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apan Public Works Agreement (1994)

EMBASSY OF APAN

WASHINGTON, D.C.

anuary 19, 1994

Dear Secretary Brown:

I am pleased to convey the following to you, with regard to the "Action plan on Reform of the Bidding and Contracting Procedures for Public Works" (hereinafter referred to as the "Action Plan"), adopted on anuary 18, 1994, and of which the Government of apañ has informed the Government of the United States in my letter addressed to you on the same date.

The Government of apañ intends to implement the Action Plan according to the time schedule set out in the Action Plan.

The Government of apañ intends to keep the Action Plan under review, and in this regard, to hold annual meetings with the Government of the United States to assess implementation and utilization of the Action Plan. The Government of apañ is prepared to hold the first annual meeting with the Government of the United States in the first quarter of FY1995. The annual meetings will deal with, among other things, an evaluation of the relevant information and data, described in the Appendix attached to this letter.

The Government of apañ is also prepared to consult at any time, an the request of the Government of the United States, with the Government of the United States to resolve issues with regard to the implementation and utilization of the Action Plan. Annual meetings and consultative meetings held upon request by either Government will be held until the end of FY1999, at which point, the two governments will decide whether it is necessary to continue these meetings. To make a useful reference for effective implementation of the Action Plan, the Government of apañ may wish to discuss matters concerning the procurement procedures of the United States, public works -market on the occasion of these meetings.

The relationship between the Major Projects Arrangements (hereinafter referred to as the "MPA") and the Action Plan is described in the Action Plan. The MPA will be terminated when the projects covered by the MPA are completed. Review of the MPA will take place at the same time as the annual meeting on the Action Plan.

The Government of apañ hopes that the third sector entities apply transparent, objective, competitive and non-discriminatory procurement procedures in their construction projects.

The Government of apañ reaffirms its SII commitment on Advisory Committees (Shingi-kai) and Study Groups (Kenkyu-kai) with regard to the construction-related sector.

The Government of apañ reaffirms its Basic Policies for import Expansion announced in the Trade Conference on October 7, 1993, and confirms its applicability to the construction-related sector.

I consider that the contents of the Action Plan are satisfactory from an international perspective, and also in light of the bidding and contracting procedures for public works procurement by the Government of the United States.

Sincerely yours,

Takakazu Kuriyama J

Ambassador of Japan

Appendix: Relevant Information & Data

The Honorable

Richard E. Brown

United States Department of Commerce

Herbert C. Hoover Building, 14th & Constitution Avenue, N.W.

Washington, D.C. 20230

APPENDIX : RELEVANT INFORMATION & DATA

1. Construction Contracts

(a) The total annual value and number of construction contracts awarded or procurements covered by the Action Plan.

(b) The total annual value and number of single bidder construction contracts awarded or procurements covered by the Action Plan; and those in which foreign companies are the single bidders, or participants in a cooperative relationship with the single bidder, including as subcontractors.

(c) The total annual value and number of construction contracts awarded to joint ventures or procurements covered by the Action Plan, and those in which foreign companies are members.

2. Design and Consulting Contracts

(a) The total annual value and number of design and consulting contracts awarded or procurements covered by the Action Plan. U

(b) The total annual value and number of single bidder design and consulting contracts awarded or procurements covered by the Action Plan; and those in which foreign companies are the single bidders, or participants in a cooperative relationship with the single bidder, including as subcontractors.

(c) The total annual value and number of design and consulting contracts awarded to joint ventures or procurements covered by the Action Plan, and those in which foreign companies are members.

3. Commissioning entities' evaluation with regard to the efforts made by foreign companies in making use of opportunities provided through the implementation of the Action Plan, including use of contacts and other efforts.

4. The number of registrations made by foreign companies.

5. The number of bids or proposals submitted by foreign companies in the procurements covered by the Action Plan.

6. The total annual value of construction-related foreign goods procured by general contractors which have voluntarily established contacts.

EMBASSY OF JAPAN

WASHINGTON, D.C.

January 18, 1994

Dear Secretary Brown:

I have the honor to inform you that the Government of Japan has adopted a "Action Plan on Reform of the Bidding and Contracting Procedures for Public Works," as attached hereto, on January 18, 1994. U

The Governor of Maryland will voluntarily implement the Actio Pla, with the aim of reforming bidding and contracting procedures for public works in Maryland, to enhance transparency, objectivity and competition, as well as to strengthen the application of the principle of non-discrimination.

Sincerely yours,

Takakazu Kuriyama

Ambassador of Maryland

Appendix: "Actio Pla of Reform of the Bidding and Contracting Procedures for Public Works"

The Honorable

Ronald H. Brown

United States Department of Commerce

Herbert C. Hoover Building, 14th & Constitution Avenue, N.W.

Washington, D.C. 20230

Actio Pla of Reform of the Bidding and Contracting

Procedures for Public Works

(Background and Objectives of the Actio Pla)

Given the responsibility of bidding and execution of public works in Maryland, it is a major emergency to recover people's confidence in the execution of public construction and public works selection. Recognizing the increasing interest of foreign companies in the United States and the increasing competition for Maryland's market, the Governor of Maryland views it as important to make its bidding and contracting procedures more transparent and objective with a fair and impartial view to make it more accurate. Based on his recognition, on the 26th of October 1993, the Governor of Maryland issued the "Outline of Actio Pla of Reform of the Bidding and Contracting Procedures for Public Works" as well as its decision to formulate the "Actio Pla of Reform of the Bidding and Contracting Procedures for Public Works" (hereinafter referred to as the "Actio Pla"), which began in 1994.

During the past months, the Central Council of Construction Companies (CCCCB) acknowledged the issue of discrimination in the bidding and contracting system of Maryland, and produced its recommendations, "Recommendations of the Reform of the Bidding and Contracting System for Public Works", on the 21st of December 1993.

In the interim, the Maryland State Council is conducting the new Agreement of the Governor of Maryland. Procurement has been included substantially with a view to establishing, in 1996, new interim rules primarily aimed at major industrial countries of government procurement covering such areas as construction, design and consulting services.

In the light of these new trends, each commission and agency should improve its bidding and contracting procedures for public works. Although the same is true, external relations should be handled in a coherent manner among government agencies. For this purpose, the Governor of Maryland has formulated his Actio Pla as a set of guidelines.

Paying due attention to the importance of ensuring high quality in public works, the "Actio Pla" aims to drastically enhance transparency, objectivity and competition in the bidding and contracting procedures for public works in Maryland, as well as to make these procedures more approachable to the fair and impartial perspective, and to further strengthen the principle of non-discrimination. To this end, the Governor of Maryland will undertake the following measures, as described below, which include the adoption of transparency, objectivity and openness.

competitive procurement processes, appropriate evaluation of foreign firms, establishment of a complaint mechanism, appropriate measures against such unfair practices as "Daigo".

Consistency with the provisions of the agreements negotiated with the framework of GATT, which entered into force to which Japan is a party, will be essential in the implementation of this Action Plan.

(Timetable)

The central government entities and quasi-governmental agencies will make it a principle that they intend, to the best of their abilities, the concrete measures set forth in this Action Plan in relation to public works starting from the initial budget of FY 1994, and make necessary arrangements for a optimum space, objective and competitive procurement system to not less than the thresholds specified in 1.2. below, by the start of FY 1994. The central government entities and quasi-governmental agencies will immediately begin preparation to this end.

[Concrete Measures]

I. A Option of Tariff Space, Objective and Competitive Procurement Processes

1. Procurement Processes

Tariff space, objective and competitive procurement processes with an international perspective taken into account, will be adopted for the procurement of construction services, and design and consulting services, the following manner. Procurement relating to national security and such procurement as that for reasons of geography that require confidentiality will be exempted.

(1) Construction Services - A Option of Open and Competitive Bidding Processes

Construction services, which are to be commissioned by the central government entities (the entities of Japan listed in ANNEX I, including the Notes, to the new Agreement to Government Procurement) and the quasi-governmental agencies (the entities of Japan listed in ANNEX III, including the Notes, to the new Agreement to Government Procurement), and which are not less than the thresholds described in paragraph 2 below, will be procured through open and competitive procurement.

(2) Design and Consulting Services - A Option of "Public-Invitation Procurement"

Procurement of design and consulting services for public works of the central government entities and the quasi-governmental agencies, which is not less than the thresholds described in paragraph 2 below, will be made according to the "Public-Invitation Proposal Procurement," or the "Public-Invitation Competitive Bidding Procurement."

Rotational simple services which are excluded from Japan's offer in the new Agreement to Government Procurement and which are commissioned individually will be exempted.

2. Threshold

(1) The thresholds for each commissioning entity are as follows:

Type of service Threshold

(a) The central government entities Construction 4,500,000SDR

Design and Consulting 450,000SDR

(b) The quasi-governmental agencies Construction 15,000,000SDR

Design and Consulting 450,000SDR

(2) The above thresholds shall be applied on the basis of estimate price of each contract value at the time of public notice.

(3) No commitment may be entered into for a contract, with the intent to avoid the application of the Act or Plan, or to advance to a particular supplier.

(4) No commitment may be entered into for procurement, or for a valuation method, with the intent to reduce the value of the resulting contract below the threshold.

1. Transparency and Competitive Procurement Procedure

1. Contract Services

(1) Contract Lots

Those who wish to win a contract for public work will participate in the following procurement procedure after obtaining such necessary contractual stipulations: the Contract Contractor Act, Chapter 1, Article 2, Paragraph 2).

(2) Procurement Procedure

(a) Outline of Procurement Procedure

A Open and Competitive Bidding Procedure consists of procurement, etc., application for qualification, confirmation by those who wish to participate in competitive bidding, etc. of the results of qualification, confirmation, bidding, and award of contract. The production of public contracts and bidding will be 40 days at the minimum. (A flow chart of the procedure is attached as Annex 1-1.) Cases where the procurement falls under the special cases provided by Article 11-3 of the Law on the Government Procurement, the production of 40 days is shortened.

In the case of extremely difficult projects, the "Implementation Plan Evaluation Type" of Open and Competitive Bidding Procedure may be used. The procedure would require application for competitive bidding to submit advance implementation plan for the project so that the technical qualification can be examined (See Annex 1-2).

Every fiscal year, after the total budget is formulated, a commitment will be published in relation to the procurement of the threshold amount of procurement plan.

(b) Procurement Notice

1) A commitment will be published in the "Kanpo", indicating that a procurement procedure has been established and that the following format will be used. Until the Law on the Government Procurement is revised to force Japan to become a party to it, the notice may be published in the daily official paper. (Annex 2) In addition, when published in the "Kanpo" would create difficulties to the execution of the project:

- the format of the contract (subject matter of the contract, location, outline and production of the contract);

- qualification requirements to be fulfilled to participate in competitive bidding (objective position based on the business valuation; past record of the firm in similar projects; availability of personnel with required qualification and experience; qualification criteria; matter concerning other qualification requirements for a year; and, the case of "Implementation Plan Evaluation Procedure," submission of an implementation plan);

- method and place to receive tender documents;

- method and deadline for the submission of application for tender and related documents;

- format of major contract material and equipment to be procured by the general contractor or the subcontractor;

- method and place of bidding, and deadline for the submission of tender; and

- the contract position with related format of availability.

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Evaluation of the public aspects of the qualifications for participating in the competitive bidding.

The calculation method for the Business Evaluation score shall be published. Each firm shall be notified of the result of its Business Evaluation. When a firm has a complaint about the result, it can apply for re-evaluation.

iii) Definitive criteria will be

In addition to the competitive bidding, definitive criteria, which are indispensable for judging suppliers' ability to fulfill the contract for each construction project, shall be set as a part of the qualification requirements for participating in the competitive bidding. These definitive criteria shall include such criteria as the past records of the firm in similar projects and the availability of goods and services required for qualification and experience, and shall be published in a project advertisement with the procurement notice, so that those who plan to participate in the bidding shall be able to judge the merits and demerits of the bidders. The cases of "Implementation Plan Evaluation Type" of an additional competitive bidding, the mission of implementation plans shall be required to demonstrate the capability of the firm to perform, the full confidence, particularly difficult projects.

() Qualification of firm

i) Qualification of firm is made on the basis of the data available by the bidder for the mission of application and related documents.

ii) The cases of "Implementation Plan Evaluation Type," a commissioning entity may hold explanation meetings and hearings on related documents, if it allows such explanation meetings and hearings together with the bid date, times, and place of the procurement notice.

iii) A commissioning entity shall notify the qualified applicants in writing of the result of the qualification of firm within a period of 7 days (the cases of "Implementation Plan Evaluation Type," 14 days) from the next day of the bid date for the mission of application and related documents.

iv) For applicants from the commissioning entity included as disqualified, the commissioning entity shall give the reasons for the disqualification, and shall notify the applicants that they are entitled to request further explanation for the disqualification within a period of 7 days (excluding holidays for administrative agencies) from the next day of the notification date of the result of the qualification of firm. The entity shall give explanation to the applicants upon request.

(f) Bidding and Award

A commissioning entity shall publish the result of the bidding including the process of the bidding and the name of the successful bidder as soon as possible after the bid closing.

(g) Contract

A contract shall be awarded to the bidder who has submitted the lowest bid price to the commissioning entity. When the bid price is extremely low, it may be subject to examination to ensure its propriety.

(h) Complaint Mechanism

The above procedures shall be subject to the complaint mechanism set forth in Chapter IV of this Act.

2. Design and Supervision

(1) Procurement Procedures

(a) Outline of Procurement Procedures

The "Public-Invitation Proposal Procedure" consists of procurement notice, expression of interest by firms (submission of technical materials), selection of the firms to submit proposals, invitation for them to submit proposals by notification, submission of proposals, selection of the proposal and contracting. The period C

between invitation to submit in and submission period. The minimum period (See Annex 3). The new Agreement on Government Procurement, to be entered into force by 1 January 2017, will be entered into force.

(b) Registration of Qualified Suppliers

The new website will submit period. The new Agreement on Government Procurement, to be entered into force by 1 January 2017, will be entered into force.

(c) Procurement Notice

i) A contracting entity will publish notice in the Official Journal, indicating that the procurement procedure has been initiated and continuing to be open for submission. Until the new Agreement on Government Procurement enters into force and Japan becomes a party to it, the notice may be published in the daily Indian Press in Annex 2 in the form of a notice in the Official Journal would be difficult to be executed project:

- general information (subject matter, technical, outline, and deadline for completion of the service);
- method and deadline for expressing interest;
- qualification to be invited to submit period and criteria for selection of the new submit period;
- method and place to receive tender documents;
- method, place and deadline for submission period;
- technical presentation of the evaluation in the official language.

ii) The Official Journal will be published in English as well as in Japanese:

- subject matter, technical;
- deadline for the expression of interest and submission period;
- technical presentation of the tender documents in the official language.

(d) Distribution of Tender Documents

i) A tender document, which contains all the information necessary for submitting a valid period, will be made available to the technical presentation of the procurement notice.

ii) A tender document will contain the following information:

- the address of the entity to which period should be sent;
- the address of the equivalent supplement in the official language should be sent;
- the language of the language in which period and related documents must be submitted;
- the closing date and time for the period and the period for receiving period;
- the evaluation criteria for selection period;
- the sufficient description of the service required, and the sufficient explanation of the equipment, if any;
- the terms of payment;
- the technical and technical equipment, in the official language, and in the official language document to be submitted;
- the terms of conditions.

(e) Selection of Notice to the Firms Which Are Invited to Submit Period

i) A commission i will select firms which are invited to submit proposals from among those who have expressed their interest with the submission of brief technical materials, in accordance with the specific criteria for selection published in the tender document. The commission i will offer those who have expressed their interest in writing of the result where the ratio of the number has been selected or not.

ii) For the applications who were selected, a commission i will offer the number has been awarded or the number of the number of 7 days excluding holidays for administrative affairs) from the date of the notification date. The commission i will give the explanation of the application upon request.

f) Submission of Proposals

The selected applications will submit their proposals by the deadline date specified in the procurement notice.

) Selection of Proposals

i) A commission i will select the best proposal from among the proposals submitted according to the published evaluation criteria for selection. The commission i will offer those who have submitted proposals in writing of the result where the ratio of the number of proposals has been selected or not.

ii) For applications whose proposals were selected, a commission i will add the reasons for the selection, and will offer the number has been awarded or the number of the number of 7 days excluding holidays for administrative affairs) from the date of the notification date. The i will give the explanation of the application upon request.

iii) The commission i will offer the lowest price with the bidder whose proposal was selected, as a price which is the lowest eligible price selected by the commission i.

h) When the price is the lowest criterion for evaluation in the selection of proposals, the "Public-Invitation to Compel Bidding Procedure", which is similar to the "Public-Invitation to Proposal Procedure", will be adopted. This procedure consists of procurement notice, expression of interest by firms (submission of brief technical materials), selection of participants to compel bidding, invitation for the number of participants to be notified, bidding, award /contract. The period between invitation for participation to award bidding requires a minimum of 40 days (Saturday x 3). This period of 40 days can be shortened when the procurement comes under the exceptional cases provided by Article 11-3 of the W.A.R. of the Government Procurement.

i) Complaint Mechanism

The above procedures will be subject to the complaint mechanism set forth in Chapter IV of this Action Plan.

2) Rationalization of Procurement of Contract - Out

a) When the employees of a commission i lack technical capacity or the necessary resources to perform the assigned contract work or its procurement, the commission i will contract out such assigned contract work.

b) When a commission i receives assigned contract work from a outside individuals, firms or individuals including subgroups known as "Koku-Kai" or "Koku-kai", the commission i will ask the separate procedure to be paid a appropriate amount of fee.

c) The supplier of assigned contract work services of a project procurement or a construction firms deemed to have previously, capital or other interest with the supplier, should be invited to bid in the construction procurement of the same project or be allowed to contract as a supplier of construction services. This will be applied in cases where the procurement is made as a contract from the outside, where it is urgent or where the commission i has no alternative.

III. Proper Evaluation of Foreign Firms

Foreign firms will be discriminated against in the aspect of bidding procedures for public works. (

In evaluation reforms, such evaluation activities as recording completed construction works, new works, number of staff members engaged in the construction business and business conditions have been examined with the reforms' business activities using Japan taken as a benchmark. Additionally, together with the international perspective and thorough observation of the principle of non-discrimination, the Government of Japan will take the following measures:

(1) In evaluation of the number of engineers and per capita construction business activities of a region under the Business Evaluation, the Minister of Construction and Vernacular Affairs will take into account the number of engineers and per capita construction business activities using Japan. The value of these activities overseas will be decided independently by the Minister of Construction, respectively.

(2) A commitment to enhance will take due account of a region's past records using Japan's similar projects and availability of engineers with required qualifications and experiences overseas through reference and independently overseas commitment to enhance respective career development of a region's overseas achievements.

(3) In evaluation of a region's firm whose parent company's construction firm is a wholly owned subsidiary, the parent company's shareholding company's arrangement of personnel in construction services is a wholly owned subsidiary, the resources of the parent company (in case of arrangement, the resources of the firm as a whole) will be taken into account, and a career development provided by the parent shareholding company will assure the firm's financial support.

IV. Construction Mechanism

Appendix 4-2 may illustrate a comparison with a hard parity arrangement in relation to procurement of less than the fresh bids stipulated in I.2. As a hard parity arrangement, the Procurement Review Board, which is already established in the Cabinet Office of the External Affairs, will be utilized respectively. This construction mechanism is provisional, and when the new Agreement on Government Procurement enters into force and Japan becomes a party, the comparisons will be handled in accordance with the procedures based on Article 20 of the Agreement. The details of the construction mechanism are described in Annex 4.

V. Preventive Measures and Anti-Corruption Practices including "Dan-ri"

1. Strengthening Penalties by the Licensing Authorities and Anti-Corruption Practices including "Dan-ri" for Bidders

To strengthen penalties by the Minister of Construction and Pre-ecutionary Measures based on the Construction Contract Act, penalties and standards will be established toward the end of March 1994 to make clear the content of penalties to be imposed by the licensing authorities respectively.

2. Suspension of Qualification as a Participant in Competitive Bidding

To assure appropriate implementation of a contract by excluding firms and competitive bidding suppliers who have conducted certain anti-competitive practices, a commitment to enhance measures, effective from FY 1994 when the penalty and competitive bidding procedures are introduced, to limit the participation in bidding firms which have committed such conduct as violation of the Anti-Monopoly Act.

3. Formulation of the "Guideline for Public Tendering"

The FTC (Fair Trade Commission) will formulate a "Guideline for Public Tendering" (provisional name) to enhance prevention of "Dan-ri" practices in public tendering. The guideline will be applied to all public tendering including public procurement of construction services as well as goods. The guideline will describe the basic ideas about how the Anti-Monopoly Act applies to public tendering and list up concrete examples and classify them into 3 groups: 1) practices which, in principle, violate the Anti-Monopoly Act; 2) practices which have risks of violation of the Anti-Monopoly Act; 3) practices which, in principle, are consistent with the Anti-Monopoly Act. A draft of the guideline will be prepared and published for comment, as early as possible with FY 1994. The guideline will be finalized toward the summer of 1994 after examination which will take into account the points expressed by parties concerned. With the introduction of this new guideline, the current "Guidelines concerning the Activities of Trade Associations in the Construction Industry in Relation to Public Works" will be abolished.

4. Strict Enforcement of Anti-Monopoly Act

The FTC will continue to strictly enforce the Anti-Monopoly Act against "Daig" in all industries. Upon receiving reliable information regarding "Daig", the FTC will take appropriate steps, including the collection of evidence, to determine the liability of the information. In the event that a legal action such as a claim for a surcharge payment or a claim by the FTC, the court, the government, or the public, the court, the public, or the public will also be made public unless the case is a confidential one.

5. Classification of Competition by the FTC

(1) Formulation of Material with Information "Daig"

Competition information will be formulated in materials which utilize the law, such as procedures as they take when they are possible, exist, or "Daig" practices, including the right to the FTC. The "FTC/Public Procurement Liaison Officials Meeting" will be more actively utilized by both the FTC and competition information.

(2) Training Program

Competition information will establish training programs for fair procurement. The FTC will extend support to such training programs with a view to training "Daig" and to promoting fair and competitive.

6. Fair Trade

(1) Competition Information Training Documents

Competition information will require participants to bring to the training documents that they recognize that they may be engaged in practices consistent with the Anti-Monopoly Act, and that they are in a position to follow such practices.

(2) Claims for Damages

When damages can be identified in such cases as when money has been transferred through "Daig", competition information will seek to recover damages which they suffer as a result of unfair practices based on civil and other laws.

VI. Other Measures Concerning the Improvement of Procurement Procedures

(1) Fair and Appropriate Technical Specifications

(1) Competition information may prepare, adopt, or apply a technical specification which will be a standard for the supply of suppliers, including the right to supply, which wish to participate in procurement procedures.

(2) In preparation, adopting, or applying technical specifications, competition information will, where appropriate:

(a) Use proper macro criteria, rather than specific or descriptive characteristics; and

(b) Base technical specifications on rational standards, actual compulsory standards, recognized standards, or voluntary standards or building codes.

(3) As for technical specifications or materials, competition information will, where appropriate, use actual standards or their equivalent.

(4) Competition information will, where appropriate, cooperate with the specifications, to attract and accept the right to standardize or create a new industry as equivalent to Japan's standardize or create a new industry in Japan, unless there is a compelling reason to treat such standards as equivalent. Where competition information is not able to accept the right to standardize as equivalent, a written explanation that the compelling reasons will be given immediately upon inquiry by those wishing to participate in procurement procedures having specific interests, prior to the contract award.

(5) No committee, particularly, prepare, adopt or apply technical specifications for a public procurement, may take action from a supplier who wishes to participate in bidding, or to affiliate or subdivide, a member which can be detrimental to other participants.

2. Improvement of the TVET System and the Construction Service

(1) The "Principles of Placement Order to the Self-Contractor" should be applied more thoroughly to exclude the kind of joint-venture which only refers to the upcost that they have been created only for the distribution of contract opportunities.

A "joint-venture" is a business or association which is formed by several contractors for the purpose of contracting the construction work collectively, and which each member contractor has a legal status as a direct party to the contract with the committee. Therefore, a self-contractor forms cooperation relationship with other contractors, including subcontractors, for a construction project, the contractor does not fall under the terms of joint-venture and hence, a legal entity is not created with the committee. Such a contractor should not be excluded from the self-contractor-bidding procedure.

(2) In the procurement for a work, the committee may contract with a joint-venture where the complementary terms of the scope of the work and technical requirements. Even such a case, however, for the self-contractor which is capable of independently executing the work, the bidding by such a contractor will also be allowed.

3. Improvement of the Procedure for Procurement below the Threshold

Concerning the procurement by the central government and the local authorities, in accordance with the threshold set forth in the Act on Public Procurement, the committee should choose, according to the law and regulations, what type of procedure for procurement to adopt. Where the established bidding procedure is deemed to be inappropriate to drastically improve transparency, objectivity and competitiveness of the bidding procedure.

4. Access to Information

(1) Concerning the access to information about the procurement, a committee will not try to form an administrative barrier because of the fact that the firms are foreign.

(2) The central government and the local authorities will establish contact points in the Act on Public Procurement to provide information and the implementation of measures set forth in the Act on Public Procurement.

5. Subcontract

With respect to subcontract, the Government of Japan hopes to encourage subcontractors to the business offered by competitive firms including competitive firms.

Concerning the procurement of construction services covered by the measures set forth in the Act on Public Procurement, the committee will publish, in the public procurement and the major construction materials and equipment to be procured by the potential self-contractor or subcontractor.

VII. Encouragement to Prefectural Government and the Local City

The Government of Japan will encourage prefectural governments and the local cities to take, in principle, necessary measures similar to the Act on Public Procurement, for their procurement above the following threshold, taking into account local circumstances and the provisions of relevant laws and regulations,

(threshold)

(1) Construction 15,000,000SDR

(b) Design and Consult 1,500,000SDR

The Government of Japan will encourage pre-ecological government standards designed to consider establishing a comprehensive system with respect to their procurement of less harmful thresholds.

[ATTACHMENT]

1. Countries Covered by the Measures of This Action Plan

The countries covered by the measures described in this Action Plan are those countries to which the provisions of the Agreement of Government Procurement in force are applied.

When the Government of Japan identifies harmful practices are implemented against Japanese firms in public works procurement in a country covered by the measures of this Action Plan, the Government of Japan may suspend the implementation of the measures described in this Action Plan for that country, in a manner consistent with the provisions of the Agreement of Government Procurement, until harmful practices are such harmful practices.

2. Scope of the MPA (Major Projects Arrangements)

(1) The MPA is a set of Special Measures which the Government of Japan voluntarily introduced in 1988 and 1991 to increase access to large-scale public works projects. Projects covered by the MPA are listed in Annex 6.

(2) The procurement procedures for the designed public projects covered by the MPA will be as follows:

(a) Concerning the procurement of construction, design and consulting services, less harmful thresholds set forth in this Action Plan, measures stipulated in the Action Plan will be adopted. Concerning the procurement of less harmful thresholds set forth in this Action Plan, and of less harmful thresholds set forth in the MPA, competitive bidding and other methods will either adopt the measures of the Action Plan, or, following the policy stipulated in IV.3., choose to continue to implement the measures of the MPA, or the MPA provides a separate, objective and competitive procedures.

(b) As for the procurement of goods, the measures set forth in the MPA will, continue to be implemented.

(3) As for the procurement of construction, design and consulting services and the procurement of goods in relation to designed private projects or third-sector projects as defined in the MPA, the measures set forth in the MPA will continue to be implemented.

(4) As for the procurement in relation to the "Future Projects", the measures stipulated in (2) above will be taken in the case that the competitive bidding of the project is the central government or quasi-governmental agency, and the measures stipulated in (3) above will be taken in the case that the competitive bidding of the project is a designed private or a third-sector entity.

(5) The MPA will be terminated when these projects are completed. E

[Annex 1-1 has been included with the electronic version of this document.]

[Annex 1-2 has been included with the electronic version of this document.]

[Annex 2]

DAILY INDUSTRIAL PAPERS

to Nikka -Kessei-Kogyo-Shi

to Nikka -Kessei-Tsushi

to Nikka -Kessei-Saigyo-Shi

[Annex 3 has been included with the electronic version of this document.]

[Annex 4]

Construction Procurement Review Board

As the third reporting period which reviews compliance but procurement not less than the threshold set forth in I.2., the Construction Procurement Review (CPR) which was established in the present reviewing period under the Major Projects Arrangements (the Cabinet Approved on the 26th of July 1991) will remain in force until the new Agreement on Government Procurement enters into force on 1 January 2000.

1. CPR

- (1) The CPR will have no substantial interest in the outcome of procurement subject to its review.
- (2) The CPR will receive complaints in writing, conduct investigations of the facts and make recommendations to the competent authority with respect to the selection of procurement by the entity.
- (3) The CPR will be comprised of persons who have knowledge and experience relating to public sector procurement. No member of the CPR will participate in the review of a complaint in which that member has a conflict of interest.
- (4) Where necessary, the CPR may hear opinions from technical experts who have in the knowledge and experience relating to the procurement subject to its review. Nonetheless technical experts shall have no substantial interest in the outcome of the procurement.

2. Eligibility for Complaint

All potential suppliers are eligible for filing complaints. Potential suppliers are defined as follows:

- (1) In procurement of construction services, potential suppliers mean the following respectively;
 - (a) When a complaint is concerning registration qualifications participants for an competitive bidding, those who have applied for registration;
 - (b) When a complaint is concerning qualification confirmation, those who have applied for qualification confirmation;
 - (c) When a complaint is concerning tendering procedures thereof (1) (a) or (b) above, those who have been confirmed qualifications participants;
 - (d) When a complaint is concerning the result of the tendering, those who have made tendering.
- (2) In procurement of design and consulting services, potential suppliers mean the following respectively;
 - (a) When a complaint is concerning registration qualifications participants, those who have applied for registration;
 - (b) When a complaint is concerning selection of the firms to be invited to submit proposals (in the case of "Public-Invitation Procurement Procedures") or selection of the firms as participants in bidding (in the case of "Public-Invitation Competitive Bidding Procedures"), those who have expressed their interest to the procurement;
 - (c) When a complaint is concerning procurement procedures thereof (2) (a) or (b) above, those who have been invited to submit proposals (in the case of "Public-Invitation Procurement Procedures") or those who have been qualified as participants in bidding (in the case of "Public-Invitation Competitive Bidding Procedures");
 - (d) When a complaint is concerning the selection of the best proposal (in the case of "Public-Invitation Procurement Procedures"), those who have submitted proposals; When a complaint is concerning the result of the tendering, those who have made tenders (in the case of "Public-Invitation Competitive Bidding Procedures").

A potential supplier must notify the CPR of its intent to participate in a complaint proceeding within 7 days after receipt of the notice in Paragraph 4.(4) below, and whereupon it would be subject to the procedures in Paragraph 4.(7) (b) below, unless otherwise provided in Paragraph 4.(3) below.

3. Participants

The committee is the complainant, and a potential supplier who would be affected may participate in a complaint proceeding.

4. Procurement Review Process

(1) A potential supplier, having believed a procurement covered by this chapter has been carried out in a manner inconsistent with the provisions of this chapter, may file a complaint in writing with the Board, at any time during the procurement process, but no later than 13 days after the basis of the complaint is known or reasonably should have been known. The potential supplier will submit a copy of the complaint to the committee is the committee will work in accordance with the Board. (Data will be considered confidential under the provisions specified.)

(2) The Board may receive and consider a complaint which is timely filed, if it finds that good cause is shown.

(3) The Board will review a complaint within 7 days of its filing, and may, in writing, advise the complainant of the reasons for its findings:

- (a) not submitted in a timely manner;
- (b) not subject to this chapter;
- (c) frivolous or vexatious;
- (d) not submitted by a potential supplier; or
- (e) otherwise inappropriate for review by the Board.

(4) Where the Board determines that a complaint has been filed properly, it will, if it wishes, all potential suppliers who are affected by the complaint, within 1 day.

(5) Supervisor of Contract or Contract Performance

(a) Within 10 days of the filing of a pre-award complaint, the Board will promptly issue a written request for the supervisor of contract award performance of the complaint.

(b) In the case of a post-award complaint, filed within 10 days after the award, the Board will promptly request in writing the supervisor of contract performance performance of the complaint.

(c) The committee is the committee will suspend the award or the performance of the contract immediately after it receives the Board's request, unless the head of the committee has a reasonable and compelling circumstance to allow the committee is the committee to follow the request, or has the award or the performance of the contract will be in the best interests of Japan, in which case he will immediately provide written notification to the Board of his determination and the factual circumstances on which it is based.

(6) Investigation

(a) The Board will conduct an investigation of the complaint, which may include the filing of a brief, pleading and other documents by the complainant and the respondent.

(b) The Board may, on the request of the complainant or the committee is the committee or on the Board's own initiative, hold a hearing on the merits of a complaint.

(7) Report by the Committee is the Committee

(a) Within 14 days after the date on which a copy of the complaint was received by the committee is the committee, the committee is the committee will file with the Board a written report on the complaint, containing the following:

- i) relevant documents for reference, including the specific provisions or portions hereof relevant to the complaint; and
- ii) all other documents relevant to the complaint;

iii) a statement that sets out the relevant facts, findings, actions and recommendations of the committee in a timely and responsible manner;

iv) a summary of evidence and information that may be necessary in order to resolve the complaint.

(b) The Board will, forthwith after receiving the report referred to in Paragraph (a) above, send a copy of the relevant material to the complainant and give the complainant a proper opportunity, within 7 days after it receives the relevant material, to file with the Board comments in respect of the case to be decided by the existing record. The Board will, forthwith after receiving the comments, send a copy of the committee's findings.

5. Findings and Recommendations

(1) The Board will make a report of its findings and recommendations to the committee in a timely manner within 50 days after the day which the complaint is filed. Its findings, in which the Board will grant the respondent a fair hearing, will specify whether the process of award was consistent with specific provisions of the measures set forth in the Act.

(2) Whenever the Board finds evidence of misconduct, actions contrary to law, it will refer the matter to the appropriate enforcement authorities for action.

(3) In making its findings and recommendations, the Board will consider all the circumstances surrounding the process of award, including the seriousness of any deficiency in the process, the degree of prejudice to the parties, the degree of impediment to the integrity and effectiveness of the Act, the good faith of the participants, the extent of performance of the contract which the process creates, the status of the recommendations of the Government of Japan, the urgency of the process, and the impact of the recommendations on the business of the committee.

(4) Where the Board finds that a provision of the measures set forth in the Act has been followed, it will recommend an appropriate remedy, including more effective working:

(a) that a new procedure be issued;

(b) that a new contract be signed;

(c) that the contract be re-evaluated;

(d) that the contract be awarded to the other supplier;

(e) that the contract be terminated.

(5) The Board will send its findings in writing with its recommendations to the complainant, the committee in a timely manner and any other participants, within 1 working day after issuance.

(6) The committee in a timely manner, in principle, and as its decision, duly with the findings of the Board and a copy of the report of the appropriate beneficiary of the Board. The committee in a timely manner must report to the Board within 60 days of receipt of the Board's recommendations, if it has decided to comply with the recommendations with the reasons for its decision.

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

6. Express Opti

(1) Where the complainant requests the committee in a timely manner to expedite the findings, the Board will consider the feasibility of setting up a special section, referred to hereinafter as the "express option."

(2) The Board will determine whether to apply the express option within 2 working days after receiving a request therefrom. It will notify the complainant, the committee in a timely manner, and the parties involved, which interest will be affected by the complaint, as to whether the express option is to be applied.

(3) Where the express option is applied, the time limits and procedures will be as set forth in Paragraph 4.

(a) The court will, within 6 days after the day which is testified by the Board that the expert report is to be applied, file with the Board a written report of the court, as specified in paragraph 4.(7) above. The Board will, forthwith after receiving the report, decide upon the relevant material to the court's decision. The Board will give the court a 5-day period to file with the Board a written report. The court may request that the case be decided on the existing record. The Board will, forthwith after receiving the court's report, decide upon the court's decision.

(b) The Board will, upon the filing of a decision, direct the court to write a written report within 2 days after the day which the court's decision is filed.

7. Due to the nature of the matter

The court will, upon the filing of a decision, direct the court to write a written report within 2 days after the day which the court's decision is filed. The court will, upon the filing of a decision, direct the court to write a written report within 2 days after the day which the court's decision is filed. The court will, upon the filing of a decision, direct the court to write a written report within 2 days after the day which the court's decision is filed.

[Appendix]

[List of contact persons to be included with the electronic version of the court's report.]

[Appendix 6] THE MPA PROJECT LIST

I. The MPA Project List

1. DESIGNATED PUBLIC PROJECTS

Project List 1988

Hameda Airport Expansion Phase III (FY 90-9)

New Highway Airport (FY 86-93)

Tony Port Redevelopment (Metropolitan Expressway 12). (FY 84-)

Akaka Highway Bridge (to be completed by 97)

Ile Bay Highway (to be completed by FY 96)

Yokohama Maritime 21 (Major Hall for International Conference Center, located in the port district) (FY 8 -) p

Kaala Science City (located in the district of Keala Expressway, Center for Graduate Studies Advanced Science and Technology) (FY 88-)

Project Added 1991

New Channel Airport Phase III (to be completed by FY 2000)

Kuru Highway Bridge (to be completed by FY 98)

Makuhar High Rise Apartment (FY 92-) (tentative)

New National Theater (FY 91-96) (tentative)

Kaala National Government Building (tentative)

National Olympic Memorial Youth Center (FY 91-94)

Postal Savings Bank Reform Facility (FY 91-96)

Research Center for Aging and Health* (tentative) 5

Scalibur Healthcare Hospital (Kaitiaki area) (FY 91-93)

o Tokyo University of Foreign Studies *

o National Institute of Polar Research, The Institute of Statistical Mathematics and National Institute of Japan
Library *

o Synchrotron Radiation Facility (SPRING-8) (Hyogo) (to be completed by 1998) (excluding Storage Ring Building
[Phase I] and related facilities)

* when and if initiated

2. DESIGNATED PRIVATE PROJECTS

Project Listed in 1987-88

o Kansai International Airport

o Tanabe-Tokyo Bay Highway

o Nippon Telegraph and Telephone Corporation (NTT) Shinjuku Building

3. THIRD-SECTOR PROJECTS

Project Listed in 1987-88

o Technoport Osaka

o Rokko Island**

o Hanshin Airport Terminal Construction (Phase II)

o Hanshin Airport Terminal Construction (Phase III)

o New Hiroshima Airport Terminal Construction

o New Kiyohuku Airport Terminal Construction*

o Tokyo Teleport

o Yokohama Minato Mirai 21 (International Conference Center)

Project Added in 1991

o Impo Inga Terminal in Yokohama Daikoku Pier (name)**

o Rinku Gate Tower Building

o Sendai Airport Terminal Building for International Passenger

o New Chitose Airport Terminal Construction (Phase III)*

o Rikyoosaion Road Improvement

o RUnoosaion Road Improvement *

* when and if initiated

** when and if the decision on major project and the plan is made

II. FUTURE PROJECTS (IF and when Project)

(If and when the project on the completion of the project becomes a condition for the
initiation, the project will be added to the MPA project list.)

o Fukuoka Airport Terminal Building (We)

o Chubu International Airport J

o Fukushima i o t

o S it YOU nd I

o Second N tion I Diet Lib y

o Min^{mi}- oy N P oject

Note: Conce ning "the Fukuoka i o t e^{mi}n I Building (West)" nd "the S it N tion I Gove n^{me}nt Building unde the S it YOU nd I, the ocu e^{me}nt h s ctic lly been initi ted unde the MP since 1992 nd 1993, es ectively, when these ojects we e ut in conc ete te^{ms}.

HE SECRE RY OF COMMERCE

Washington, D.C. 20230

J nu y 19, 1994

His Excellency

k k zu Ku iy

mb^{ss} do of J n

2520 Mass chusetts venue, N.W.

Washington, D.C. 20008

De Mr. mb^{ss} do :

I le sed to cknowledge the eeci t of you lette d ted J nu y 18, 1994, conveying the " ction PI n on Refo^m of the Bidding nd Cont cting P ocedu es fo Public Wo ks" (he ein fte efe ed s to the " ction PI n"), nd you se te lette , d ted J nu y 19, 1994, conce ning the nnu l^{me}etings el ted to the ction PI n, t e t^{me}nt of the Majo P ojects nge nts (he ein fte efe ed to s the "MP ") nd othe const uction-- el ted tte s.

I welco^{me} you gove n^{me}nt's decision to i le^{me}nt the ction PI n, with the i^m of efo^{mi}ng bidding nd cont cting ocedu es fo ublic wo ks in J n, to enh nce t ns ency, objectivity nd co etition, s well s to st engthen the lic tion of the infi le of non-disc i n tion. he Gove n nt of J n's do tion of the ction PI n e esents subst nti l nd s tisf ctory ocess towa d the successful esolution of long-st nding oble^m between ou two count ies el ted to ccess fo fo eign co nies to J n's ublic wo ks ket.

I welco^{me} the Gove n^{me}nt of J n's intention to kee the ction PI n unde eview, nd in this eg d, to hold nnu l^{me}etings with the Gove n nt of the United St tes to ssess i le ntion nd utiliz tion of the ction PI n. he Gove n nt of the United St tes is Iso e ed to hold the fi st nnu l^{me}eting in the fi st qu te of FY 1995. I sh e you view th t n nnu l^{me}eting will de l with, mo^{ng} othe things, n ev lu tion of the elev nt info tion nd d t , desc ibed in the endix tt ched to you lette .

he Gove n^{me}nt of the United St tes is Iso e ed to consult t ny ti e, on the equest of the Gove n^{me}nt of J n, with the Gove n nt of J n to esolve issues with eg d to the i le^{me}nt tion nd utiliz tion of the ction PI n. I sh e you view th t nnu l^{me}etings nd consult tive^{me}etings, held u on equest by eithe Gove n^{me}nt, will be held until the end of FY 1999, t which oint, the two Gove n^{me}nts will decide whethe it is necess y to continue these^{me}etings. he Gove n nt of the United St tes ecognizes th t, to ke useful efe ence fo effective i le^{me}nt tion of the ction PI n, the Gove n^{me}nt of J n y wish to discuss tte s conce ning the ocu e nt ocedu es of the United St tes' ublic wo ks ket, on the occ sion of these^{me}etings, nd the Gove n nt of the United St tes is e ed to consult with the Gove n^{me}nt of J n conce ning such tte s. I note th t the el tionshi between the MP nd the ction PI n is desc ibed in the ction PI n. I unde st nd th t the MP will be-te^mn ted when the ojects cove ed by the MP e co leted. I sh e you view th t eview of the MP will t ke l ce t the s ti s the nnu l^{me}eting on the ction PI n. T

While I realize that the Government of Japan has authority to implement the third sector entities in accordance with their structural projects, I appreciate your reference to the third sector structural projects.

I also welcome the Government of Japan's reaffirmation of its II Committee Advisory Committees (Hiro-Kai) and study groups (Keikyu-Kai) with regard to the structural-related sector.

I support the recommendation of the Central Council for Structural Construction Business "Recommendation of the Refinement of Bidding and Construction Systems for Public Works" of December 21, 1993 that consideration be given to the structural management system. In this text, I hope that a pilot structural management program will be undertaken in Japan.

I welcome the Government of Japan's reaffirmation of its Basic Policies for Import Expansion announced in the Trade Conference of October 7, 1993, and affirmation of its applicability to the structural-related sector.

I hope that the implementation of the Action Plan will provide free companies increased opportunities to participate in Japan's public works market.

Sincerely,

Ronald H. Brown

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.