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apan Computer Products And Services Agreement (1992)

APAN AGREEMENT ON COMPUTER PRODUCTS AND SERVICES

[letterhead] THE UNITED STATES TRADE REPRESENTATIVE Executive Office of the President Washington D.C.
20506

anuary 22, 1992

His Excellency Ryohei Murata Ambassador of Japan 2520 Massachusetts Avenue, N.W. Washington, D.C.

Dear Ambassador Murata:

I am pleased to receive your letter of today's date concerning the procurement of computer products and services in the Japanese public sector market, and the "Measures Related to Japanese Public Sector Procurements of Computer Products and Services" ("Measures") attached thereto. I am pleased to learn that your Government has decided to initiate the Measures with the aim of expanding Japan's procurements of competitive foreign computer products and services.

I understand that the Measures will govern procurements of computer products and services by the entities covered by the GATT Agreement on Government Procurement and additional entities listed respectively in Annexes I and II. It is also my understanding that the Measures will become effective on April 1, 1992 with respect to procurements of computer products by entities listed in Annexes I, II-A, II-B, and II-C, and on October 1, 1992 with respect to procurements of computer services by entities listed in Annexes I and II-A. I am pleased to note that the Government of Japan will take steps so that all the entities listed in Annexes II-B and II-C will be covered by the Measures with respect to procurements of computer services by April 1, 1993.

I welcome your Government's decision to implement the above-mentioned Measures and willingness to review the Measures as technology changes and develops in the field of computer products and services. In this regard, I should also like to confirm that the Government of the United States will meet annually, or at any time upon request by either Government, to assess the implementation of the Measures, based upon the consideration of relevant information as specified in your letter of today's date, and to discuss upon request other Japanese public sector computer procurement issues. We would propose to hold the first such consultation in July, 1992.

I am of the view that the Measures represent substantial progress toward resolving problems related to Japanese Government procurements of computer products and services. I hope that the implementation of these Measures will give United States computer manufacturers and service providers full access to the government procurement market in Japan. We will continue to monitor this situation and look forward to increased sales of competitive computer products and services by United States firms under the Measures.

I also welcome your Government's reaffirmation with respect to computer distribution, and hope that the maintenance of the Japanese Government's policy of promoting fair and free competition will further increase market entry opportunities, including those of foreign companies. We also welcome your Government's decision to encourage the private sector, including computer manufacturers and distributors, to establish internal Antimonopoly Act compliance programs.

In addition, I am pleased to reconfirm that it is the policy of the Government of the United States to provide non-discriminatory, transparent, fair and open opportunities consistent with our obligations under the GATT Agreement on Government Procurement. My Government will consult with your Government upon request J

concerning committee procedures. We are authorized to provide the Government of Japan with necessary information as requested concerning procurement.

Sincerely, [Signature] Carlos Hi

[Letterhead] EMBASSY OF JAPAN WASHINGTON, D. C. January 22, 1990

Dear Ambassador Hi :

With regard to procurement of computer products and services in the Japanese public sector market, I am pleased to inform you of the following

The Government of Japan has decided to initiate the "Measure Related to Japanese Public Sector Procurement of Computer Products and Services" ("Measure") based on the principle of non-discrimination, transparency, and fair and open competition in the procurement of computer products and services as defined in the Measure, in the Japanese public sector market. The Government initiates the Measure with the aim of expanding Japanese procurement of competitive foreign computer products and services.

The Measure, the text of which is attached hereto, will govern procurement of computer products and services by the entities covered by the GATT Agreement on Government Procurement and additional entities included respectively in Annexes I and II. The Measure will become effective on April 1, 1992, with respect to procurement of computer products by entities included in Annexes I, II-A, II-B and II-C, and on October 1, 1992, with respect to procurement of computer services by entities included in Annexes I and II. The Government of Japan will take the utmost at all the entities included in Annexes II-B and II-C will be covered by the Measure with respect to procurement of computer services by April 1, 1993.

In understanding that the Government of the United States continues and will continue to provide nondiscriminatory, transparent, fair and open opportunities consistent with its obligation under the GATT Agreement on Government Procurement. The Government of Japan welcomes the policies of the Government of the United States and undertakes the above Measure.

In light of rapid change and development of technology in the field of computer products and services the Government of Japan will keep the Measure under continuous review. In this regard, the Government of Japan will meet annually or at any time upon request by either Government with the Government of the United States to assure the implementation of the Measure based on the consideration of relevant information and to discuss upon request other Japanese public sector computer procurement issues.

Relevant information includes, but is not limited to, annual circulating data for a Japanese public sector procurement (including new installation, replacement, and upgrade) broken down by two categories (i.e., foreign computer manufacturer and domestic computer manufacturer) of computer products and services; similar data publicly available for private sector procurement; the effort by foreign computer manufacturer to increase their Japanese public sector participation in terms of availability, specification, performance, evaluation of the products and services, the growth in the Japanese public and private sector market and level of foreign computer manufacturer's participation in the public and private sector in Japan.

With respect to computer distribution, in accordance with its policy of promoting fair and free competition to increase new market entry opportunities including those of foreign companies the Government of Japan reaffirms its commitment to enforce effectively the antimonopoly act and related guidelines to address anticompetitive activities, if any, related to the distribution of goods including computers. The Government of Japan will encourage the private sector including computer manufacturer and distributor to establish internal antimonopoly act compliance programs.

Sincerely, [Signature] Ryoichi Murata

Ambassador of Japan

MEASURES RELATED TO JAPANESE PUBLIC SECTOR PROCUREMENTS OF COMPUTER PRODUCTS AND SERVICES A

I. General Principles

A. In the interest of expanding trade opportunities based on the principles of non-discrimination, transparency, and fair and open competition in public sector procurements of computer products* (including peripherals and packaged software) and computer services (operation and maintenance of computers input of data into computers; development of computer systems, including development of software and systems integration, maintenance of computer software and other related services) (collectively referred to as "computer products and services") the Government of Japan ("the Government") strive to take further measures to public sector procurement procedures. Accordingly, the Government enact these "Measures Related to Japanese Public Sector Procurements of Computer Products and Services" ("the Measures") set forth herein, with the aim of expanding procurements of competitive foreign computer products and services.

B. The Government reaffirms its commitment to the obligations of the General Agreement on Tariffs and Trade (GATT) and the Agreement on Government Procurement as amended ("the Code"). The Measures shall be implemented ensuring consistency with the requirements of the Code, including any amendments thereto.

C. In order to implement these policies fully and effectively, the Measures govern a computer products and services procurements above the threshold of 100,000 SDRs or the Code threshold, as amended, however, severally, by entities covered by the Code and additional entities listed respectively in Annexes I and II attached ("the entities"). Super computer procurements shall not be covered by the "1990 Procedures for Introduction of Super Computers," and shall not be covered by the Measures.

[Footnote] * Computer products include services in addition to the supply of products of the value of these in addition to services do not exceed that of the products themselves. [End footnote]

D. The Government further reaffirms the policies and measures set forth in the 1985 Action Program for Improved Market Access with respect to government procurement, confirms that it shall not implement such procurement policies in the area of procurements of competitive foreign computer products and services and measures efforts by foreign computer manufacturers to increase their sales in the Japanese public sector market.

E. Implementation

The Measures shall become effective on April 1, 1992 with respect to procurements of computer products by entities listed in Annexes I, II-A, II-B, and II-C and on October 1, 1992 with respect to procurements of computer services by entities listed in Annexes I and II-A. The Government take steps that achieve the entities listed in Annexes II-B and II-C be covered by the Measures with respect to procurements of computer services by April 1, 1993.

II. Policies and Procedures

The Government herein reaffirms existing policies and procedures and establishes and implements new policies and procedures with respect to public sector computer procurement. The Government undertakes these policies and procedures to fully ensure non-discrimination, transparency, and free and open competitive opportunities, with the aim of expanding its procurements of competitive foreign computer products and services.

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1. A potential foreign and domestic suppliers be a ranked equal access to participation, free availability, and provided that equal opportunities to participate in such pre-s tat n phase, and no advantage of advance knowledge be given to any potential suppliers.

2. During entities ensure that a potential suppliers are given the same opportunities to participate in the national reference committees, advisory groups, study units, or any such groups, established that discuss the technology, budget, specifications, functions or any other aspect of planned computer products and services procurements.

3. Information disseminated during this pre-s tat n phase shall not be used to exclude or pre-qualify any potential suppliers. w

Specificati

Specificati will be formulated in a impartial manner. If the procurement will replace a direct contract with a existing system, the specification will not be designed to preclude competition. Features that are essential to the assigned task will not be required.

Any supplier directly involved in the development of final specifications in a procurement will not be allowed to participate in the tendering process, if such participation would result in a unfair competition and advantage except in such cases where potential supplier provides information that a particular company is preparing a reference specification in a situation where the entity is controlling the process and conducting it in a fair and impartial manner and where a supplier provides, at the request of a entity, product specifications or data about a product it supplies. In such cases all potential supplier will be provided with a opportunity to participate or provide such product specifications or data.

6 The Government will establish a program to centralize and facilitate the dissemination of information and provisions related to specifications formulated by the entity procurement official.

Explanation

7 The entity will hold a necessary explanation with regard to the procurement of computer products and services, including the opportunity for direct technical and administrative interaction between potential supplier and the purchasing entity.

Tendering and Bidding Procedure

8 All potential supplier will be accorded fair and equal opportunity to respond to the requirements of the purchasing entity in the tendering and bidding phase.

9 Because competition in procurement are the foundation of the Government's procurement policy and practice, competitive tendering principles will be used, except in special cases, justified in accordance with C de procedure, and will not be used to favor supplier of domestic computer products or services. The entity will reduce their use of competitive tendering.

10 The tender documents and evaluation criteria will be prepared in a impartial manner and ensure that equal opportunity are provided to all potential supplier and administrative staff.

11 The bidding system, including the designated bidding system, will not be used to favor supplier of domestic computer products or services. Purchasing entity may restrict the number of supplier that may bid in a procurement only in administrative matters.

Evaluation of Bid

12 Evaluation of offer will be conducted in a transparent manner that ensure equal treatment of all bidder.

13 Technical evaluation and system performance evaluation when used will be conducted under the same conditions for all potential supplier in the tendering process and a weighting criteria will be the same for all potential supplier.

1 All evaluation factors will be clearly set forth in the tender documents. Evaluation of bid will be conducted in accordance with C de-criteria tendering procedure, and as described in (a) and (b) below. The particular tendering procedure will be chosen by the respective purchasing entity and the basis of the objective and characteristics of the procurement.

(a) Bid will be evaluated on a pass/fail basis based upon the specific technical and other evaluation criteria stated in the specifications, and a contract will be awarded to the lowest-priced bidder among those bid which have met the evaluation criteria.

(b) Contract will be awarded to the supplier with the bid which meets the evaluation criteria and also best meet the requirements of the specifications in terms of technical and functional as well as price/cost factors. Relative

weights applied to the evaluation criteria, as necessary, and as specified in the tender document. The price/cost evaluation is based on the total life cycle cost of the procurement.

Information on the Contract Award

15. After final selection has been made, procuring entities will publish information on the contract award and, upon request from any unsuccessful supplier who has submitted a tender, provide such supplier with pertinent information concerning the reasons for not being selected including the name of the selected supplier as well as information on its relative advantages. However, the information exclude such information as would prejudice the legitimate commercial interest of particular suppliers or might prejudice fair competition among suppliers.

Information on Future Plans

16. Information developed on budget request to potential suppliers will be developed on a non-discriminatory basis. Procuring entities will announce in the Known Plans to introduce computer products and services that exceed 800,000 SDRs serial in the Japanese fiscal year (JFY) possibly, and issue general invitation to potential suppliers for submission of tenders and contents relevant to those plans.

Entity Specific Plans

17. Pursuant to the Measures, individual procuring entities are encouraged to develop entity-specific plans that describe the efforts that the entity is making, or will make, to implement the policies and procedures set forth in the Measures. Such entity-specific plans are encouraged to be updated every fiscal year.

Bid Protest System

18. An impartial bid protest system, described in Annex III, will be implemented to provide equitable, timely, transparent, and effective challenge procedures for potential suppliers of computer products and services covered by the Measures.

Local Governments

19. The Government will inform prefectural and local governments of the Measures, and request their cooperation in following the spirit of full competitive procurement policies and procedures consistent with the Measures.

Multi-vendor Open Systems

20. An inter-ministerial group will be tasked to promote multi-vendor open systems environment. Foreign and domestic computer companies will be invited on a fair and non-discriminatory basis to assist in the development of the multi-vendor open systems environment.

III. Unfair Bids

Given that it is the policy of the Government to procure computer products and services based on bids that are consistent with the Antimonopoly Act, including the prohibition against unjust low-bidder sales, procuring entities will take appropriate actions to address anticompetitive practices.

A. Where a bid is submitted that, because of its price or other terms, unreasonably impedes fair competition, the bid will be deemed void in its entirety and the procuring entity will not consider that bid in awarding the contract.

B. An addendum referred to in Paragraph III A above will be a matter of principle and will be inadvisable to resubmit a bid in that computer product or service procurement and the name of such addendum will be announced publicly.

C. When a procuring entity obtains information indicating the existence of practices that unreasonably impede fair competition in relation to its procurement, including the formation of its procurement specific conditions, the entity will provide such information timely to the Fair Trade Commission so as to enable the Commission to take steps to deal with the practice.

D. To this end, the procuring entity will assign a contact person with the Fair Trade Commission to facilitate procurement for the execution of, and exchange of information concerning practices that may violate the Antimonopoly Act.

Annex I (Entities covered by the GATT Agreement to Government Procurement)

House of Representatives

House of Councillors

Supreme Court

Board of Audit

Cabinet

Prime Minister's Office

-----Fair Trade Commission

-----National Public Safety Commission (National Police Agency)

-----Provisional Disaster Coordination Commission

-----Imperial Household Agency

-----Magistrate Coordination Agency E

-----Hokkaido Development Agency

-----Defense Agency

-----Atomic Planning Agency

-----Science and Technology Agency E

-----Provisional Agency

-----Okiawa Development Agency

-----National Land Agency

Ministry of Justice

Ministry of Foreign Affairs

Ministry of Finance

Ministry of Education

Ministry of Health and Welfare

Ministry of Agriculture, Forestry, and Fisheries

Ministry of International Trade and Industry

Ministry of Transport

Ministry of Postal and Telecommunications

Ministry of Labor

Ministry of Construction

Ministry of Home Affairs E

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 Hokkaido Rai wa^{mp}an
 East Japan Rai wa^o^{mp}an
 entra Japan Rai^o^{mp}an
 West Japan Rai^o^{mp}an
 Shikoku Rai wa^{mp}an
 K ushu Rai^o^{mp}an
 Japan Freight Rai^o^{mp}an
 Japan Tobacco nc.
 Nippon Telegraph and Telephone Co., Ltd.
 Peoples's Finance Corporation
 Housing Loan Corporation
 Agriculture, Forestry, and Fisheries Finance Corporation
 S^{ma} Business Finance Corporation
 Finance Corporation of Local Public Enterprise
 Hokkaido-Tohoku Development Corporation
 Social Welfare and Medical Service Corporation
 S^{ma} Business Credit Insurance Corporation
 Environmental Sanitation Business Financing Corporation
 Okinawa Development Finance Corporation
 Japan Development Bank
 Export-Import Bank of Japan
Annex II (Quasi-governmental Agencies covered by the Action Program)
 AI
 Water Resources Development Public Corporation
 New Tokyo International Airport Authority
 Japan Highways Public Corporation
 Environmental Pollution Control Service Corporation
 Japan International Cooperation Agency
 Pension Welfare Service Public Corporation
 Labor Welfare Projects Corporation
 Employment Promotion Project Corporation
 Japan Consumers Information Center
 Japan Information Center of Science and Technology
 Japan Foundation

National tai^man hool Health Center of Japan
 University of the Air Foⁿation
 Japan Paⁱng Assoⁱation
 Japan External ra^e Organization
 New Energy an^d In^dustrial e^hnology Develop^{me}nt Organization
 B T
 Northerⁿ territories Iss^ue Asso^c. T^e
 he Overseas E^{co}no^mi^c Cooperation F^un^d
 Power Rea^ltor an^d N^uclear F^ule Develop^{me}nt Corporation
 Japan Ato^mi Energy Resear^{ch} Instit^{ute}
 Poll^ution-Relate^d Health Da^mage Co^mpensation Assoⁱation
 Japan Regional Develop^{me}nt Corporation
 F^un^d for the Pro^motion an^d Develop^{me}nt of the A^{mami} Islan^ds
 Japanⁿ holarship Foⁿati^on
 Mut^{ual} Ai^d Assoⁱation of Privateⁿ hool Personnel
 o^lial Ins^uran^ce Me^di^cal Fee Pay^{me}nt F^un^d
 Assoⁱation for Welfare of the Mentally & Physi^cally Han^di^cappe
 Japan Agri^clt^ural Lan^d Devpt. Agen^{cy}
 Mut^{ual} Ai^d Assoⁱation of Agri^clt^ure, Forestry an^d Fishery Corporation Personnel
 Japan National Oil Corporation
 Metal Mining Agen^{cy} of Japan
 Coal Mine Da^mage Corporation
 Japanⁿ ma^jor B^usiness Corporation
 Japan Keirin Ra^cing Assoⁱation
 Instit^{ute} of De^velop^{ing} E^{co}no^mi^ces
 Japan Motor y^{le} Ra^cing Organization
 JNRⁿ ettle^{me}nt Corporation
 eito Rapi^d ransit A^uthority
 Postal Life Ins^uran^ce Welfare Corporation
 ma^jor Enterprise Retire^{me}nt Allowan^ce Mut^{ual} Ai^d Assoⁱation
 Japan Instit^{ute} of Labor
 Metropolitan Expressway P^ubli^c Corporation
 Ho^using an^d Urban Develop^{me}nt Corporation
 Mut^{ual} Ai^d F^un^d for Offi^cial Cas^ualties an^d Retire^{me}nt of Vol^unteer Fire^{me}n T^e

Annex II (Of the quasi-governmental Agencies) [These annexes are simply lists of agencies covered by these measures and are omitted from this annex.]

Central
Finance Development Corporation
Teikoku Life Insurance Corporation
Japan Railway Construction Public Corporation
Hanshin Expressway Public Corporation
Honsu-Saikoku Bridge Authority
Research and Development Corporation of Japan
National Space Development Agency of Japan
Livestock Industry Promotion Corporation
Japan Raw Silk and Spinning Price Stabilization Agency
Shoko Chokin Bank
Electric Power Development Co., Ltd.
Kansai International Airport Corporation Limited
Kokusai Denshin Denwa Co., Ltd.
Institute of Physical and Chemical Research
National Education Centre
Japan Arts Council
Japan Society for the Promotion of Science
Japan Private School Promotion Foundation
Social Development Research Institute
Japan Regional Public Racing Association
Farmer's Pension Fund
Japan National Tourist Organization
The Japan Shipbuilding Industry Foundation
Rail Development Fund
Japan Broadcasting Corporation (NHK)
Construction, Sewing Industry and Forestry Retirement Allowance Mutual Aid Association
Japan Workers' Housing Association

ANNEX III COMPLAINT MECHANISMS

1. Overview

In order to provide fair and open competition and to achieve consistency with the provisions of these measures in the process of competition procedures and services, the following complaint process will become effective 30 days after these measures go into effect. ME

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2. Procur vi w Board

2.1 Th Gov fr will maⁱ ai a Procur vi w Board (Board) as a i d p d r vi wi g orga o r vi w co^{mp}lai s by po i al suppli rs o a y asp c o a procur o a co^{mp}u r produc or s rvc subj c o h M easur s. Th Board will hav o subs a ial i r s i h ou co o a co^{mp}u r produc s a d s rvc s procur subj c o i s r vi w.

2.2 Th Board will r c iv co^{mp}lai s i wri i g, co duc i v s i ga io s o h ac s a d ma^k r co da io s wi h r sp c o a y asp c o a procur o a co u r produc or s rvc by a i y.

2.3 Th Board will b co^{mp}ris d o p rso s who hav k owl dg a d xp ri c r la d o public s c or procur s. No mb r o h Board will paricipa i h r vi w or a co^{mp}lai i which ha mb r has a co lic o i r s .

p

3. Procur vi w Proc ss

3.1 A Po i al suppli r ma^y il a co^{mp}lai wi h h Board wh i b li v s h procur has b carri d ou i a ma r i co sis wi h h i or a y provisio o h M easur s. I ma^y also il a co^{mp}lia bas d upo h all ga io ha h co rac was award d o a suppli r ha had sub^{mi} d a bid i viola io o h A i mo opoly Ac . Po i al suppli rs ar courag d o s k r solu io i i ally wi h h i y o a y all g d i co sis cy wi h h s M easur s.

3.2 Ti g o Co^{mp}lai s

(1) A co^{mp}lai ma^y b il d a a y i duri g h procur proc ss bu o la r ha 10 days a r h basis o h co^{mp}lai is k own or raso ably should hav b k own. Th po i al suppli r will sub^{mi} a copy o h co plai o h i y wi hi o day o ili g i wi h h Board.

(2) Th Board ma^y co sid r a co^{mp}lai v hough o i ly il d i i ds ha good caus is shown or ha a co plai rais s issu s sig i ca o h purpos o h M easur s.

3.3 Th Board will r vi w a co lai wi hi s v days o i s ili g¹ a d ma^y i wri i g a d wi h good raso s giv dis^{mi} ss a y co^{mp}lai ou d o b :

(1) o sub d i a i ly ma^r;

(2) o subj c o h s M easur s;

(3) r iv olous or r iv al o i s ac ;

(4) o sub^{mi} d by a po i al suppli r; or

(5) o h r wis i appropria or r vi w by h Board.

3.4 Wh r h Board d r s ha a co^{mp}lai has b il d prop rly i will o i y i wri i g all po i al suppli rs wi hi o worki g day o h co^{mp}lai .

3.5 Susp sio o award or procur proc ss

(1) Wi hi 10 days o h ili g o a pr -award co lai¹ h Board will issu wri r qu s s or susp sio o h procur proc ss p di g r solu io o h co^{mp}lai .

(2) Wi hi 10 days o h ili g o a pos -award co^{mp}lai h Board will r qu s i wri i g susp sio o p r or ma^c o h co rac p di g r solu io o h co^{mp}lai .

(3) Th i y will, as a ma r o pri cipl susp d, h procurf^p proc ss or p r or ma^c o h co rac i dia ly a r i r c iv s h Board r qu s, u l ss h h ad o h i y d r^{mi} s ha urg a d co lli g circu^{ms} a c s do o allow h i y o llow h r qu s, i which cas h will i dia ly i or f h Board o his d r^{mi} a io .

3.6 Investigation

- (1) The Board will conduct an investigation of the complaint, which may include the filing of a request, pleadings and other documents on the complaint and evidence.
- (2) The Board may, on the request of the complainant or on the Board's own initiative hold the respondent in contempt of the complaint.

3.7 Final Report

- (1) Within 25 days after the day on which a copy of the complaint was sent to the complainant, will file with the Board a complete written report on the complaint containing the following:
 - (a) the material included in the complaint and portions hereof relevant to the complaint;
 - (b) all other documents relevant to the complaint;
 - (c) the reasons the Board found, conclusions and recommendations of the complainant and respond fully to all issues of the complaint, and
 - (d) any additional evidence or information that may be necessary in order to resolve the complaint.
- (2) The Board will forthwith receive the report referred to in (1) above, and a copy of the relevant material to the complaint and the complaint in opposition with evidence after receive the relevant material, of file with the Board comment or request the case be decided on the existing record. The Board will forthwith receive the comment, and a copy of the evidence.

3.8 Principle: The complainant and potential supplier who are directly or indirectly affected by the award of, or the failure to award, a contract may present a complaint proceeding.

4. Finding and Recommendation

4.1 The Board will make a report of findings and recommendations within 90 days after the day on which the complaint is filed. In findings in which the Board will affirm or deny the complaint in whole or in part, will specify whether the procurement process or award was consistent with the intent or specific provision of the Measure.

4.2 (1) Where the Board finds that there is a substantial likelihood that a contract was awarded to a supplier who has demonstrated that it contravened the prohibition in the Antimonopoly Act on unjust low-priced sale, will report the case to the request the Federal Trade Commission (FTC) determine whether or not the Antimonopoly Act has been violated and take appropriate measures.

(2) Pending the notification by the FTC of its findings the Board will request the complainant to suspend performance of the contract. With the request, the complainant, as a matter of principle, will suspend performance of the contract. Upon receipt of the FTC's notification the Board will complete a review of the complaint and where the FTC found a violation of the Antimonopoly Act, the Board will recommend that the complainant adopt remedial measures for the future.

4.3 In making findings and recommendations the Board will consider all the circumstances surrounding the procurement process or award including the seriousness of the deficiency in the procurement process, the degree of prejudice to the potential supplier or to the entity and effectiveness of the Measure, the good faith of the complainant and the extent of performance of the contract to which the procurement relates.

4.4 Where the Board finds that the complainant or any provision of the Measure has not been realized may recommend an appropriate remedy, including one or more of the following:

- (1) the new tender pack be issued;
- (2) the new bid for the contract be opened;
- (3) the bid be re-evaluated; or

(4) That the Contract awarded to the supplier,

(5) that the Contract be terminated.

4.5 The Board will send its findings in writing with its recommendations to the complainant, the entity, and a majority of the potential suppliers, within two working days after issuance. The Joint Fact Finding Affairs will respond to external inquiries regarding the findings.

4.6 When the entity desires to follow the Board's recommendations, the entity will send a copy of its decision to the attorney for the Board within two working days after issuance. The Joint Fact Finding Affairs will respond to external inquiries regarding the decision.

4.7 Whenever the Board discovers evidence of misconduct, having a duty to law regulate, such evidence will be referred to law enforcement authorities for appropriate action.

5. Expedient Opti

5.1 When the complainant requests in writing an expedited handling of a complaint, the Board will consider the feasibility of using the procedure set out in this section, referred to hereinafter as the expedient procedure.

5.2 The Board will determine whether to apply the expedient procedure within two working days after receiving a request. The expedient procedure will certify the complainant's allegations as to whether the expedient procedure is to be applied.

5.3 When the expedient procedure is applied, the time limits and procedures will be as follows:

(1) The entity will, within 10 days after the day when it is notified by the Board that the expedient procedure is to be applied, file with the Board a complete report of the complaint as specified in Section 3.7. The Board will, forthwith after receiving the report, send a copy of the evaluation material to the complainant. The Board will give the complainant five days to file with the Board recommendations such material request that the case be decided on the existing record. The Board will, forthwith after receiving the recommendations, send a copy to the entity.

(2) The Board will issue its findings and recommendations to the complainant in writing within 45 days after the day when the complaint is filed.

FOOTNOTE M

¹ In April 16, 2014 exchange of letters, ^{Me} the United States and Japan decided to modify its Section IV of Japan's Procedures for the Procurement of Non-R&D Satellites, Section III of Japan's Procedures for the Procurement of Supercomputers, and Annex III of Japan's Procedures related to Japanese Public Procurement of Supercomputers, and Procurement of Non-R&D satellites, supercomputers, and procurement of products and services subject to these Procedures and procedures, the amount of time given to the Procurement Review Board (Board) to review a complaint in paragraph 3.3 was expanded from "seven days" to "10 working days" of its filing. In addition, for procurement subject to these Procedures and procedures, the amount of time the Board may take to issue a written request for the suspension of the procurement process pending resolution of the complaint in paragraphs 3.5.1 and 3.5(1) respectively was expanded from "10 days" to "12 working days."

TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency.