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apan Public Sector Procurement Of Telecommunications Products And Services Agreement (1994)

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EMBASSY OF APAN

WASHINGTON, D.C.

November 1, 1994

The Honorable

Michael Kantor

United States Trade Representative

Washington, D.C. 20506

Dear Ambassador Kantor:

With regard to the procurement of telecommunications products and services in the apanese public sector market, I am pleased to state the following upon instructions from my Government.

The Government of apan reaffirms the Framework for a New Economic Partnership established by the "oint Statement on the apan-United States Framework for a New Economic Partnership" of the Heads of the Governments of apan and the United States on uly 10, 1993 (hereinafter referred to as the "Framework"). The goals of the Framework are to deal with structural and sectoral issues in order substantially to increase access and sales of competitive foreign goods and services through market-opening and macroeconomic measures; to increase investment; to promote international competitiveness; and to enhance bilateral economic cooperation between the United States and apan.

To accomplish these goals with respect to apanese public sector procurement of telecommunications products and services, the Government of apan has adopted the "Measures on apanese Public Sector Procurement of Telecommunications Products and Services" (hereinafter referred to as the "Measures") and the "Operational Guidelines with Respect to Measures on apanese Public Sector Procurement of Telecommunications Products and Services" (hereinafter referred to as the "Guidelines"), attached as Appendices A and B respectively, with the aim of significantly increasing access and sales of competitive foreign telecommunications products and services in the apanese public sector procurement market.

Assessment of the implementation of the Measures and Guidelines, as well as the evaluation of progress achieved, will be based on the overall consideration of the following qualitative and quantitative criteria. These qualitative and quantitative criteria will be considered as a set, and no one criterion will be determinative of the assessment of the Measures and Guidelines, or the evaluation of progress achieved. These criteria do not constitute numerical targets, but rather are to be used for the purpose of evaluating progress achieved toward the goals of the Framework and the goals of this sector, as set forth above.

1. QUANTITATIVE CRITERIA

Annual evaluation of progress in the value and share of procurements of foreign telecommunications products and services covered by the Measures and Guidelines to achieve, over the medium term, a significant increase in J access and sales of competitive foreign telecommunications products and services, by:

1.1 Annual alu an ar of procur ment of for ign t l communication pro uct an r ic co r by t Mæ ur an Gui lin , aluat by r f r nc to r c nt tr n in t alu ,rat of growt an ar of procur ment of for ign t l communication pro uct an r ic ,an t total alu of procur ment co r by t Mæ ur an Gui lin ;

NO E In t initial y ar of con ultation (b for multipl y ar of ata a b n coll ct) it will b n c ary to con i r r c nt GA ata.

1.2 Annual numb r of ntiti procur ing for ign t l communication pro uct an r ic ,co r by t Mæ ur an Gui lin , in r lation to t total numb r of ntiti procur ing t l communication pro uct an r ic co r by t Mæ ur an Gui lin ;

1.3 Annual numb r an alu of contract awar a a r ult of a cr a in ingl t n ring;

1.4 Annual numb r of t n r ubmitt by all uppli r an for ign uppli r ; an

1.5 R lati comp titi n of for ign t l communication pro uct an r ic .

2. QUALI A IVE CRI ERIA

2.1 Full an non- i criminary acc to procur ment information by for ign uppli r at all tag of t procur ment proc ,a pro i in t Mæ ur an Gui lin ;

2.2 Impro ment in ubcontracting opportuniti for for ign uppli r ;

2.3 Full impl mentation of all r quir ment of t Mæ ur ,Gui lin an l tt r ,in a ition to t o mention abo ;

2.4 Effort by for ign uppli r to utiliz procur ment opportuniti ,inclu ing comment on raft p cification ; an

2.5 Mark t con ition ,inclu ing xc ang rat .

Go rnment of Japan will k p t Mæ ur an Gui lin un r continual r i w. Go rnment of Japan an t Unit Stat will me t in Jun 1995 an annually t r aft r, or at any time upon t r qu t of it r Go rnment, to i cu any matt r r lat to t Mæ ur an Gui lin ,inclu ing a ment of impl mentation of t Mæ ur an Gui lin an aluation of progr ac i toward t goal of t Fram work an t goal of t i ctor, a t fort abo .Suc con ultation will b l until t n of FY2000, at whic point, t two Go rnment will ci wh t r or not to continu t con ultation .

In a ition to t Mæ ur whic alr a y a b n impl ment ,t Gui lin will b impl ment a of No mb r 1, 1994, xc pt for procur ment in whic a Notic of Procur ment or a R qu t for Comment wa publi b for No mb r 1, 1994. A i con i t nt wit t Framework, it i confirme t at t b n fit of t Mæ ur an Gui lin will b on a Mo t-Fa or -Nation ba i .

Go rnment of Japan will coll ct t ata t fort in App n ix C for u in t con ultation crib abo .Dæ n ing on t r ult of t con ultation ,t Go rnment of Japan will, if n c ary, tak appropriat action ,an t Go rnment of t Unit Stat will, if n c ary, furt r ncourag U.S. firms to tak a nttag of opportuniti cr at by t Go rnment of Japan an , if appropriat , will con i r a itional ffort .

Wit r p ct to t i tribution of t l communication pro uct an r ic ,in accor anc wit it policy of promoting fair an fr comp tition to incr a mark t ntry opportuniti ,inclu ing t o of for ign compani , t Go rnment of Japan r affirms it commitment to nforc ffcti ly t Anti-Monopoly Act an r lat Gui lin to a r anticomp titi acti iti ,if any, r lat to t i tribution of goo an r ic ,inclu ing t l communication pro uct an r ic . Go rnment of Japan will ncourag t pri at ctor,inclu ing manufactur r an i tributor of t l communication pro uct an r ic ,to tabli int rnal Anti-Monopoly Act complianc programs. T

The Government of Japan recognizes that adequate budgets for the procurement of telecommunications products and services are necessary to ensure fair and competitive procurement. To this end, my Government will request that, as a matter of policy, make efforts to ensure that adequate public procurement of telecommunications products and services based on prices of similar products and services in similar working environments in the private sector.

I understand that this is the policy of the Government of the United States to provide nondiscriminatory, fair and open opportunities consistent with its obligations under the GATT Agreement of the Government of Japan to the Government of Japan. I also understand that the Government of the United States will consult, at the above-mentioned consultation, with my Government upon requesting such policies, and areas of particular interest in this sector, and will consider the views of the Government of Japan. The Government of Japan welcomes these policies of the Government of the United States, and implements the Measures and Guidelines and the conclusions of his letter.

Sincerely,

Takakazu Kuriyama

Ambassador of Japan

Appendix A: Measures of Japanese Public Sector Procurement of Telecommunications Products and Services

Appendix B: Operational Guidelines with Respect to Measures of Japanese Public Sector Procurement of Telecommunications Products and Services

Appendix C: Data Collection

APPENDIX A

MEASURES ON JAPANESE

PUBLIC SECTOR PROCUREMENT OF

TELECOMMUNICATIONS PRODUCTS AND SERVICES

I. GENERAL POLICIES

1. The purpose of these Measures of Japanese Public Sector Procurement of Telecommunications Products and Services (hereinafter referred to as the "Measures") is to ensure nondiscriminatory, fair, competitive and open public sector procurement procedures. With the aim of achieving this purpose and significantly increasing access to sales of competitive foreign telecommunications products and services in the Japanese public sector procurement, the Government of Japan (hereinafter referred to as the "Government") will implement the Measures set out below.

2. The Government reaffirms its obligations to observe the provisions of the existing Agreement of the Government of Japan to the Government of Japan, which is expected to be concluded on January 1, 1996. Prior to entry into force of the Agreement of the Government of Japan to the Government of Japan, the Measures will be implemented in addition to the requirements of the existing Agreement of the Government of Japan to the Government of Japan, while entering into consistency with it. A further entry into force of the Agreement of the Government of Japan to the Government of Japan, the Measures will be implemented in addition to the requirements of the existing Agreement, while entering into consistency with it. (The existing Agreement and the new Agreement are hereinafter referred to collectively as the "Code".)

3. The Measures will govern procurement of no less than 100,000 SDRs, or the Code threshold, whichever is lower, by the entities specified in Annexes 1 and 2 (hereinafter referred to as the "entities") of all telecommunications products and services set forth in Annex 3 by a voluntary contractual means, such as purchase, lease, rental and hire purchase.

II. NATIONAL TREATMENT AND NON-DISCRIMINATION

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1. With regard to procurement of goods by the Government, the Government will encourage foreign products and services and foreign suppliers of such products and services, treatment not less favorable than it accords to:

- (1) domestic products, services and suppliers;
- (2) products, services and suppliers from any other foreign country.

2. With regard to procurement of goods by the Government, the Government will not:

- (1) treat locally-established suppliers less favorably than non-locally-established suppliers on the basis of race, religion, ethnicity or ownership;
- (2) discriminate against locally-established suppliers on the basis of the products or services offered by the suppliers or the particular procurement of foreign products or services.

III. POLICIES AND PROCEDURES APPLICABLE TO ALL PROCUREMENTS

1. Future Procurement Plans

Entities will invite suppliers to submit comments on the following procurement plans by publishing in the Nepal procurement information and communication products and services (the name of the respective entity, subject matter of the procurement such as its name, volume, plan to purchase the procurement), encourage by the Government solely in the fiscal year possible, and will make the information available for public purchase to the extent possible in the entity, as provided in Section IV(3). In the case of the national procurement of the Roster of Comments submitted in the sub-paragraph 5 below, the entity shall not take the procurement of information submitted in this paragraph.

2. General Requirements

2.1 Where an entity has a requirement for telecommunications products or services, it will undertake procurement planning and conduct market research, and, accordingly, in order to promote competition to the maximum extent possible, and to ensure that the entity meets its needs with the most appropriate telecommunications products or services.

2.2 Information made available to all bidders and to all suppliers will be made available to all; discrimination by the entity may provide a known and to any supplier, if such known would give that supplier an advantage over other suppliers, but prior to the information, where available, to any supplier of procurement, from the formation of the bidder to the bidder in the specific time of the procurement through the issuance of the procurement to the award of the contract. Entities will encourage qualification prior to the information to all foreign and domestic suppliers and provide them with qualification opportunities to participate in procurement activities. The entity may use information that is relevant to the procurement to exclude any supplier.

2.3 Entities will ensure that all suppliers receiving the same opportunities to participate in the technical information, communication, visit, requests, study councils, and any such requests, if established, that discuss the channel, but, specifically, functions relevant to the procurement of telecommunications products and services.

2.4 Qualification of Suppliers

(1) Entities, in the process of qualifying suppliers in the procurement, will not discriminate among foreign suppliers and between domestic and foreign suppliers.

(2); Entities will limit any conditions for participation to those that are essential to ensure the supplier's capability to fulfill the contract in question.

(3) Entities will publish annually in the Nepal the invitation to suppliers to qualify, which will state the objectives and specific qualification requirements for participation in tenders.

(4) In determining whether a supplier is qualified, entities will consider not only the business activities of the supplier.

(5) Entiti rovid o ortuniti to u i r to qua ify at any time, including aft r a Notic of Procur ment ha b n i u d for a articu ar rocur ment. h qua ification obtain d b ff ctiv unti th n xt r guar qua ification. If qua ifi d at a r guar qua ification, th qua ification b ff ctiv for at a t t y ar .

(6) Entiti notify u i r in iting of th r ut of th qua ification. If th ntity do not qua ify a u i r, th ntity notify th u i r of th r a on for th di qua ification and that it i ntit d to r qu t furth r x ànation thin v n d ày of r c i t of th di qua ification notic .

2.5 Entiti not p rd a contract for t communication roduct or rvic to any u i r, or to it affiat , if that u i r ha rovid d r arch or d ign rvic for that rocur ment, and uch invo v ment cou d r ut in an unfair comp titiv advantag , xc t to th xt nt uch rvic ar incud d in th contract for rocur ment r quiring th R qu t for Comment roc dur t out in th Mæ ur .

2.6 Entiti tr at fo o on contract a arat rocur ment ubj ct to th roc dur t out in th Mæ ur . Contract a rd d a th r ut of th x rci of o tion or r n rovi ion in a contract a rd d in accordanc th th roc dur t out in th Mæ ur not b con id r d "fo o on" contract .

2.7 No ntity may:

(1) r ar , d ign or oth r tructur any rocur ment th th int ntion of avoiding th a ication of th Mæ ur or favoring any articu ar u i r; or

(2) divid a rocur ment th th int ntion of r ducing th va u of any r uting contract b o th thr ho d t out in S ction I.

2.8 Entiti :

(1) d t rmi th va u of contract con i t nt th th Cod and th Mæ ur , in d t rmining th r a rocur ment i ubj ct to th Mæ ur .

(2) not ct a va uation method for a ro o d rocur ment th th int ntion of avoiding th a ication of th Mæ ur .

3. nd ring Proc dur

3.1 Entiti u o n t nd ring roc dur , to th maximum xt nt o ib , for th rocur ment of t communication roduct and rvic .

3.2 h Gov rnment n ur that th t nd ring roc dur of it ntiti :

(1) ar a i d in a n n-di criminatory mann r;

(2) do not rovid any u i r th information on a cific rocur ment in a mann r that u d hav th ff ct of dimini hing comp tition; and

(3) ar con i t nt th th rovi ion of th Mæ ur .

4. Limitation on Sing nd ring

4.1 Entiti r duc th ir u of ing t nd ring.

4.2 B cau i comp titiv rocur ment ar th foundation of th Gov rnment' rocur ment oici and ractic , ing t nd ring b u d on y in xc tion a ca , ju tifi d in accordanc th Cod roc dur , and not b u d to favor or xcud dome tic or for ign u i r of t communication roduct or rvic , or to contrav n any rovi ion, int nt or ur o of th Mæ ur .

4.3 Exc t in th ca that no t nd r ar ubmitt d in comp titiv t nd ring or no ucc fu t nd r ar r ubmitt d in th cond t nd ring, or in ca of xtr me urg ncy, ntiti ub i h an announc ment of a ing t nd r rocur ment cov r d by th Mæ ur in th Kan o at a t 40 day b for th contract i a rd d. T h notic contain:

(1) a description of the coupon, including volume to be issued;

(2) the planned coupon date;

(3) the Code just after the single ending; and

(4) the name of an individual, in the case of issuers on the coupon, have begun with his or her

5 Request for Comments

5.1 Request for submission of materials

For coupons in which the issuer is developing a new asset or securities without equating the submission of materials from the issuer, and the coupon awards of which are expected to be greater than 800,000 SDRs, the issuer will make the following a condition of the first year as early as possible before the beginning of the first year, except in the case of urgency or in the case of single ending provided for in the Code:

(1) The issuer will publish a notice in the Kanon of the request for materials and of the necessary information on the basis of the planned coupon, and provide copies of the notice to the issuer on request.

(2) The notice in the Kanon includes the following:

(a) the name and address of the entity;

(b) subject matter of the coupon (its name and volume, basis of the planned coupon);

(c) deadline of the submission of the materials; and

(d) notice of a conference for the planned coupon, if such a conference is held.

(3) The deadline of (c) above will be, except in the case of urgency, at least 30 days after publication of the Request for submission of materials.

(4) Where an entity amends or has additional information on an announced coupon set out in (2) above, it will simultaneously provide the amendment of additional information to all issuers who have responded to the Request for submission of materials. If the amendment of additional information is on an entity's subject matter of the coupon set out in (b) above, the issuer will allow at least 30 days for the issuer's response and respond to the amendment of information.

5.2 Request for Comments on drafts of securities

For (i) coupon securities of modified duration securities or securities developed by duration securities, (ii) coupon securities of all off-the-shelf duration securities with a value greater than 800,000 SDRs, except in cases where off-the-shelf duration securities with a unit value of 500 SDRs or below are being issued in high volume, or (iii) the coupon securities for which the issuer has a knowledge of the need to use the Request for Comments, the issuer will make the following measures a condition to ensure that the issuer has submitted the comments on drafts of securities as required by the issuer. In the case of urgency, however, the issuer may shorten the period of the issuer's submission of securities or, by announcing securities for reasons for the issuer's education in the notice of the Request for Comments in the Kanon. In the case of extreme urgency with which the issuer will not be able to comply with the above education, the issuer may omit all or part of the issuer's education set out below, provided that the issuer announces the reasons for the omission in the Notice of Coupon.

Where the issuer has shed securities for reasons that need to be immediately used to meet requirements of compliance with already existing requirements, the issuer may choose, instead of publishing the Request for Comments, to announce the reasons for the use of securities for reasons in the announcement in the Kanon as provided for in III(1), or, if unable to make a decision, to announce the securities for reasons in the Kanon some time in advance. When, in this case, any issuer's securities, within ten days after the day following the publication provided for in III(1), or the publication of the securities for reasons in the Kanon in advance, to make the Request for Comments to education set out for the issuer's submission of securities, the issuer will make the education

(1) Entiti ubi h th notic of th comp tion of d v o ing draft cification in th Kan o at a t 60 day b for th int nd d dat of th Notic of Procur ment and rompt y nd a co y of th R qu t for Comment to u i r u on r qu t.

(2) Entiti announc th fo o ng in th notic of th comp tion of d v o ing draft cification :

(a) ubj ct matt r of th rocur mnt (it name and vo ume);

(b) th addr from ich th draft cification may b obtain d;

(c) th d ad in for th h ubmi ion of comment ;

(d) th name and addr of th ntity;

() th dat and ocaton of th conf r nc for draft cification if uch conf r nc i to h d; and

(f) invitation to int r t d u i r to x r int r t in ubcontract invo v d in that rocur ment.

(3) Th d ad in for th ubmi ion of comment t out in (c) abov b at a t 30 day aft r th day fo o ng th ubication of th R qu t for Comment for draft cification .

(4) Wh n ntiti r cogniz th n d to improv th ir draft cification i announc d in th notic of th R qu t and amend th ma a r ut of th comment ubmitt d from int r t d u i r th ntiti notify a th dom tic and for ign u i r that hav x r d int r t in th rocur ment. In uch a ca th ntiti a o uffici nt time for th d ad in for th ubmi ion of comment in ord r for u i r to con id r and r ond to th amendment or information rior to ubication of th Notic of Procur ment. i

6. Tchnica S cification

6.1 Any tchnica cification r crib d by an ntity b r a ro riat :

(1) cifi d in t rms of rformanc rath r than d ign or d pcri tiv charact ri tic ; and

(2) ba d on^hWh t rnational tandard r uch xi t and oth r ba d on nationa tchnica r guation or r cogniz d nationa tandard .

6.2 Entiti r ar tchnica cification th th minimum d tai n d d to d fin th rformanc crit ria. Entiti not r quir fatur not ntia to th rformanc crit ria. i

6.3 Entiti fpmu at cification in an impartia mann r. Entiti not r ar ado t or a y any tchnica cification th th int nt of cr ating ob tac to any u i r or ca of u i r including for ign u i r . If th rocur ment r ac or int rconn ct th an xi ting y t m th cification not b d ign d to imp d comp tion.

6.4 Entiti not a o any u i r dir ct y invo v d in th d v o ment of cification in a rocur ment to artici at in th t nd ring roc xc t r : i

(1) th u i r ha rovid d comment in r h on to a R qu t for Comment a rovid d for in S ction III(5) and uch artici ation ud not r ut in an unfair comp titiv advantag for any u i r;

(2) th u i r ha rovid d information or a i tanc to an ntity in r aring or r fining cification and th ntity ha contro d th roc and conduct d it in a fair and impartia mann r and ha rovid d th ame o ortuniti to a u i r to rovid information and a i tanc ; or

(3) th u i r ha rovid d at th r qu t of an ntity roduct cification or data about a roduct it u i and a u i r ar rovid d an qua and impartia o ortuniti to artici at or rovid roduct cification or data.

6.5 Entiti not r crib a tchnica cification that r quir or r f r to a articu ar trad mark or name , at nt d ign or ty cific origin or roduc r or u i r un th r i no oth r uffici nt y r ci or i

intelligible describing the procurement requirements and provided that, in such cases, reads such as "or
equivalent" are included in the tender document.

7. N tice Pr curement

7.1 Entities shall invite all suppliers to participate in the procurement by publishing in the national procurement tender list 50 days, in principle, but in no case less than 40 days, prior to the deadline for the submission of tenders, unless justified by the C de.

7.2 E ch p r t ll, ter publishing the N tice Pr curement in the np, pr mptl make such N tice v il ble r public perus l t c nt ct p int in the entit, s pr vided r in Secti n VI(1).

7.3 The N tice | Pr curement |l include su icient in rmati n r supplier t make n in rmed decisi n s t
ether t p rticip te in the pr curement, nd |l c nt in the |l ng in rmati n:

- (1) subject matter the procurement;
- (2) method evaluation tenders;
- (3) the addresses from which the tender documents may be obtained;
- (4) if pre-tender conference is held, its date and location; and
- (5) the deadline and address for the submission of tenders.

7.4 If, after public notice, the Notice of Procurement, but before the deadline for submission of tenders, the entity amends the Notice, it shall publish the amendment in the newspaper and make the information available for public perusal to the interested parties in the entity, as provided for in Section VI(1).

8. Tender Document title

8.1 Entities will use tender documents to identify their needs to suppliers and to solicit tenders from them. K

8.2 Entities shall prepare the tender document, including evaluation criteria, in the preferred language. The method of evaluation used, in an impartial manner.

shall ensure that equal opportunities are provided to all suppliers on a non-discriminatory basis.

8.3 In preparing tender documents, an entity must accept the provision of assistance from a supplier, which could give that supplier an advantage over other suppliers, rather than in accordance with the procedures set out in the Measures.

8.4 Tender documents to be provided to suppliers. In order to ensure that all suppliers have the opportunity to submit responsive tenders, including information required to be published in the Notice of Procurement, except for the amount and terms payment is sum payable for the tender documents, and the following:

- (1) the address to which tenders should be sent and the names of the responsible person for the procurement;
- (2) the address to which requests for supplementary information should be sent;
- (3) the language in which tenders and their tendering documents must be submitted;
- (4) the closing date and time for receipt of tenders and the length of time during which a tender should be open for acceptance;
- (5) the persons authorized to be present at the opening of tenders and the date, time and place of the opening;
- (6) economic and technical requirements, including guarantees and other information required from suppliers; K

(7) a complete description of the procedures or services to be procured and requirements, including technical specifications, conformity certification and necessary plans, drawings and instructions materials;

(8) a criteria having a bearing on the successful supplier having a bearing on the contract, including evaluation factors and sub-factors, weightings of important evaluation and including any factors having a bearing on the costs of the services to be included in the evaluation, such as transportation, insurance and insurances;

(9) the terms of payment;

(10) if a reference is made, is a, time allocation; and

() any other terms or conditions.

8.5 En i i s w i :

() make the procurement available at the time of publication of the Notice of Procurement;

(2) send the procurement to the supplier's request;

(3) reply to any reasonable request for information relevant to the procurement made by a supplier arising in the tendering process, on the condition that such information does not give the supplier an advantage over its competitors in the award of the contract;

(4) reply to written communications with suppliers, except when it imposes an unnecessary burden on the entity, concerning the preparation of the procurement, including specifications, standards and other tendering terms.

9. Pre-Tender Conference

9.1. At least 30 days prior to the date in the Notice of Procurement for the submission of tenders, the entity shall hold a pre-tender conference with regard to any procurement for which Request for Comments procedure is applicable as set out in Section III(5) and for any other procurement, as necessary. Such conference shall include the opportunity for interested discussions between suppliers and the entity on technical, administrative and any other aspects of the procurement, and for a supplier to obtain information on tendering on an equal basis.

9.2. The entity shall make available a pre-tender conference for the submission or consideration of tenders. 1

10. Evaluation of Tenders

10.1. In evaluating tenders and selecting the successful supplier, the entity shall use a selection procedure signifying:

() maximize competition;

(2) minimize the complexity of the procurement, the evaluation and the selection process; and

(3) ensure impartial and comprehensive evaluation of tenders submitted by suppliers.

10.2. The entity shall evaluate tenders in a transparent manner having regard to the quality of the suppliers submitting tenders. 1

10.3. The entity shall conduct technical evaluations and system performance evaluations, where necessary, under the same conditions for all suppliers in the tendering process and any selection criteria will apply to all suppliers equally.

10.4. The entity shall evaluate tenders as follows: 1

(2) The design will be evaluated pass/fail basis based upon the specific technical and the evaluation criteria stated in the specific terms, and contracts will be awarded to the lowest-priced design proposal that meets the evaluation criteria, unless the architect selects the value engineering method design submitted by the design proposal (1).

(1) E titles will evaluate the debt service, which is determined by the side of the debt service, price of the debt service specified in the debt service. E titles will apply the relative weights set out in the debt service to the evaluation of the price/cost of the debt service. The price/cost of the debt service will be based on the total life cycle cost of the debt service.

[illegible]

(5) E tities will put i writi g p mptl ev lu ti f te de s d the esulti g selecti decisi , cludi g the sc i g f ll f ct s d me f pe s s esp sible f selecti decisi s.

11.1 The e tit will make the wad s s p ctic ble fte c mpleti f the ev lu ti p cess d will publish i f mati the c t ct wad i the K p d p mptl tif ll supplie s th t submitted te de s f its selecti d the wad p ice, d will ls make the i f mati v il ble f public pe us l t c t ct p i ti the e tit , s p vided f i ecti VI(I).

(1) discl se t thi d p t supplie 's t de sec ets, ma uf ctu i g p cess, i tellectu l p pe t the c fide ti l busi ess i f mati p vided b supplie ;

12. Post-Award Contract Modifications

Any modification of scope of work 3 would increase value of work by 100,000 SDRs or more will be subject of procedures set forth in the Measures which were new procurement.

1. Treatment of Subcontractors

When an entity publishes Request for Comments, it will also publish an invitation for suppliers to express in writing their views on the procurement. The entity will provide lists of potential subcontractors having expressed such views to those who request such lists and those who respond to the Request for Comments, with the presumption that the entity is not responsible for the completion of the suppliers' lists, as well as making it available for publication on the point in the entity, as provided for in Section IV().

IV. SUPPORTING MEASURES

1. Improvement of Methods to Provide Procurement Information

Entities will make the maximum possible use of procedures described in 6. of the Procedures for Government Procurement on Products (Operation I Guidelines) to contribute to convenience for domestic and foreign suppliers who have expressed an interest in government procurement of telecommunications products and services.

2. Follow-up of the Measures

To ensure effective implementation of the Measures, the Government will set up a forum for follow-up to examine on a regular basis the following.

2.1 The Government will establish a committee of specialists and standardized manual to develop non-discriminatory and simplified specifications for procurement of telecommunications products and services procured by two or more entities.

2.2 The Government will establish a committee to develop standardized format, consistent with the Measures, to be used by all entities, to ensure practical, order and uniformity of telecommunications products and services.

2. Training

The Government will establish a program to provide training on entity procurement policies regarding the implementation of the Measures.

3. Contact Points

The entity will establish an internal point of contact to provide general information about all procurement of telecommunications products and services and more specifically information about procurement subject of the Measures.

4. Meetings

4.1 The entity will conduct an annual conference for entity procurement policies and domestic and foreign suppliers to discuss information about the entity's major short-term procurement plans and, with budgetary reservations, their longer-term procurement outlook. This may be replaced by the entity's participation in similar conferences established by the Government or their entities.

4.2 The entity conducting procurement on an open basis will publish notice of the open tender in the Knpole 30 days prior to the opening.

5. Procurement-related Groups

Where the Government establishes any committee or similar groups, whether formal or informal, which includes only private sector or both public and private sector participation, primarily related to the publication of procurement of telecommunications products or services, the Government will publish notice in the Knpole 30 in information related to the group's establishment.

V. UNFAIR TENDERS 3

1. Given the policy of the Government to procure telecommunication products and services based on tender, the Government will, under the Anti-Monopoly Act, including the prohibition on unjustly lowered prices, ensure that the procurement of domestic competitive services.

2. Where a tender is submitted, because of its price or other terms, unlawfully impeding its competition, the tender will be deemed void in its entirety and will not constitute a tender in awarding the contract.

3. The tender will be deemed null and void if the submitted tender referred to in paragraph 2 is ineligible to be submitted in the telecommunication products or services procurement; and the tender will announce the name of the bidder publicly.

4. When the tender is an information indicating the existence of a service, it may impede its competition in relation to its procurement, including the formulation of its procurement specification, the tender will provide such information on a timely basis to the Fair Trade Commission or the relevant Commission to take appropriate measures.

5. To this end, the tender will provide the name of its contractor on the Fair Trade Commission of the relevant procedure for the deletion of, and exchange of information concerning, a service that may violate the Anti-Monopoly Act.

VI. COMPLAINT MECHANISMS

The procedure of fair complaint mechanisms, described in Annex 4 of the Action Plan on Reform of the Bidding and Contracting Procedure for Public Work (hereinafter referred to as "Action Plan"), will be applied to provide equitable, timely, and effective complaint procedure for the bidder of telecommunication products and services covered by the Measure, until the new Agreement on Government Procurement enters into force and Japan becomes a party to it. The role of the "construction procurement review board" will be replaced by the "procurement review board". In light of the nature of telecommunication products and services, the following modification will be made. (For ease of reference, Annex 4 of the Action Plan, amended by the following, is cited as Annex 4 of the Measure.)

1. Rule 3, 4-(4) and 6-() of Annex 4 of the Action Plan respectively by 3-1, 3-8, 3-4 and 5- of Annex III of the Measure related to Japan's Public Sector Procurement of Computer Products and Services. "Potential bidder" in Annex 4 of the Action Plan will be replaced by "bidder", where "commencing entry" by "entry".

2. Change the duration for making a report (5-(1) of Annex 4 of the Action Plan) to 90 days.

VII. ENCOURAGEMENT TO PREFECTURAL GOVERNMENTS AND DESIGNATED CITIES

The Government will encourage prefectural governments and Designated Cities to take, in principle, necessary measures similar to the Measure, for their procurement of no less than 100,000 SDR, taking into account local circumstances and the provision of relevant laws and regulations.

The Government will encourage prefectural governments and Designated Cities to consider establishing review mechanisms with respect to their procurement of no less than 100,000 SDR.

VIII. TIME TABLE FOR IMPLEMENTATION

The Measure will be basically introduced on the maximum expenditure for procurement under the initial budget of FY1994, and the year for procurement in accordance with the Measure will be established by the end of FY1994.

IX. REVIEW OF THE IMPLEMENTATION OF THE MEASURES

The Government will hold a review on the expenditure of the Measure to contribute to improvement of non-discriminatory nature, transparency, openness, competitiveness and fairness of procurement of telecommunication products and services covered by the Measure and, in addition, conduct specific studies in implementing the Measure. The review will be held annually, and necessarily, under the Committee for Deregulation and Promoting the Action Program. Administration relating to the review will be governed by the 2

Cabinet C n i s' Offi e n Exte na Affai s. At the eview, impementati n and ti izati n b s ppie s f the Meas es wi be examined by sin statisti s and the e evant inf mati n. This wi in de the pp t nity f istenin t pini ns f d mesti and f ei n mpanies and b siness ass iati ns.

X. DEFINITIONS

F p p ses f the Meas es:

"Days" mean a enda days, ex ept in the ase f Annex 3, whe e efe en es t days means wo kin days;

"L a y-estab ished s pp ie " means a s pp ie that is estab ished in Japan, with t e a d t the s e f its apita ;

"S pp ie " means a pe s n that has p vided d p vide p d ts se vi es in esp nse t a N ti e f P e ment;

"Affi iates" mean (a) mpanies whi h a s pp ie wh has p vided esea h desi n se vi es nt s a e nt ed by, (b) the mpanies whi h a e nt ed by a mpany nt in a s pp ie wh has p vided esea h desi n se vi es, whe e nt means wne ship in ex ess f 50% f the iss ed st k if the affi iate is a st k p ati n, and wne ship in ex ess f 50% f the apita if the affi iate is a imited mpany;

"Modified p d ts se vi es" means te e mmuni ati ns p d ts se vi es that exist in the inte nati na ma ketp a e at the time the Req est f C mments is p b ished in the Kanp b t eq i e modifi ati n t meet the e itimate eq i ements f the entity f the p e ment that si nifi ant y a te thei f n ti n essentia physi a ha a te isti ;

"Off-the-she f-p d ts se vi es" means te e mmuni ati ns p d ts se vi es that exist in the inte nati na ma ketp a e at the time the Req est f C mments the N ti e f P e ment is p b ished in the Kanp ; and

"Spe ia y deve ped p d ts se vi es" means te e mmuni ati ns p d ts se vi es that d n t exist in a f m that meets the pe f man e eq i ements in the inte nati na ma ketp a e and must be deve ped espe ia y t meet the e itimate eq i ements f the entity f the p e ment.

ANNEX 1

CENTRAL GOVERNMENT ENTITIES g

Ho se f Rep esentatives

Ho se f C n i s

S p eme C t

B a d f A dit

Cabinet

Nati na Pe s nne A th ity

P ime Ministe 's Offi e

Fai Tade C mmissi n

Nati na P b i Safety C mmissi n

(Nati na P i e A en y)

Envi nmenta Disp tes C - dinati n C mmissi n

Impe ia Ho seh d A en y

Mana ement and C - dinati n A en y g

Hokkaido De o nt Ag ncy

Def ns Ag ncy

Econo^{mi}c Panning Ag ncy

Sci nc and T chno ogy Ag ncy

En iron nt Ag ncy

Okinawa De o nt Ag ncy

Mi
Nationa Land Ag ncy

Mi
nistry of Justic

Mi
nistry of For ign Affairs

Mi
nistry of Financ

Mi
nistry of Education

Mi
nistry of H æ th and We far

Mi
nistry of Agricu tur , For stry and Fish ri s

Mi
nistry of Int rnationa Trad and Industry

Mi
nistry of Trans ort

Mi
nistry of Posts and T co nications

Mi
nistry of LabourM

nistry of Construction
mu

nistry of Ho Affairs
ME

ANNEX 2

OTHER ENTITIES COVERED BY THE ASURES

Wat r R sourc s De o nt Pub ic Cor oration

N w Tokyo Int rnationa Air ort Authority

Ja an Highway Pub ic Cor oration

Ja an En iron nt Cor oration

Ja an Int rnationa Coor ration Ag ncy

Socia We far and dica S r ic s Cor oration

P nsion We far S r ic Pub ic Cor oration

Labour We far Cor oration

E oy nt Pro^{mo}tion Cor oration

Hokkaido and Tohoku De o nt Financ Pub ic Cor oration

Okinawa De o nt Financ Cor oration

P o 's Financ Cor oration

En iron nta Sanitation Busin ss Financing Cor oration M

Agriculture Industry and Fisheries Finance Corporation
Japan Finance Corporation for Small Business
Small Business Credit Insurance Corporation
Housing Loan Corporation
Japan Finance Corporation for Municipal Enterprises
Japan Development Bank
Export-Import Bank of Japan
Japan Tobacco Inc.
Hokkaido Japan Railway Company
East Japan Railway Company
Central Japan Railway Company
West Japan Railway Company
Shikoku Japan Railway Company
Kyushu Japan Railway Company
Japan Freight Railway Company
Japan Consumer Information Center
Japan Information Center for Science and Technology
Japan Foundation
University of the Air Foundation
National Stadium and School Health Center of Japan
Japan Racing Association
Japan External Trade Organization
New Energy and Industrial Technology Development Organization
Northern Territory Issues Association
The Overseas Economic Cooperation Fund
Power Reactor and Nuclear Fuel Development Corporation
Japan Atomic Energy Research Institute
Pollution-Related Health Management Compensation Association
Japan Regional Development Corporation
United for the Promotion and Development of the Amami Islands
The Japan Scholarship Foundation
Mutual Aid Association of Private Schools in Japan
Social Insurance Medical Payment Fund
Association for the Welfare of the Mentally & Physically Handicapped

Japan Agricultural Land Development Agency
Municipal Association of Agriculture, Forestry and Fisheries Corporation Personnel
Japan National Oil Corporation
Metallurgical Agency of Japan
Coastal Mining Areas Development Agency
Japan Small Business Corporation
Japan Kernelling Association
Institute of Developing Economies
Japan Monetary Planning Organization
JN Seimen Corporation
Teoapd Trans-Ahor y
Postal Life Insurance Welfare Corporation
Small Enterprise Remedial Allowance Municipal Association
Japan Institute of Labor
Meiropoan Expressway Public Corporation
Housing and Urban Development Corporation
Municipal Fund for Off-Casualties and Remedial Volunteer Remedial
Forestry Development Corporation
The Marine Credit Corporation
Japan Railway Construction Public Corporation
Hanshin Expressway Public Corporation
Honshu-Shikoku Bridge Authority
Research and Development Corporation of Japan
Livesock Industry Promotion Corporation
Japan Law Sake and Sugar Price Stabilization Agency
Institute of Physical and Chemical Research
National Education Center
Japan Arts Council
Japan Society for the Promotion of Science
Japan Private School Promotion Foundation
Social Development Research Institute
National Association of Fishing
Farmer's Pension Fund
Japan National Teachers Organization R

Rail Development Fund

Crosscutting, the Sake Brewing Industry and Freshry Retail Alliances Mutual Aid Association

X 3

NINE COMMUNICATIONS PRODUCTS AND SERVICES COVERED BY THE MEASURES

I. Telecommunications Products

The Measures, "electronic products" means wireless equipment and electronic cable.

This includes, for example, the following:

1. Terminals, mobile telephones, facsimile machines

2. Switching Equipment, radio exchange equipment, access switches

3. Transmissions Equipment, multiplexers, demultiplexers, DSU

4. Wireless Equipment, base station equipment, radio transmitter/receiver/amplifier equipment, antennas, digital radio, wireless terminals including pager

5. Telecommunications Cable, optical fiber cable, coaxial cable

II. Telecommunications Services

The Measures, "electronic services" means the following.

1. Relating to the products of the I. above,

(1) Operation and maintenance services

(2) Systems integration

(3) Custom software development

(4) Network management and administration

(5) Consulting, management, and other analytical services and studies

2. Other services

(1) Electronic mail

(2) Voice mail

(3) On-line information and database retrieval

(4) Electronic data interchange (EDI)

(5) Enhanced facsimile services

(6) Computer conversion **A**

(7) On-line information and/ or data processing (including transaction processing)

* 2.(1)-(7) shall according to Annex 4, then the Agreement on Environment Protection submitted by the Government of Japan.

ANNEX 4

Protection Review Board

1. Board

(1) The Board will have substantial independent members to protect the public interest.

(2) The Board will receive complaints in writing, conduct investigations, take actions and make recommendations to the competent authority on any aspect of the public interest.

(3) The Board will be composed of persons who have knowledge and experience in related public sector protection. No member of the Board will participate in the review of a complaint in which that member has a conflict of interest.

(4) Whenever necessary, the Board may have professional experts who have depth knowledge and experience in related public sector protection submitted to the review. No such professional experts should have substantial independent members to protect the public interest.

2. Eligibility Complaint

A supplier may file a complaint with the Board when the relevant public sector protection has been caused in a manner inconsistent with the intention of any provision of the Measures. It may also file a complaint based upon the allegation that the contract was awarded to a supplier that had submitted a bid in violation of the Antimonopoly Act. Supplier's negligence does not conflict with the intention of any alleged inconsistency with the Measures.

3. Participants

The intention and supplier's conduct concerning the contract would be decided by the award, the allocation award, a contract act may participate in a complaint proceeding.

4. Protection Review Process

(1) A supplier, that the relevant public sector protection caused by the Measures has been caused in a manner inconsistent with the intention of any provision of the Measures, may file a complaint in writing with the Board, at any time during the public sector protection process, but not later than 10 days after the basis of the complaint is known or should have been known. The supplier will submit a copy of the complaint to the competent authority within 1 working day following with the Board. (Days will be considered calendar days unless otherwise specified.)

(2) The Board may receive and consider a complaint which is submitted immediately, it finds that the cause is shown.

(3) The Board will review a complaint within 7 days following, and may, in writing and with reasons given, dismiss any complaint under the following:

(a) not submitted in a timely manner;

(b) not subject to the Measures;

(c) violation of the law;

(d) not submitted by a supplier;

() the withdrawal of the complaint by the Board.

(4) When the Board determines that a complaint has been filed properly, it will notify in writing all suppliers within 1 working day of the complaint. G

(4) Wh r th B and ds that th t t r a y pr vs , th M e a s u r s has t b ll w e d t w i l
r c m m e d a a p p r p r a t r m e d y c l u d g r m o r th ll w i g :

- (a) that a new tenement document be issued ;
- (b) that the fees for the rent be set;
- (c) that the fees be re-evaluated ;
- (d) that the rent be a fair and reasonable supply ;
- (e) that the rent be terminated .

(5) The Board shall send its findings in writing to its members and to the complainant, the entity and any of the participants, within a reasonable time after issuance.

(6) The entity shall, in principle, answer its decision, usually within the findings of the Board on any complaint brought promptly before the Board. The entity must report to the Board within 60 days of receipt of the Board's recommendations, if it has decided not to comply with the recommendations with the reasons for its decision.

(7) The Board shall respond to external inquiries concerning its findings.

6. Express Option

(1) Where the complainant the entity requests in writing an expert's handling of a complaint, the Board shall consider the feasibility of using the procedure set out in this section, effective as the "express option."

(2) The Board shall determine whether to apply the express option within a reasonable time after receiving a request from the complainant and entities as to whether the express option is to be applied.

(3) Where the express option is applied, the time limits and procedures shall be as set forth in this Paragraph.

(a) The entity shall, within six days after the day on which it is notified by the Board that the express option is to be applied, file with the Board a written report on the complaint, as specified in paragraph 4.(7) above. The Board shall, forthwith after receiving the report, send a copy of the relevant material to the complainant and any of the participants. The Board shall give the complainant and any of the participants 5 days to file with the Board comments on such material request that the case be decided on the existing evidence. The Board shall, forthwith after receiving the comments, send a copy to the entity.

(b) The Board shall issue its findings and recommendations on the complaint in writing within 25 days after the day on which the complaint is filed.

7. Document Retention

To contribute to the above purposes, each entity shall maintain complete documentation relating to all procedures not less than the threshold set forth in I.2. of the Measures, for five years from the date of the rent determination, to allow verification that the procedure process is carried out in accordance with the Measures.

APPENDIX

Telecommunications Procedure

[The following has not been included in this electronic version. It is available in hard copy.]

APPENDIX 2

List of Central Contract Provisions set forth in Section IV of the Measures

[The contract list has not been included in this electronic version. It is available in hard copy.]

APPENDIX B

[TELECOMMUNICATIONS] 1

Go OPERATION I INES WITH RESPECT TO MEAS RES ON JAPANESE P B IC SECTOR PROC REMENT OF
TE ECOMMUNICATIONS PRO D CTS AN SERVICES Gu Dr

The vernment of J p n h s decided to issue nd implement these Oper tion I idelines to supplement nd
cl rify the Me sures on J p nese Public Sector Procurement of Telecommunic tions Products nd Services
(herein fter referred to s "the Me sures") which were decided by the Committee for wing p nd Promoting a
the Action Progr m on 28th M rch, 1994, s follows. In c rrying out the Me sures, the idelines will be fully
implemented nd respected.

1. SECTION III.1: F T RE PROC REMENT P ANS

When n entity publishes in the K npo procurement inform tion on telecommunic tions products nd services a
covered by the Me sures s set forth in Section III. 1, the entity will invite suppliers to submit m teri ls,
comments nd other necess ry information on the procurement. Entities will give full consider tion to ny
information submitted by suppliers.

2. SECTION III.5: REQ UEST FOR COMMENTS

(1) In the c se of Request for Submission of M teri ls set forth in Section III.5.1,, suppliers c n submit materi ls a
nd commenRs on the entity's ctu l needs with reg rd to the procurement for which Request for Submission of
M teri ls h s been issued.

(2) With respect to Section III. 5.1, ll procurements in which the contr ct w rd is expected to be gre ter th n
800,000 S S re deemed to be those in which entities f ce difficulties in developg ppropri te specific tions
without requesting the submission of materi ls from suppliers. This may not be the c se, where the est blished
specific tions re repe tedly used to meet requirements of comp tibility with lre dy existing equipment.

(3) For procurements in which the contr ct w rd is expected to be 800,000 S s or below, entities may use the
Request for Submission of M teri ls procedures when they determine th t they f ce difficulties in developing
ppropri te specific tions without requesting the submission of m teri ls from suppliers.

(4) The phr se in Section III. 5.2 of the Me sures, which st tes entities will t ke the following me sures in order
to ensure th t interested suppliers submit their comments on dr ft specific tions prep red by the entities" is not
intended to limit comments submitted to those on dr ft specific tions. Suppliers c n submit materi ls nd
comments on, in ddition to dr ft specific tions, other technic l information or ny other spect of the
procurement, including the supplier's view on the estimated cost of the procurement.

3. SECTION III.6.1 : TECHNICA SPECIFICATION

In implementing Section III. 6.1(2), in theDcEse where intern tion l st nd rds do not exist, the entity will give full
consider tion to using de f cto intern tion l st nd rds, in ddition to using n tion l technic l regul tions nd
recognized n tion l st nd rds s the b sis of technic l specific tions. DR

4. Section III.10.4 : EVA TION OF TEN RS

(1) Subp r gr ph (iii)of III.10.4(l) me ns th t entities will use the over ll gre test v lue methodology for off-the-
shelf products or services with v lue gre ter th n 800, 000 S s for which the s me specific tions re
repe tedly used.

(2) The ev lu tion method descibed in Section III.10. 4 (2) will be used for ll procurements other th n those
specified in p r gr ph 10.4(1), unless the entity chooses to use the over ll gre test v lue methodology described
in Section III.10.4 (1).

5. THRESHO FOR OVERA EATEST VA E EVA TION AN REQ UEST FOR COMME DME

With respect to the threshold th t pplies to over ll gre test v lue ev lu tion nd Request for Comments, s set
out in Sections III.5.1, III.5.2 nd III.10.4 of the Me sures nd p r gr phs 2(2), 2(3) nd 4(l) of these
idelines, the vernment will lower the threshold from 800,000 S s to 600,000 S s on April 1, 1996, to
400, 000 S s on April 1, 1997 nd to 385,000 S s on April 1, 1998. a

6. SECTION III. TREATMENT SUBTRACTS

In addition to the measures described in Section III. , when an entity publishes in the Kanpo request procurement information of telecommunications products and services as set forth in Section III. of the measures, the entity will invite suppliers to express interest in sub-contractors involved in those procurements. Each entity will compile lists of potential subcontractors which have responded to the invitations issued in accordance with Section III. of the Measures and this paragraph of these Guidelines, and will attach these lists to tender documentation distributed to suppliers, with the presumption that the entity is not responsible for the competency of the suppliers listed.

7. SECTION IV. 2. SUPPORTING MEASURES

The committee set forth in Section IV. 2. has the objective of developing a standardized manual for non-discriminatory and simplified specifications, and will seek to identify appropriate fields for developing uniform specifications.

8. SECTION IV.4 MEETING

Entities which procured in the previous fiscal year a total of five million SDRs or more of telecommunications products and services covered by the Measures will hold their own meetings.

9. Annex TELECOMMUNICATIONS PRODUCTS AND SERVICES COVERED BY THE MEASURES

(I) Products covered by the Measures "Telecommunications products" as described in Annex to the Measures means all types of terminals, switching equipment transmission equipment, wireless equipment and telecommunications cable.

Under the Measures, no specific telecommunications products are excluded.

(2) Services covered by the Measures new enhanced or value-added services that emerge in the future will be included in the services covered by the Measures. Enhanced or value-added services are defined as services offered over Type I carrier transmission facilities, which employ such computer processing applications as described below :

(i) that convert the content, code, protocol or similar

aspects of the subscriber's transmitted information (conversions performed solely for the benefit of the network shall not be included within the scope of this definition);

(ii) that provide the subscriber with additional, different or restructured information; and

(iii) that involve subscriber interaction with stored information (a service involving the storage and automatic delivery of information to the recipient will be allowed whenever the service includes one of the processing applications described in subparagraphs. (i) or (ii) of this Paragraph, or whenever the storage and delivery function provides a service of value to the sender or recipient).

APPENDIX C

DATA COLLECTION

(TELECOMMUNICATIONS)

The Government of Japan will report the following information, and data annually, beginning with Calendar Year 1994, for procurements subject to the Measures

. The total number and value of contracts awarded by all covered entities and by each such entity

() for the major types of products and services classified by product categories I through 5 in I. of Annex to the Measures and service categories (services relating to the products of the I. above") and 2("other services") in II. of the above-mentioned Annex ; c

(2) in the total products; and

(3) in the joint total services;

2. The total number and value of contracts was added on inputs and services by all covered entities and by such entity:

(1) of the major types of products and services classified by product category is 1 through 5 in I. of Annex 3 to the Measures and services category is 1 (services "related to the products of the I. box") and 2 ("other services") in II. of the box - mention of Annex 3;

(2) in the total products; and

(3) in the joint total services;

3. The number and percentage of contracts that were single and multiple contracts, the value of such contracts, and the number and value of those contracts was added on inputs and services.

4. The total number and value of contracts was added by all covered entities and by such entity: joint

(1) in the cases that only the national domestic products of services were submitted;

(2) in the cases that only the national domestic products of services were submitted; and

(3) in the cases that both the national domestic and on inputs of services were submitted, broken down by contracts was added on domestic products of services and those was added on inputs of services.

NOTE

The box - included by such entity covered by the Measures will most likely fluctuate by year.

THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

Washington, D.C. 20506

November 1, 1994

His Excellency Takuzo Kuwayama

2520 Massachusetts Avenue, N.W.

Washington, D.C.

Dear Ambassador Kuwayama:

I am pleased to convey to you the following information concerning the communications products and services in the Japanese public sector and the "Measures on Japanese Public Sector Procurement of Telecommunications Products and Services" (hereinafter referred to as the "Measures") and "Options for Guidelines with Respect to Measures on Japanese Public Sector Procurement of Telecommunications Products and Services" (hereinafter referred to as the "Guidelines") that have been developed.

The Government of the United States is pleased to announce the new Economic Partnership Agreement established by the "Joint Statement on the Japanese-United States Framework for a New Economic Partnership" of the Heads of the Governments of Japan and the United States on July 10, 1993 (hereinafter referred to as the "Framework"). The role of the Framework is to deal with structural and sectoral issues in order substantially to increase access and to promote competition in goods and services through market-opening and macroeconomic measures; to increase investment; to promote international competition; and to enhance bilateral economic cooperation between the United States and Japan.

I am please lea ha , acc mplish hese g als wi h espec Japa ese public sec p cu eme f
elec mmu ica i s p uc s a se vices, y u Gove me has a p e he Measu es a Gui eli es wi h he
aim f sig ifica ly i c easi g access a sales f c mpe i ive f eig elec mmu ica i s p uc s a se vices
i he Japa ese public sec p cu eme ma ke .

I welc me y u Gove me 's ecisi impleme he Measu es a Gui eli es a willi g ess keep he
Measu es a Gui eli es u e c i ual ewiew. I woul like c fi m ha he Gove me s f Japa a he
U i e a es will mee i Ju e 1995 a a ually he eaf e , a a y ime up he eques f ei he
GoveS me , iscuss a y ma e s ela e he Measu es a Gui eli es, i clu i g assessme f
impleme a i f he Measu es a Gui eli es a evalua i f p g ess achieve wa he g als f he
F amew o k a he g als f his sec , as se f h ab ve. I woul like c fi m ha such c sul a i s will be
hel u il he e f FY2000, a which p i , he woGove me s will eci e whe he c i ue hese
c sul a i s. Depe i g he esul s f he c sul a i s esc ibe ab ve, he Gove me f he U i e
a es will, if ecessa y, fu he e c u age U . f i ms ake a va age f pp u i ies cea e by he
GoveS me f Japa a , if app p ia e, c si e a i i al eff s.

Assessme f he impleme a i f he Measu es a Gui eli es, as well as he evalua i f p g ess
achieve , will be base he ve all c si e a i f he f ll wi g quali a ive a qua i a ive c i e ia. These
quali a ive a qua i a ive c i e ia will be c si e e as a se , a eci e i will be e e mi a ive f he
assessme f he Measu es a Gui eli es, he evalua i f p g ess achieve . These c i e ia
c s i u e ume ical a ge s, bu a he a e be use f he pu p se f evalua i g p g ess achieve wa
he g als f he F amew o k a he g als f his sec , as se f h ab ve.

QUANTITATIVE CRITERIA

A ual evalua i f p g ess i he value a sha e f p cu eme ff eig elec mmu ica i s p uc s a
se vices c ve e by he Measu es a Gui eli es achieve, ve he me ium e m, a sig ifica i c ease i
access a sales f c mpe i ive f eig elec mmu ica i s p uc s a se vices, by:

A ual value a sha e f p cu eme s ff eig elec mmu ica i s p uc s a se vices c ve e by he
Measu es a Gui eli es, evalua e by efe e ce ece e s i value, a e f g wth a sha e f
p cu eme s ff eig elec mmu ica i s p uc s a se vices, a he al value f p cu eme s c ve e
by he Measu es a Gui eli es;

NOTE I he i i ial yea s f c sul a i s (bef e mul iple yea s f a a have bee c llec e) i will be ecessa y
c si e ece GATT a a.

A ual umbe f e i ies p cu i g f eig elec mmu ica i s p uc s a se vices c ve e by he Measu es
a Gui eli es, i ela i he al umbe f e i ies p cu i g elec mmu ica i s p uc s a se vices
c ve e by he Measu es a Gui eli es;

A ual umbe a value f c acs awa e as a esul f a ec ease i si gle e e i g;

A ual umbe f e e s submi e by all supplie s a f eig supplie s; a

Rela ive c mpe i ive ess ff eig elec mmu ica i s p uc s a se vices.

QUALITATIVE CRITERIA

2.1 Full a - isc imi a y access p cu eme i f ma i by f eig supplie s a all s ages f he
p cu eme p cess, as p vi e i he Measu es a Gui eli es;

2.2 Imp veme i subc ac i g pp u i ies f f eig supplie s;

2.3 Full impleme a i f all equi eme s f he Measu es, Gui eli es a le e s, i a i i h se
me i e ab ve;

2.4 Eff s by f eig supplie s u ilize p cu eme pp u i ies, i clu i g c mme s af specifica i s;
a S

2.5 Mark dii s, i ludi g x ha g ra s.

I addi i h Mēasur s whi h alr ady hav b impl me d, h Guid li s will b impl me d as f v mb r 1, 1994, x p f r pr ur me si whi ha i f Pr ur me ra R qu s f r C mme s was publish d b f r v mb r 1, 1994.

I als wēl me y ur Gō r me 's r affirma i wi h r sp distribu i N f l mmu i a i spr du s a d s rvi s, a dh p ha h mai a f h Gō r me f Japa 's p li y f pr moi g fair a d fr mp i i will fur h r i r as mark ry pp rui i s, i ludi g h s f f r ig mpa i s. I als wēl me y ur Gō r me 's d isi urag h priva l mmu i a i spr du s a d s rvi s, s ablish i r al A i-Mo p ly A mpla pr grams.

I wēl me y ur Gō r me 's i r qu s a d, as a ma r f p li y, mak maximum ff r si h fu ur bai suffi i fu ds abl h publi pr ur me f l mmu i a i spr du s a d s rvi s bas d pri s f r similar pr du s a d s rvi si similar wōrki g vir me si h priva s r.

I am f h vi w ha h Mēasur s a d Guid li s r pr s subs a ial pr gr ss ward r s lvi g pr bl ms r la d pr ur me s by h Gō r me f Japa f l mmu i a i spr du s a d s rvi s a dar a maj ra hi v me f h Framework. I xp ha h impl me a i f h Mēasur s a d Guid li s will giv f r ig l mmu i a i s suppli r s a d s rvi pr vid rs full a ss h publi s r pr ur me mark i Japa . We will i u moi r his si ua i a d, mbi d wi h ff r s by U.S. firms, l k f r ward i r as da s s a d sal s f mp i i v l mmu i a i spr du s a d s rvi s by U.S. a d h r f r ig firms u d r h Mēasur s a d Guid li s.

We ha i r sp s h l gi al a d mark d v l pme s, h publi s r i Japa will b mod r izi g i s l mmu i a i s sys ms. I ligh f h s d v l pme s, l b li v ha h Mēasur s a d Guid li s will pr vid sig ifi a addi i al mark a ss f r f r ig suppli rs f l mmu i a i spr du s a d s rvi s.

Th Gō r me f h U i d Sa s will urag U.S. firms ak adva ag f pp rui i s r a d by h Gō r me f Japa . Th Gō r me f h U i d Sa s r firms ha i is h p li y f h Gō r me f h U i d Sa s pr vid -dis rimi a ry, ra spar , fair a d p pp rui i s sis wi h is bliga i su d r h GATT Agr me Gō r me Pr ur me a d, af r ry i f r f r h U i d Sa s, h w Agr me Gō r me Pr ur me . My Gō r me will sul wi h y ur Gō r me up r qu s r i g su h p li i s, a dar as f pari ulari r s . We ar als pr par d pr vid h Gō r me f Japa wi h ssary i f rma i as r qu s d r i g ur pr ur me s.

Si r ly,

[Sig a ur]

Mi ha l Ka r

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