First Part: TRANSPARENCY

Note: For convenience, various provisions concerning the procedures for the award of contracts and the obligations placed on purchasing entities, as well as provisions relating to firms have been brought together under this general heading.

1. The following new sub-paragraphs (3) and (4) should be added at the end of paragraph 18:

"(3) In open procedures, the purchasing entities shall forward the tender documents at the request of any potential supplier participating in the procedure, and shall reply to any request for explanations relating thereto, within six working days following receipt of the request for the tender documents, or for explanations.

"(4) In selective procedures, the purchasing entities shall forward the tender documents to any potential supplier invited to submit a tender, and shall reply to any request for explanations relating thereto, within six working days following receipt of the request for explanations."

2. A new sub-paragraph (5) should be added after sub-paragraph (4) above:

"The purchasing entities shall reply to any reasonable request for relevant information submitted by a potential supplier participating in the procedure within six working days following receipt thereof, on condition that such information does not give that potential supplier an advantage over its competitors in the procedure for the award of the contract, and to the extent that the purchasing entity considers that such information is not detrimental to the proper functioning of the procedure."

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The numbering of the paragraphs is based on that in document MTN/NTM/W/81. The draft provisions of this working document are to be considered mainly as an attempt to stimulate progress in the work of the sub-group. The Communities reserve the right to add to or modify the following draft provisions.
3. Paragraph 20 (presentation of bids and candidatures by rapid means of communication) should be entirely amended and redrafted as follows:

"(1) Tenders shall normally be submitted by mail. If bids by telex, telegram or telecopy are permitted, the bid made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the bidder and a statement that the bidder agrees to all the terms, conditions and provisions of the invitation to tender. Any bid that does not include such a statement shall not be taken into consideration. The bid must be confirmed by letter posted on the day on which the telex, telegram or telecopy is sent or by the despatch of a signed copy of the telex, telegram or telecopy.

Bids presented by telephone shall not be permitted."

"(2) The content of the telex, telegram or telecopy shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit."

"(3) Requests to participate in a selective procedure may be submitted by telex, telegram or telecopy."

4. As a consequence of the new wording of paragraph 20, paragraph 26 should be amended as indicated below (the parts amended are underlined):

"Bids must be submitted so as to be received in the office designated in the tender not later than the time set forth in the tender. If a bid is received in the office designated in the tender after the time specified in the tender, it shall be considered if, sent by mail or, where authorized, by telex, telegram or telecopy, it was received by the purchasing entity and except for the delay due solely to mishandling on the part of the entity, would have been received at the office designated by the time specified in the tender; it shall be considered in other circumstances if the standard regulations of the purchasing entity so provide."

5. A new sub-paragraph should be added to the end of paragraph 27:

"A report on the opening of bids shall be drawn up in writing. This document shall not be published. It shall remain with the purchasing entity, at the disposal of the government authorities responsible for the purchasing entity, in order that it may be used if required at the bilateral phase of the settlement of disputes."
6. A sentence should be added to paragraph 13(a) which should now read as follows:

"No contract may be divided with the aim of removing it from the scope of the present instrument, in the case of contracts of a recurring nature, or intended to be renewed within a given period, the sum of the initial supply and of those to be made during the twelve subsequent months shall be taken as a basis. In the case of such contracts where the total value of purchases to be made under these contracts is likely to exceed the threshold, the first notice of the contract shall contain an estimate of the volume of purchases envisaged in the first year."

Second Part: BILATERAL PHASE OF THE SETTLEMENT OF DISPUTES

Note: Only paragraph 40(B) has been redrafted. For the convenience of the reader, however, all the provisions relating to the bilateral phase of the settlement of disputes have been reproduced below.

"33. After the award of each contract, the purchasing entities shall, upon request by any unsuccessful candidate or bidder, inform him of the reasons why his candidature was rejected or his bid not selected with, if relevant, such general information on the characteristics or relative advantages of the bid selected as they deem possible to disclose.

"34. Signatory countries must have procedures for the hearing and reviewing of protests arising in connexion with all phases of the purchasing process, such as the issuance of tenders, the presentation of candidatures, the submission of bids or the awarding and administration of contracts.

"39. It is the firm intention of signatories to this instrument that all disputes under this instrument shall be expeditiously resolved between the candidate/supplier and the procuring officer or with the purchasing entity under the terms of paragraphs 33 and 34.

"40. (A) Signatory governments shall comply with the request of another signatory government for consultation on the problems of a bilateral character relating to government purchasing arising from the application of this instrument generally or to any particular dispute not expeditiously resolved under the terms of paragraphs 33 and 34.

"40. (B) In the event of repeated disputes or allegations of discrimination in a specific product area, the consulting governments shall, upon request, promptly supply the information necessary for examination of the controversy, including available statistical information on the purchases in question."
"40. (C) Confidential information provided to a consulting government shall not be revealed without formal authorization from the government providing the information."

Third Part: SPECIAL AND DIFFERENTIAL TREATMENT IN FAVOUR OF DEVELOPING COUNTRIES

A. Special treatment for least developed countries

1. Signatory countries may grant, in an autonomous manner, the same treatment as that guaranteed under the relevant provisions of the Code, to products originating from least developed non-signatory countries, and to suppliers in those countries.

2. The governments of the developed signatory countries hereby undertake to grant assistance to potential bidders in the least developed countries referred to in the previous paragraph, in submitting their bids, selecting the products which are likely to be of interest to purchasing entities in the developed countries and assisting them to comply with technical regulations and standards relating to products which are the subject of invitations to tender.

B. Provisions in favour of developing signatory countries

Note: Although the provisions of this part are applicable to all signatories, they have been brought together under a special heading: they have been expressly requested by the representatives of developing countries and are primarily of interest to them.

1. Time-limits to be set for undertakings interested in a contract

para.17(2)(h) "The period for the receipt of bids shall in no case be less than thirty working days from the date of publication referred to in paragraph 16."

para.17(3)(j) "The period for the filing of candidatures shall in no case be less than twenty working days from the date of publication referred to in paragraph 16."

[new para.17(4)] "Such periods may be reduced to twenty and twelve working days respectively from the date of the publication referred to in paragraph 16, either where a state of urgency duly substantiated by the purchasing entity renders impracticable the final dates referred to in subparagraphs 2 and 3 above or in the case of the second and subsequent publications of a contract of a recurring nature within the meaning of paragraph 13(a) above."
"In no case shall this time-limit be less than fifteen working days."

"Without prejudice to the provisions of paragraphs 17(2)(h), 17(3)(j), 17(4), 18(1)(b) and 18(2)(k), any time-limit prescribed for a contract must be calculated in such a way as to allow foreign as well as domestic suppliers the full time needed to prepare and submit bids or to present their candidatures under selective procedures. In such selective procedures, the invitations to tender accompanied by the documentation shall be sent simultaneously to all the suppliers, candidates or others, who are permitted to submit bids. In determining how much time is sufficient, consideration shall be given to such factors as the complexity of the tender, the extent of sub-contracting anticipated and the normal time for transmitting bids by mail from foreign as well as domestic points."

2. Languages

"16. For each proposed purchase, the purchasing entities shall publish a notice thereof in at least one publication of wide circulation. The list of publications in which this publicity shall be made in each signatory country is given in Annex II. The content of the notice which shall be published in the language chosen by the purchasing entity shall be in accordance with paragraph 17 below. At the same time and in the same publication, the purchasing entities shall publish, in one of the official languages of the GATT, a summary of the notice of tender containing at least the following particulars:

Subject matter of the contract; time-limits set for the submission of bids; addresses from which documents relating to the contracts may be requested.

"18. The tender documentation shall provide to interested suppliers all necessary information which will enable them to submit valid bids, including:

(1) In open and selective procedures:

(a) the name and address of the body to which bids should be sent;

(b) the address to which, and the time-limit within which, requests for supplementary information may be sent; in no case shall this time-limit be less than fifteen working days.

This shall be taken to refer to the Official Gazette of the country concerned or to any other easily obtainable publication that the signatory government shall designate for that purpose.
(c) the language or languages in which bids and bidding documents must be submitted: if, in open procedures, a purchasing entity allows bids to be submitted in several languages, one of those languages shall be one of the official languages of the GATT; in selective procedures, candidatures may be sent to a purchasing entity in either the language used by that entity or one of the official languages of the GATT;

(d) the length of time during which any bids should be kept open for acceptance."

3. Information centre

"1. Each signatory shall see to it that there is in its territory an 'information centre' capable of meeting, itself or by indicating the name and address of the authority in a position to do so, all reasonable requests from the other signatories or from interested parties who are nationals of the other signatory countries for information relating to the matters listed in the sub-paragraphs below.

"A group of signatories may set up a joint information centre.

"2. The information centre shall have at its disposal the following information concerning the signatory country or countries which it covers:

- the rules, procedures and practices relating to government purchasing;
- in so far as is possible, the nature and volume of supplies and products purchased or to be purchased by the purchasing entities.

"The information centre shall keep up to date the addresses and other information relating to the bodies responsible for international trade in the signatory country or countries which it covers.

"In so far as is possible, the information centre shall have at its disposal addresses and other information relating to the bodies responsible for international trade in the signatory country or countries which it covers."

4. Assistance for developing signatory countries

"1. Signatory countries shall endeavour, upon request, to provide to developing signatory countries all possible assistance in resolving their problems in the field of government procurement.

2. This assistance shall relate, inter alia, to:

- the solution of particular problems relating to the award of a specific contract;
- any other problem which the signatory country making the request and another signatory country agree to deal with in the context of this assistance."