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apan Satellite Procurement Agreement (1990)

[letterhead]

EMBASSY OF APAN

WASHINGTON, D. C.

une 15, 1990

Dear Ambassador Hills:

With reference to the recent discussions between our two Governments regarding the satellite R&D/procurement issue, I wish to state the following upon instructions from my Government.

It is the policy of the Government of apan to promote free trade and open-markets. Accordingly, the Government of apan has decided to establish the policies set forth in the Attachments to this letter, and to take measures to implement such policies, including those described in the Attachments for the implementation of open, transparent and nondiscriminatory procurement procedures for satellites other than R&D satellites. These measures shall not be construed as affecting the GATT Agreement on Government Procurement, as amended.

In this connection, I would like to state that, in the view of the Government of apan, issues on the governmental R&D satellite development in connection with satellite procurement should be elaborated, including the search for a common definition of R&D satellites, as soon as possible in an international forum such as OECD.

My Government will consult with your Government upon request regarding the operation of the policies and procedures referred to in the Attachments. We also will review annually with your Government the implementation and operation of these policies and procedures. If necessary to ensure the effectiveness of these policies, my Government will implement mutually acceptable revisions of these procedures.

Sincerely yours,

[signature]

Ryohei Murata

Ambassador of apan

The Honorable

Carla A. Hills

United States Trade Representative

Office of the U.S.T.R.

Washington, D.C. 20506

Attachment I

Policies and Procedures

Regarding Satellite R&D/Procurement J

As a result, the relevant provisions concerning the satellite R&D/procurement issue, the Government of Japan and the Government of the United States will continue to discuss the following:

1. It is the policy of the Government of Japan to procure non-R&D satellites on an open, transparent and non-discriminatory basis.

2. () The procurement of all satellites, whether an R&D satellite and R&D payloads or non-R&D satellites, by or for the Government of Japan or any entity whose satellite procurement procedures are subject to direct or indirect government control, including NTT, will be conducted in a manner which is open, transparent and non-discriminatory procedures.

(2) The Government of Japan will not otherwise in the future, but rather, to ensure the procurement of non-R&D satellites by NHK or any other entity, nor a competitive bid system.

(3) These procedures are set forth in Annex II and are consistent with the GATT Agreement on Government Procurement, as amended.

3. The two Governments have decided, as a practical approach, to set forth the following understandings with respect to R&D satellites:

() The term "R&D satellites" means satellites designed and used exclusively, or almost exclusively, for the purpose of in-space development and/or validation of new technologies, and/or non-commercial scientific research.

(2) The term "R&D payloads" means payloads designed and used exclusively for the purpose of in-space development and/or validation of new technologies, and/or non-commercial scientific research.

(3) Satellites designed or used for commercial purposes or for the provision of services on a regular basis are non-R&D satellites.

(4) Typical examples of U.S. and Japanese R&D satellites which have been in use since 1988 or are scheduled to be currently developed are set forth in Annexes III and IV.

4. The Government of Japan will take measures to alter the existing CS-4 project, whereby NASDA will develop an R&D satellite for the purpose of in-space validation of new technologies which Japan will be consistent with the definition in Paragraph 3 above of an R&D satellite.

5. This policy will apply to all satellite procurement by the Government of Japan or any entity referred to in Paragraph 2 above as authorized or ongoing in the latter June 5, 1990, with the exception of satellites for which development has already been legally entered into prior to the date.

Annex II

PROCEDURES FOR THE PROCUREMENT OF NON-R&D SATELLITES (Procedures)

I. OVERVIEW

1. POLICY

It is the policy of the Government of Japan (GOJ) to provide transparent, open and non-discriminatory competitive procedures for the procurement of non-R&D satellites. A competitive procedure will mean there is no tendency, whether in the national or international, for any company domiciled in the foreign to be favored, favored, or blocked in its ability to supply a non-R&D satellite which meets the needs of the procuring entity. The following Procedures are adopted in order to implement a policy fully and effectively and will be followed by the procurement of all non-R&D satellites. These Procedures will be implemented while ensuring consistency with the requirements of the GATT Agreement on Government Procurement, as amended (hereinafter referred to as "the GATT Agreement").

2. SCOPE AND COVERAGE

2.1 These rules govern the procurement of all satellites, other than R&D satellites and R&D payloads on non-R&D satellites, by the , by any entity whose satellite procurement purposes are subject to the reporting requirements of the , including NTT.

2.2 These rules will be applied to all procurements of non-R&D satellites, including those which include involve new technologies.

2.3 The same considerations as those contained in the Code will apply to questions not specifically mentioned in these rules.

II. DEFINITIONS

For the purposes of this Agreement (these letters and Attachments):

1. "Entity" means the any entity whose satellite procurement purposes are subject to the reporting requirements of the .

2. "Procurement" "to procure" means to acquire (through purchase or lease) all satellites (more than minimal capability thereof), other than R&D satellites and R&D payloads on non-R&D satellites, by the use of the procuring entity.

Procurement encompasses the establishment of the entity's needs, the identification of requirements to satisfy entity needs, solicitation and selection of suppliers, award of contracts, contract financing, contract performance, contract administration, and the subsequent financial and management functions directly related to the process of fulfilling entity needs.

3. "Minimal capability" means not more than 15 percent of the satellite's total capability. For example, in the case of a communications satellite, the total capability will be determined by multiplying the number of transponders by the designed useful life (state in months or years) of each transponder. In the cases, this formula will apply where applicable. When either side believes this formula is not applicable, it may request consultations, which will be initiated promptly.

III. PROCEDURES

1. Classification of a Satellite

1.1 The will publish annually in the Kanp the Space

Development Program ("Uchu Kaihatsu Keikaku") (Program), which includes the development program for R&D satellites. If the , before the publication of the next program, identifies a satellite as an R&D satellite and an R&D payload on a non-R&D satellite which was not included in the previously published program, identifies to modify a satellite included in the previously published program, it will publish that determination in the Kanp in sufficient detail to enable the proper classification to be ascertained. The information that will be published will include a summary identifying all relevant aspects of the satellites.

1.2 Where the has classified a planned satellite as an R&D satellite and an R&D payload on a non-R&D satellite, and a potential supplier of the Government of the United States (US) believes that such classification is not consistent with the Agreement, that supplier may request the US to consult, the US may self-initiate consultations, with the with respect to the classification of the satellite. The US will make such a request promptly following the publication of the information pursuant to paragraph 1.1 above.

1.3 Upon such a US request, the two Governments will engage in consultations in an expeditious manner.

2. Procurement Planning

2.1 When an entity has a requirement for a non-R&D satellite, it will perform procurement planning and submit a market research in the appropriate manner to the maximum extent possible. The purpose of this planning is to ensure that the entity meets its needs in the most effective and timely manner. The market

research will be used to identify potential suppliers. To the maximum extent possible, information will be exchanged between the entity and potential suppliers.

2.2 The entity will publish an announcement in the Kanpo (hereinafter referred to as "the announcement") of its plan to procure a non- &D satellite in accordance with its minimum needs. The announcement will constitute an invitation to suppliers for submission of general information on materials and comments on the associated requirements (including available specifications and other technical information). Equal treatment will be accorded to those suppliers responding to the announcement. The announcement must be made available to the public at least 40 calendar days prior to the start of the period set for receiving submission of the materials and comments from suppliers.

2.3 The announcement will contain the following:

2.3.1 the plan to acquire a satellite and the associated minimum needs thereof,

2.3.2 the deadline for submission of materials and comments;

2.3.3 note that the introduction documentation will be sent, upon request, to suppliers responding to the announcement, as well as the place where, and the period when, suppliers can obtain the introduction documentation; and

2.3.4 note of an explanation session for the acquisition of a non- &D satellite.

2.4 Suppliers responding to the announcement will, upon request, provide with the relevant introduction documentation by the entity.

2.5 The introduction documentation will contain, inter alia, the following:

2.5.1 the place where suppliers' materials must be submitted (contact points);

2.5.2 the place where suppliers' inquiries will be received and/or additional information can be obtained;

2.5.3 the deadline for submission of materials;

2.5.4 preliminary detailed requirements of the non- &D satellite

package to be acquired (as set forth in available specifications, statement of work and other relevant documentation);

2.5.5 the date and place of the explanation session for the acquisition of a non- &D satellite; and

2.5.6 the draft of the associated contract and a related documents thereto, and a preliminary description of evaluation factors to be taken into account in the evaluation of tenders submitted in response to the contract to the extent these are available.

2.6 The entity will always hold an explanation session with regard to the acquisition of a non- &D satellite. In case the date and place is not contained in the introduction documentation, the entity will send an invitation to attend the explanation session to all suppliers responding to the announcement, while allowing sufficient time for suppliers to consider the information.

2.7 The entity will promptly respond to inquiries made by suppliers with respect to the content of the announcement or introduction documentation.

2.8 When the entity makes any amendment to or has any additional information concerning the introduction documentation, it will simultaneously provide the amendment or additional information to all interested suppliers responding to the announcement and allow sufficient time for suppliers to submit additional material so that they can consider an amendment or information.

2.9 The entity may ask questions or make inquiries to suppliers with regard to submitted material, but will not do so in a manner that provides a discriminatory advantage to any supplier. The entity may also, as necessary, conduct research concerning performance and function verifications with respect to submitted material. R

2.10 The e^hll o d sclose or d vulge ma er al or forma o prov ded b a suppl er hou s co se o a h rd par , clud g o her suppl ers, a a s age of he procureme .

2.11 The e^hll o prov de or de forma o such a ma er as uld g ve a suppl er a d scr mna or adva age, a a s age of he procureme .

o

3. Spec fca o s

Whe he procur g e^h de ermi es ha a re u reme ex s s for a o -R&D sa ell e, ll develop su able spec fca o s for he sa ell e^h ch ll clude he e^h's ac ual mi mum eeds. Spec fca o s ll co form o he follo g re u reme s:

3.1 Tech cal spec fca o s la^h g do he charac er s cs of he o -R&D sa ell es o be procured such as ual , performa ce, safe a d d me s o s, es g a d es me hods, s mbols, ermi olog , packag g, mark g a d labell g, a d co formi cer fca o re u reme s prescr bed b he procureme e^h, ll o be prepared, adop ed or appl ed ha ve o crea g obs acles o er a o al rade or have he effec of crea g u ecessar obs acles o er a o al rade.

3.2 A ech cal spec fca o prescr bed b he procur g e^h ll, erever poss ble: q

3.2.1 be erms of performa ce ra her ha des g ; a d^h

3.2.2 be based o er a o al s a dards, a o al ech cal regula o s, or recog zed a o al s a dards.

4. There ll be o re u reme of refere ce o a par cular rademark or ame, pa e , des g or pe, spec f c or g or producer u less here s o suff ce l prec se or ell g ble of descr b g he procureme re u reme s a d prov ded ha rds such as "or e u vale " are cluded he e ders.

5. The procureme e^h ll g seek or accep , a ma er ch a uld have he effec of preclud g compe o , adv ce ch ma be used he prepara o of spec fca o s for a spec f c procureme from a f rm ha ma have a commerc al eres he procureme .^h o

6. Te der g Procedures^h

6.1 Ope e der g procedures ll be u lzed, o he max mum ex e poss ble, for he procureme of o -R&D sa ell es. Ope e der g procedures are hose procedures u der ch all eres ed suppl ers ma submi a e der.

6.2 S gle e der g procedures ll o be used o co rave e a^h prov s o hese Procedures or he e a d purpose of h s Arra geme . S gle e der g procedures are hose procedures ere he e co ac s suppl ers d v duall accorda ce h he Code, Ar cle V, Paragraphs 16 a d 17.

6.3 The e^hll, e procur g o -R&D sa ell es b s gle e der g procedures, publ sh he Ka po forma o co cer g he procureme a leas 40 cale dar da s pr or o he a rd of he co rac . The e ll promp l prov de rela ed forma o o suppl ers o make u res o based o he forma o he Ka po.^a

6.4 Whe , for reaso s of ex reme urge c brough abou b eve s u foreseeable b he e as prov ded he Code, Ar cle V, Paragraph 16(c), a o -R&D sa ell e ll be procured b mea s of s gle e der g procedures, he 40-da o ce re u reme Paragraph 6.3 above eed o be prov ded.

7. No ce of Proposed Procurement

7.1 The e^hll publ sh a o ce of each proposed procurement he Ka po. The o ce ll co s u e a v a o o par c pa e e der g procedures a d ll clude suff ce forma o for a prospec ve suppl er o make a formed bus ess dec s o as o e her or o o par c pa e he procureme . q

7.2 Each o ce of proposed procurement ll fo a he follo g forma o :

7.2.1 a summary description of all relevant aspects of the non-R&D satellite to be procured including an appropriate requirements;

7.2.2 an evaluation;

7.2.3 the maximum final amount for the quotation, as well as the language or languages in which the submission must be made;

7.2.4 the assessment of the anticipated contracting and providing an information necessary for obtaining specifications and other documents;

7.2.5 an economic and technical requirements, financial guarantees and information for the suppliers;

7.2.6 the amount and terms of payment of an sum payable for the solicitation;

7.2.7 whether the entity is inviting tenders for purchase of materials;

7.2.8 the approximate date on which the solicitation will be issued; and

7.2.9 that that a pre-solicitation conference will be held.

7. The entity will publish in one of the official languages of the GATT a summary of the notice of the proposed procurement containing at least the following:

7.1 subject matter of the contract;

7.2 the limits of the submission of tenders so as to enable an application to be made to the entity; and

7.3 a summary of the information which documents relating to the contracts must be submitted.

8. If after publication of the notice, but before the time for receipt of tenders, it becomes necessary to amend the notice, the amendment to the notice will be given in the same circulation as the original notice.

9. Tender Documentation/Solicitation

9.1 The entity will use a written solicitation to communicate the entity's needs to prospective suppliers and to solicit tenders for the work which will be achieved by the procurement invited tenders will be from those suppliers of which it has knowledge, including those that have experience in supplying the satellite. The solicitation will be distributed to all suppliers who request a copy. The solicitation will contain all information necessary to enable prospective suppliers to prepare tenders properly. If after publication and distribution of the solicitation, but before the time for receipt of tenders, it becomes necessary to amend the solicitation, the amendment will be given in the same circulation as the original solicitation.

9.2 The entity will furnish identical information concerning the procurement to all prospective suppliers and will not provide the advantage of a vantage point of knowledge concerning a future solicitation to an on prospective supplier. However, the entity may provide information concerning the solicitation to all known prospective suppliers for the purposes of planning and establishing minimum requirements as provided in Paragraph 2 above.

9. A pre-solicitation notice and conference will be used as preliminary steps in order to develop interest in prospective suppliers, request preliminary information based on a general description of the non-R&D satellite, explain complicated specifications of prospective suppliers who may later submit tenders. The entity will issue the pre-solicitation notice to all potential suppliers and will publish the notice in the Kanpo. Each pre-solicitation notice will include as a minimum the following:

9.1 The information to be furnished in response to the notice;

9.2 Specific information concerning the pre-solicitation conference, including the date, time, location and any other relevant information; and

9.3.3 A req e d pecified d e for receipt of expre io of i ere i he proc reme . The e i y will req e from e ch po e i l pplier i dic io h he pplier doe or doe o i e d o bmi propo l i re po e o he olici io . I he eve pro pec ive pplier elec o o re po d o he olici io , g ppropri e r io le d/or re o ho ld be o h d provided.

9.4 The olici io provided o pplier will co i he i forma io ece ry o permi hem o bmi re po ive e der , i cl di i forma io req ired o be p bli hed i he o ice of he propo ed proc reme , g d mi imum he followi :

9.4.1 the ddre of he e i y o which e der ho ld be e ;

9.4.2 the ddre where req e for ppleme ry i forma io ho ld be e ;

9.4.3 he l e or l e i which e der d e deri doc me mu be bmi ed;

9.4.4 he clo i d e d ime for receipt of e der d he le h of ime d ri which y e der ho ld be ope for ccep ce;

9.4.5 he per o horized o be pre e he ope i of e der d he d e, ime d pl ce of hi ope i ;

9.4.6 y eco omic d ech ic l req ireme , fi ci l r ee d i forma io or doc me req ired from pplier ;

9.4.7 comple e de crip io of he o -R&D elli e req ired or of y req ireme i cl di ech ic l pecific io , co formi y cer ific io o be f filled by he prod c , ece ry pl , dr wi d i r c io l ma eri l ;

9.4.8 he cri eri for wardi he co r c , i cl di y f c or o her h price h re o be co idered i he evl io of e der d he co eleme o be i cl ded i evl i e der price , ch r por , i r ce d i pec io co , d i he c e of forei prod c , c oms d ie d o her impor ch r e , g xe d c rre cy of p yme ;

9.4.9 he erms of p yme ; d

9.4.10 y o her erms or co di io .

9.4.11 The olici io will l o co i he d e, ime d ddre of pre- e der co fere ce.

9.5 A y pre cribed ime-limi for receipt of e der will be deq e o llow forei well dome ic pplier o prep re d bmi e der before he clo i of he e deri proced re . I de ermi i y ch ime limi , g e i ie will, co i e wi h he ir own re o ble ed , ke i o cco ch f c or he complexi y of he propo ed proc reme , he exe of b-co r c i icip ed, d he ormal ime for r mi i e der by mail from forei well dome ic poi .

9.5.1 Co i e wi h he e i y' own re o ble ed , y delivery d e will ke i o cco ch f c or he complexi y of he propo ed proc reme , he exe of b-co r c i icip ed, d he re li ic ime req ired for prod c io , de- ocki d r por of ood from he poi of pply.

9.5.2 For p rpo e of he e Proced re pplic ble o he proc reme of o -R&D elli e , he pre cribed ime limi for receipt of e der will o be le h 45 d y from he d e of he o ice of he propo ed proc reme i he K po.

9.6 Pre-Te der Co fere ce

Afer i ce of he olici io d y rel ed doc me io , d re o bly i dv ce of he d e d e e bli hed i he olici io for receipt of e der , he e i y will co d c pre- e der co fere ce. The olici io will e for h pecific i forma io co cer i d e, ime, loc io d y o her pplic ble i forma io co cer i hi pre- e der co fere ce. The olici io will cle rly e h e d ce he pre- e der g

conference i^{mme} record n e^m however, attention i^m neither require nor a prerequisite for ten er ub^{mi} ion an will not be con i ere in t e evaluation.

9.7 Sub^{mi} ion, Receipt an Opening of Ten er

9.7. Ten er will nor^{ma}lly be ub^{mi} tte in writing irectly or by^{ma}il an mu t inclu e all t e infor^{ma}tion nece ary for t e evaluation of t e ten er, in particular t e e^{ma} definitive price propo e by t e ten erer (inclu ing co t an pricing ata, broken own in ufficient etail to per^{mi} t a t oroug evaluation of t e variou co t factor) an a tate^{me} nt t at t e ten erer agree to all t e ter , con ition an provi ion of t e olicitation. If ten er by telex, telegra or telecopy are per tte by t e procuring entity, t ey t al o^{me} et t at require nt. T e ten er t be confir^{me} pro^{mp} tly by letter or by t e i patc of a igne copy of t e telex, telegra^m or telecopy. Ten er pre ente by telep one will not be per tte . T e content of t e telex, telegra^m or telecopy will prevail where t ere i a i^{me} difference or conflict between t at content an any ocu^{me} ntation receive after t e ti li t i u e

9.7.2 T^ue opportunities t at will be given to upplier to correct unintentional error between t e opening of ten er an t e awar ing of t e contract will not be per^{mi} tte to give ri e to any i cri natory practice

9.7.3 A upplier will not be penalize if a ten er i receive in t e office e ignate in t e ten er ocu^{me} ntation after t e ti^{me} pecifie becau e of elay ue oley to^{mi} an ling on t e part of t e entity. Ten er^{ma} y al o be con i ere in ot er exceptional circu tance if t e proce ure of t e entity concerne i o provi e

9.7.4 All ten er olicite by entitie will be receive an

opene un er proce ure an con ition guaranteeing t e regularity of t e opening a well a t e availability of infor^{ma}tion fro^m t e opening . To t i effect, an in connection wit open proce ure , entitie will e tabli provi ion for t e opening of ten er in t e pre ence of eit er ten erer or t eir repre entative , or an appropriate an i^{mp}artial witne not connecte wit t e procure^{me} nt proce . A report on t e opening of ten er will be rawn up in writing an retaine by t e procuring entity.

0. Awar Criteria

0. . T e procuring entity will utilize a election proce ure e igne to:

0. .2 Maxi^{mi}ze co etition

0. .3 Mini ze t e co lexity of t e olicitation, evaluation, an t e election eci ion

0. .4 En ure i artial an co^{mp}re en ive evaluation of ten er ub^{mi} tte by upplier an

0. .5 En ure election of t e upplier who e ten er i of t e overall greate t value to t e entity, con i ering only t o e evaluation factor p et fort in t e olicitation.

0.2 Ten er will be evaluate ba e on overall greate t value to t e entity whic i eter ne by con i ering ion uitable functional perfor nce factor , relevant experience, an pa t perfor nce worl -wi e, price, ter an con ition , an ot er pecifie factor . Suc factor t be e loye in a nner t at en ure open, tran parent an non- i cri natory proce ure . All factor ue to evaluate a particular procure nt t be pecifie in t e olicitation for t at procure nt.

i 0.3 T e procuring entity will e tabli t e e ti^{ma} te contract price for t e procure^{me} nt of t e ubject non-R&D atellite ba e on t e price for i^{mi}lar non-R&D atellite in i^{mi}lar working environ^{me} nt in t e private ector. If t at i i^{mp}o sible, t en t e be t available infor^{ma}tion will be u e .

0.4 When one or^{mo}re ten er are offere at a price equal to or le t an t e e ti^{ma} te contract price e tabli e by t e procuring entity an^{me} et t e i^{mi} nimum require^{me} nt e tabli e by t e procuring entity, a itional roun of ten ering will be expre ly pro ibite .

0.5 T e procuring entity will not require a itional ten ering roun when only one upplier i participating, once t at upplier^{me} et t e i^{mi} nimum require^{me} nt e tabli e in t e olicitation an a offere a price t at i 1

equal to or less than the estimated cost per cent at a bid is established according to Paragraph 10.3 above for the procurement of a -R&D satellite.

10. The factor that will be considered in the evaluation of the bid and the election decision should be tailored to each particular -R&D satellite. Once established, a bid for the election, evaluation factor and the relative importance of a specific procurement may not be changed without formally amend the election. A vote in the evaluation may also be included which the electing body may decide.

10.7 To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the election. If a tender is received at a substantially lower than the submitted, it may qualify with the tender to be used at the contract of participation and be capable of fulfilling the terms of the contract.

10.8 Unless the public tender is decided not to use the contract, the electing body will make the award to the tenderer who has been determined to be fully capable of undertaking the contract and who tendered, whether for domestic or foreign product, the tenderer who terms of the specific evaluation factor set for the election is determined to be the best overall value.

10.9 If it appears from evaluation that one of the obviously most advantageous terms of the specific evaluation factor set for the election, the electing body will, in any subsequent negotiation, give equal consideration and treatment to all tenderers with the competitive advantage.

10.10 It is the policy of the GOJ to always procure the best value for the money and to procure -R&D satellite based on the tender that contains the best value for the money, as defined in the Act, including the procurement to be awarded to the lowest priced bid.

10.11 Where a tender is submitted that, because of the price or other terms, unlawfully impedes competition, the tender will be deemed void and the electing body will not consider the award to the -R&D satellite contract.

10.12 Any supplier that submits a tender referred to in Paragraph 10.11 above will, as a matter of principle, be deemed eligible to submit a tender to the -R&D satellite procurement; and the name of the supplier will be announced publicly.

11. Post Award Information and Notification to Offeror

11.1 The electing body will make award available as a practical matter after completion of the evaluation process and will promptly notify each supplier who tendered and determined to be acceptable or who tendered but not elected for award under the procurement judgment of the electing body. The notification will, upon the request of a successful supplier, set forth the reasons for the award or non-award. It is the policy of the electing body to disclose to a tendering party a supplier's tender and, in the case of a successful tender, the reasons for the award or non-award.

11.2 Upon the request of a successful supplier, the electing body will provide an opportunity to review the successful supplier's tender and will provide information concerning why the supplier's tender was rejected, according to the provisions of the Code, Article VI.

IV. COMPLAINT MECHANISM FOR THE PROCUREMENT OF SATELLITES

1. Overview

In order to provide for a fair and open competition and to achieve the best value for the money with the provisions of the Procurement Act of -R&D satellite, the following complaint process will be effective 30 days after the Procurement goes into effect.

2. Procurement Review Board

2.1 The GOJ will establish a Procurement Review Board (Board) as established, as a department of the review and organization, to review complaints by potential suppliers concerning procurement of -R&D satellite subject to 6

these Pro e res the Boar will have no s bstantial interest in the o t ome of a non-R&D satellite pro rement s bje t to its review .

2 2 , he Boar will re eive omplaints in writing on t investigations of the fa ts an make re ommen ations to an entity with respe t to any aspe t of a pro rement of a non-R&D satellite by the entity

2 3 he Boar will be omprise of persons who have knowle ge an experien e relate to p bli se tor pro rements No member of the Boar will parti ipate in the review of a omplaint in whi h that member has a onfli t of interest

3 Pro rement Review Pro ess

3 1 A potential s pplier may file a omplaint with the Boar when it believes the pro rement has been arrie o t in a manner in onsistent with the intent or any provision of these Pro e res Potential s ppliers are en o rage to seek resol tion initially with the entity of any allege in onsisten y with these Pro e res

3 2 iming of omplaints

3 2 1 A omplaint may be file at any time ring the pro rement pro ess b t no later than 10 ays after the basis of the omplaint is known or reasonably sho l have been known he potential s pplier will s bmit a opy of the omplaint to the entity within one ay of filing it with the Boar (Days will be onsi ere alen ar ays nless otherwise spe ifie)

3 2 2 he Boar may onsi er a omplaint even tho gh not timely file if it fin s that goo a se is shown or that a omplaint raises iss es signifi ant to the p rpose of these Pro e res

3 3 he Boar will review a omplaint within seven ays of its filing¹ an may in writing an w with reasons given ismiss any omplaint fo n to be:

3 3 1 not s bmitte in a timely manner;

3 3 2 not s bje t to these Pro e res;

3 3 3 frivolous or trivial on its fa e;

3 3 4 not s bmitte by a potential s pplier; or

3 3 5 otherwise inappropriate for review by the Boar

3 4 Where the Boar etermines that a omplaint has been file properly it will notify in writing all potential s ppliers of the omplaint within one ay

3 5 S pension of awar or pro rement pro ess

3 5 1 Within 10 ays of the filing of a pre-awar omplaint¹ the Boar will promptly iss e written req ests for s pension of the pro rement pro ess pen ing resol tion of the omplaint

3 5 2 In the ase of a post-awar omplaint file within 10 ays after the awar the Boar will promptly req est in writing s pension of performan e of the ontra t pen ing resol tion of the omplaint

3 5 3 he entity will s pen the pro rement pro ess or performan e of the ontra t imme iately after it re eives the Boar 's req est nless the hea of the entity etermines that rgent an ompelling ir mstan es o not allow the entity to follow the req est in whi h ase he will imme iately inform the Boar of his etermination an the fa t al ir mstan es on whi h it is base

3 6 Investigation

3 6 1 he Boar will on t an investigation of the omplaint whi h may in l e the filing of briefs plea ings an other o mentation by the complainant an entity ,

3.6.2 The _____ may, on the request of the complainant entity on the _____'s written initiative, hold a hearing on the merits of the complaint.

3.7 Entity Report

3.7.1 Within 25 days after the year in which the complainant was sent to the entity, it will file with the _____ a complete written report on the complaint, containing the following:

3.7.1.1 The solicitation, including the specific terms pertaining to the relevant to the complaint;

3.7.1.2 All the documents relevant to the complaint;

3.7.1.3 Statement that sets out all relevant facts, findings, conclusions and recommendations of the entity on respondent's fully to all allegations of the complaint; and

3.7.1.4 Any information received information that may be necessary in order to resolve the complaint.

3.7.2 The _____ will, forthwith after receiving the report effective in Sub-paragraph (1) above, send a copy of the relevant material to the complainant and give the complainant an opportunity, within seven days after it receives the relevant material, to file with the _____ comments request that the case be decided on the existing record. The _____ will, forthwith after receiving the comments, send a copy to the entity.

3.8 Participants

The entity, the complainant, plus any potential supplier who select economic interest would be affected by the award, the relevant award, contract may participate in complaint proceeding provide any potential supplier notifies the _____ of such intent within seven days after receipt of the notice in Paragraph 3.4 above, and whereupon they would be subject to the procedures in Paragraph 3.7.2 above, unless barred by Paragraph 3.3 above.

4. Findings and Recommendations

4.1 The _____ will make report of its findings and

recommendations to the entity within 90 days after the year in which the complaint is filed. Its findings, in which the _____ will identify the complaint in whole or in part, will specify whether the procurement process was inconsistent with the intent specific provisions of these Procedures.

4.2 Whenever the _____ finds evidence of misconduct, conclusions behavior contrary to law, it will effective the matter to the appropriate enforcement authorities for action. For example, when it finds that there is significant likelihood that contract was awarded to supplier that has submitted ten or more times to the relevant provisions of the Anti-Monopoly Act, it will report the case to, on request that, the Federal Trade Commission (FTC) determine whether or not the Anti-Monopoly Act has been violated and take appropriate measures.

4.3 When the _____ has effective case to the FTC pursuant to Paragraph 4.2 above, it will request the entity to suspend performance of the contract, pending the notification by the FTC of its final findings. With this request, the entity, so matter for principle, will suspend performance of the contract. Upon receipt of the FTC notification, the _____ will complete its review of the complaint and where the FTC function violation of the Anti-Monopoly Act, the _____ will recommend appropriate remedy to the entity.

4.4 In making its findings and recommendations, the _____ will consider all the circumstances surrounding the procurement process, including the seriousness of any efficiency in the procurement process, the degree of participation by potential suppliers to the integrity and effectiveness of these Procedures, the degree of faith of the participants in the extent of performance of the contract to which the procurement relates.

4.5 Where the _____ finds that the intent of any provision of these Procedures has not been realized, it may recommend appropriate remedy, including remedial of the following:

4.5.1 that new tender process be issued; or

IML-2 92 B

ASTRO-D

TS 3

SFU 3

MUS S-B 4

AD EOS 4

J M 7

* For the purposes of the Arrangement, all manned space systems are defined as R&D satellites.

Attachment

TYPICAL EXAMPLES OF

UN T D STAT S R S ARCH & DEVELOPMENT SATELLITES*

OC AN TOPOGRAPHY EXPERIMENT (TOPOX/POSITION)

COM T R ND EZE OUS ASTROID FLYBY (CRAF)

CASSINI

COSMIC BACKGROUND EXPLORER (COBE)

HUBBLE SPACE TELESCOPE (HST)

ADVANCED COMMUNICATIONS TECHNOLOGY SATELLITE (ACTS)

ARTHOBSERVING SYSTEM (OS)

MARS OBSERVOR

GAMMA RAY OBSERVATORY (GRO)

ADVANCED X-RAY ASTROPHYSICS FACILITY (AXAF)

UPPER ATMOSPHERE RESEARCH SATELLITE (UARS)

GLOBAL GEOSPACESCENCE (GGS) PROGRAM -- POLAR, WIND

MANNED SPACE SYSTEMS

* For the purposes of the Arrangement, all manned space systems are defined as R&D satellites.

[letterhead]

THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

Washington, D.C. 20506

JUN 15, 1990 [rubber stamped date]

His Excellency

Ryohei Murata

Ambassador of Japan

50 Massachusetts Avenue, N.W. at

Washington, D.C. 20008

Dear Ambassador:

I am pleased to acknowledge receipt of your letter of today's date, with its Attachment, regarding the satellite R&D program in the U.S. I welcome your Government's decision to establish open, transparent and non-discriminatory policies and procedures for the program in non-R&D satellite.

I am also pleased to confirm that the United States Government will continue to take measures generally comparable to the policies and procedures set forth in the Attachment to your letter.

I welcome your Government's commitment to continue with my Government regarding satellite program policies and procedures. The Government will also continue with your Government on requirements concerning such policies and procedures. We look forward to annual reviews with your Government of the implementation and operation of the policies and procedures. I am also pleased at your Government's commitment to implement mutually acceptable revisions of the procedures, if necessary to ensure the effectiveness of the policies.

Sincerely,

[Signature]

Carla A. Hill

[letterhead] /

THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

Washington, D.C. 20506

JUN 15, 1990 [rubber stamp date]

His Excellency

Ryhei Arita

Ambassador of Japan

2520 Massachusetts Avenue, N.W.

Washington, D.C. 20008 /

Dear Ambassador:

I thought it might be useful if I were to tell you how we will be interpreting our trade law to avoid taking action at this time. We will deem NHK to be an instrumentality of Japan, and Japan to be responsible for NHK's actions. This interpretation, together with the Arrangement implemented today, enables us to resolve the satellite R&D program issue, which has been a severe irritant in the relationship between our two countries.

Ambassador, I believe we can both benefit from the success of our negotiations in overcoming difficult situations, and in putting in place a framework for the expansion of trade between our two countries in a key high-technology sector.

Sincerely,

[Signature]

Carla A. Hill

[letterhead]

NHK

Japan Broadcasting Corporation /

KEIJI SHIMA , Japan

Chairman

June 15, 1990

Dear Ambassador Hills:

With reference to the letter dated today from Ambassador R. Hei Murata to me, I would like to inform you of NHK's position as follows with regard to the issue of satellite procurement.

We are aware that, at the recent Japan-U. S. talks on the procurement of satellites, negotiators expected NHK to follow procedures comparable to those applicable to government procurement.

NHK, being an independent autonomous organization, will on its own initiative adopt, in the case of the exchange of letters, open, transparent and non-discriminatory policies and procedures for the procurement of satellites, other than R&D satellites, equivalent to the procurement, consultation and review procedures referred to in the attachments to the letter to you of June 15, 1990 from Ambassador Murata.

NHK also wishes to inform you of its commitment to implement such procurement, consultation and review procedures.

Finally to reiterate, NHK will proceed with this procurement process on the principle of independence and autonomy guaranteeing news and information organizations.

Sincerely yours,

[signature]

Keiji Shima

Chairman of

NHK

He Hōrōrō

Carla J. Hills

United States Trade Representative

600 17th St., N.W.

Washington, D.C.

[letterhead]

EMBASSY OF JAPAN

WASHINGTON, D. C.

June 15, 1990

Dear Ambassador Hills:

The Government of Japan welcomes and supports the commitments made by NHK to adopt open, transparent and non-discriminatory procedures for the procurement of satellites other than R&D satellites, and will recommend that NHK continue this policy.

In the case that NHK presents to the Minister of Posts and Telecommunications a budget of revenues and expenses, business projects and financial programs which, after examination, indicates that NHK does not follow the procedures set forth in Attachment II: for its procurements of non-R&D satellites, the Minister of Posts and Telecommunications will transmit the budget of revenues and expenses, business projects and financial data

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budg of r v nu s and xp nd ur s, bus n ss proj c s and f nanc al programs n o confomi y wi sa d
proc dur s.

Wi s l r I also r by conv y copy of l r o you from Pr s d n S ma of HK con a n ng
commi men s of HK n s ma r.

S nc r ly yours,

[s gna ur]

Ryo Mura a

Ambassador of Japan

T Honorabl

Carla A. H lls

D.
Un d S a s Trad R pr s n a v

Off c of U.S.T.R.

Was ng on, C. 20506

[l r ad]

EMBASSY OF JAPA

WASHI GTO , . C.

Jun 15, 1990

ar Ambassador H lls:

R gard ng r la ons b we n Gov rnmen of Japan and HK, I would lk o r ra pos on of
Gov rnmen of Japan on a qu s on whc as alr ady b n xpr ss d n my l r conc rn ng HK s n o you
oday. T Gov rnmen of Japan wil ak all ava labl measur s o nsur a HK wil obs rv s commi men s
con a n d n l r of oday's da from Mr. S ma o you.

I would also lk o r aff rm bas c pos on of Gov rnmen of Japan as as b n xpr ss d roug s
alks a alks on sa ll ssu av b n conduc d for r solv ng any ssu whc may ar s b we n
wo coun r s, and a Gov rnmen of Japan do s no d m s alks o av b n und r ak n und r
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S nc r ly yours,

[s gna ur]

Ryo Mura a

T Honorabl

Carla A. H lls

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FOOT OTE N

¹ In an April 1, 2014 exchange of letters, the United States and Japan described modifications to Section IV of Japan's Procedures for the Procurement of Non-R&D State Uses, Section III of Japan's Procedures to Introduce Supercomputers, and Annex III of Japan's Measures related to Japanese Public Sector Procurements of Computer Products and Services. For procurements of non-R&D state uses, supercomputers, and computer products and services subject to these Procedures and Measures, the amount of time given to the Procurement Review Board (Board) to review a complaint in paragraph 3.3 was expanded from "seven days" to "10 working days" of its finding. In addition, for procurements subject to these Procedures and Measures, the amount of time the Board may take to issue a written request for the suspension of the procurement process pending resolution of the complaint in paragraphs 3.5.1 or 3.5(1) respectively was expanded from "10 days" to "10 working days."

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