Qualification procedures shall be consistent with the following:

  "(b) any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less..."
"The financial, commercial and technical capacity of a supplier shall be judged on the basis of that supplier's global business activity rather than its activity in the territory of the purchasing entity, taking due account of the legal relationship between the supply organizations;"

**Article V:2(d):**

- Add new clause at the end of the existing provision:

  (... reasonably short time;)

  "and on their permanent supplier list, entities shall not maintain subgroups of qualified suppliers within a product category on such grounds as volume of business, nor shall they use such distinctions as a basis of restricting invitations to tender."

### Bid Times

- **Article V:10(a), (b) and (c)**

  In order to allow exporters sufficient time to prepare and transmit tenders, the period for the receipt of tenders in Article V:10 should be extended from thirty to [forty] days from the date of publication of notice of proposed purchase.

  **10(a)"In open procedures, the period for the receipt of tenders shall in no case be less than thirty days from the date of publication referred to in paragraph 3 of this Article.**

  **(b) In selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall in no case be less than thirty days from the date of publication referred to in paragraph 3; the period for receipt of tenders shall in no case be less than thirty days from the date of issuance of the invitation to tender.**

  **(c) In selective procedures involving the use of a permanent list of qualified suppliers, the period**
29. **Time Limits in Recurring Purchases**

- **Article V:10(d):** Redraft as follows:

  **Original proposal:**
  
  "The periods referred to in (a), (b) and (c) above may be reduced where a state of urgency duly substantiated by the entity renders impracticable the periods in question."

  **Alternative proposal:**
  
  "The periods referred to in (a), (b) and (c) above may be reduced in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 4 of this Article. In this case, the period for the receipt of tenders shall in no case be less than 25 days."

- "The original proposal to become subparagraph (e) of Article V:10, referring to its subparagraphs (a), (b), (c) and (d)."

for receipt of tenders shall in no case be less than thirty days from the date of the initial issuance of invitations to tender. If the date of initial issuance of invitations to tender does not coincide with the date of the publication referred to in paragraph 3, there shall in no case be less than thirty days between those two dates."
30. Publishing Information on Winning Bids

Article VI: Add new subsection 1, and renumber all existing subsections accordingly:

(1). "Within 45 days of a contract awarded under Article V:14 and 15, entities shall publish a notice in the publication listed in Annex II. Such notice shall include:

(a) the nature and quantity of the goods in the contract award(s);

(b) the name of the awarding entity;

(c) the name and address of the winning supplier(s);

(d) the value[s] of the winning bid[s]; and

(e) a means of identifying the proposed purchase notice issued for the contract under Article V:3."

31. Conciliation

Article VII: Proposed additional provisions:

Add new paragraph 6:

"Conciliation"

"6: [After making their best efforts to reach a mutually satisfactory solution,] Parties may refer to the Chairman or to an official designated by the Chairman from the indicative list referred to in paragraph [8 to become 9], complaints relating to an individual
procurement concerning any matter or aspect relating to the operation of this Agreement. Following the receipt of the complaint the Chairman or the designee will promptly inform the parties concerned of their rights to present views and information to him. The Chairman or the designee will examine, based on the best information available, the issue raised in the complaint with a view to reach a mutually acceptable solution. Whenever no such solution is reached the Chairman or the designee will issue his advice to the parties concerned. Conciliation procedure shall be concluded within two weeks upon the receipt of the complaint."

Redraft first sentence of present paragraph 7; present paragraphs 6, 7, etc. to become 7, 8 etc.

"Dispute settlement"

7. (Present paragraph 6)

8. If no mutually satisfactory solution has been reached after detailed examination by the Committee under paragraph 7 within three months or as a result of the conciliation procedure under paragraph 6, the Committee shall, at the request of any party to the dispute establish a panel to:"

"Dispute settlement"

6. If no mutually satisfactory solution has been reached as a result of consultations under paragraph 4 between the Parties concerned, the Committee shall meet at the request of any party to the dispute within thirty days of receipt of such a request to investigate the matter, with a view to facilitating a mutually satisfactory solution.

7. If no mutually satisfactory solution has been reached after detailed examination by the Committee under paragraph 6 within three months, the Committee shall, at the request of any party to the dispute, establish a panel to:"
32. Substantial Modification of Criteria Used to Evaluate Offers and Award a Contract

A new provision on substantial modification of criteria used to evaluate offers and award a contract would build on the concepts already embedded in the existing Article V:15 and V:8. It would consist of these four points:

1. Basic statement of the principle that all Code-covered procurement shall be consistent with the criteria specified in the original NPP and tender documentation, i.e. bids shall be evaluated exclusively on these criteria and awards shall reflect these requirements.

2. If it appears, at any time after the initial advertisement that it would be more advantageous to the entity to consider a purchase or to award a contract on terms which are substantially modified from those of the original NPP and/or tender, the entity shall issue a new NPP containing the modified terms and start the procurement again.

3. Substantial modifications would be defined to mean those which have, or are likely to have, the potential for attracting additional or other suppliers than those which responded to the initial notice. Modifications which are likely to prompt only a different response from the same set of suppliers would be considered less than substantial modifications and subject to Article V:8.

4. Included among, but not limited to, possible substantial modifications are:

   (a) An entity's decision to procure quantities significantly in excess of the maximum quantity specified in the original notice (i.e. 10%, 20% or 30%);

   (b) A significant change in technical specifications;

   (c) Consideration of an options provision significantly in excess of the amount initially advertized (25%);

   (d) Conversion of the type of the procurement (e.g. from purchase to lease, from lease to purchase, from non-Code covered to Code-covered).

33. Exceptions/Specific Derogations

Despite the fact that most Parties have not provided the agreed information which makes it possible to quantify the impact of specific derogations, such limitations on coverage could be used to circumvent the Agreement. Serious consideration should be given to the elimination of all derogations under the Agreement.