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UNITED STATES OF AMERICA
and
JAPAN

Exchange of letters constituting an agreement relating to government procurement in the field of telecommunications (with attachments and joint statement). Washington, 19 December 1980

Authentic text: English.

Registered by the United States of America on 1 March 1982.

ÉTATS-UNIS D'AMÉRIQUE
et
JAPON

Échange de lettres constituant un accord relatif aux achats gouvernementaux dans le domaine des télécommunications (avec pièces jointes et déclaration commune). Washington, 19 décembre 1980

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 1^{er} mars 1982.

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND JAPAN RELATING TO GOVERNMENT PROCUREMENT IN THE FIELD OF TELECOMMUNICATIONS

I

December 19, 1980

Dear Ambassador Askew:

Discussions between Japanese and United States officials on "Government procurement and Related Markets" in the field of telecommunications, as foreseen by the Joint Statement of Ambassador Ushiba and Ambassador Strauss of June 2, 1979, have been concluded.

It is the policy of the Government of Japan to provide non-discriminatory and competitive opportunities in its procurement operations and to guide Government-affiliated agencies such as the Nippon Telegraph and Telephone Public Corporation (NTT) to do likewise. It is our objective to achieve an open, transparent, and competitive telecommunications market. The NTT has decided to introduce procedures to be effective from January 1, 1981, which provide non-discriminatory competitive opportunities to both domestic and foreign manufacturers. Those procedures will be developed in detail within the framework of the "NTT Procurement Procedures", the English version of which is attached to this letter. These procedures will be published in the NTT Procurement Guidebook. Tracks II and III of the Procedures will apply to procurement of public telecommunications equipment by the NTT, which is over and above NTT procurement placed by Japan under the Government Procurement Code.

In our view, these Procedures are not inconsistent with the provisions of the Code, in particular, article V. In addition to implementing the Procedures, the NTT will also fully observe the requirements of the Code. The Government of Japan will, in accordance with the laws and regulations of Japan, give guidance to ensure the implementation of the Procedures and the observance of the requirements by the NTT.

We will be available to meet periodically to review the operation of the above arrangements. The Government of Japan anticipates that the arrangements will be in effect through 1983 and that these Procedures will be reviewed in connection with the three-year review foreseen in the Code. After such review, the Government of Japan anticipates that the arrangements, if appropriate, may continue for a further period of three years.

If a dispute with respect to the operation of these arrangements should arise that cannot be satisfactorily settled, my Government stands ready to enter into expeditious consultations with the Government of the United States. Should consultations not resolve the dispute, either party may appeal to the proposed non-binding arbitration procedures attached to this letter.

I express the hope that the open and competitive procurement policy discussed and supported by our Governments will encourage other countries to join us in pursuing similar policies and to work toward reciprocal and worldwide liberalization of

¹ Came into force on 19 December 1980 by the exchange of the said letters.

procurement in the field of telecommunications. Further, we would hope to keep in close contact with the Government of the United States in regard to the interests of other countries in this endeavor.

The contents of this letter with its attachments were approved by the Cabinet in a meeting on December 19, 1980.

Sincerely,

[Signed]

Dr. SABURO OKITA
Government Representative for
External Economic Relations

Attachments

Ambassador Reubin O'D. Askew
United States Trade Representative

ATTACHMENT I

NTT PROCUREMENT PROCEDURES

(Details developing this framework will be provided in the NTT procurement guidebook)

1. To utilize the best available products and technology for its services, NTT will provide competitive opportunities to both domestic and foreign manufacturers. Purchases will result from service needs as well as sales representations from interested suppliers.

2. All NTT purchases other than those subject to exceptions provided for by the Agreement on Government Procurement (Code) will be made by one of the following three tracks. Track I will be used to purchase all products, which are offered by Japan and placed under the Code. Tracks II and III will be used to purchase public telecommunications equipment. Track II will be used to purchase public telecommunications equipment that is available in the marketplace as is or requires modification to meet NTT's requirements including uniformity and quality control. Track III will be used to purchase public telecommunications equipment that does not exist in a suitable form in the marketplace but must be developed especially for or with NTT. The procedures for tracks II and III are as follows, and NTT will, for each proposed procurement, invite applications from the maximum number of domestic and foreign suppliers, consistent with the efficient operation of the procurement system.

Track II (Initial purchases)

(1) RFP/Announcement

3. When NTT determines that there is a need to purchase a particular product under this procedure it will issue a RFP/announcement. This invitation for participation will take the form of a RFP/announcement which will simultaneously be published in the *Kampo* and sent to firms which are interested in and/or capable of producing the product required. Firms responding to the published announcement shall be treated in a manner no less favorable than those responding to the NTT-issued RFPs.

4. The text of the RFP/announcement will contain the following:

- Nature and quantity of the product to be supplied;
- Notice that the purchase will be accomplished through track II procedures;
- Delivery date, if any;

- The address and final date for submitting an application, as well as the language in which it must be submitted;
- Any information necessary for obtaining procurement documentation and other documents;
- Any economic and technical requirements, financial guarantees and information required from suppliers;
- Written notice that firms who qualify under track II procedures will be considered as qualified suppliers for follow-on procurement;
- The amount and terms of payment of any sum payable for the procurement documentation;
- The fact that one winning application will be selected or, in the case that more than one supplier is necessary to assure stable supply, the proposed number of suppliers to be selected.

5. In addition, a summary of the RFP/announcement will simultaneously be published in the *Kampo* in one of the GATT languages containing the:

- Subject matter of the procurement;
- Time limit for submission of applications;
- Addresses from which necessary documents and further information may be requested.

(2) Documentation

6. Firms responding to the RFP/announcement will be provided with procurement documentation on a timely basis. The procurement documentation will contain all information necessary to permit suppliers to submit responsive applications including:

- The address of the division within NTT to which applications should be sent;
- The address where requests for supplementary information should be sent;
- Closing date for receipt of applications;
- Any economic and technical requirements, financial guarantees and information required from suppliers;
- A full description of the products required or of any requirements, such as technical specifications, conformity certification to be fulfilled by the products, necessary plans, drawings and instructional materials;
- The criteria for the selection and award of the contract(s) to the successful applicant(s), including any factors other than price, such as compatibility, quality control and stable supply, that are to be considered in the evaluation of applications and the cost elements to be included in evaluating applications prices;
- The terms of payment;
- In cases of purchases where more than one supplier is to be selected, the factors to be utilized in the allocation of the total procurement among the selected suppliers including the intended minimum lot for orders to be placed;
- Any other terms or conditions.

The period for receipt of applications shall in no case be less than 30 days from the date of issuance of the RFP/announcement.

7. NTT will respond promptly to any reasonable request for clarification of the RFP or procurement documentation. Any clarification or amendment of the RFP or documentation shall be provided simultaneously to all interested suppliers in adequate time for such suppliers to consider this information and respond to it.

(3) Selection and award of contracts of successful applicants

8. Selection and award of contracts will be accomplished as follows:

- Applications, to be considered for selection, must
 - (1) Conform to the essential requirements of the RFP/announcement and procurement documentation and
 - (2) Be from suppliers which comply with the conditions for participation;
- Applications shall be evaluated in terms of the selection criteria set forth in the procurement documentation;
- The applicant(s) determined to be the most advantageous in terms of the selection criteria shall be selected and be awarded the contract(s);
- If it appears that no application, or applications as the case may be, is obviously the most advantageous in terms of the selection criteria listed in the documentation, NTT will, in subsequent negotiations, give equal consideration to all applicants within the competitive range.

9. Those firms successfully selected through this procedure will be considered as qualified suppliers for follow-on procurement. This fact will be specified in the RFP/announcement.

Track II-A. (Follow-on purchases)

10. Additional units of products initially purchased via track II will be purchased via track II-A. The procedures governing the selection and award of contracts under track II shall apply *mutatis mutandis* for track II-A except as provided for below.

(1) Announcement

11. Announcement of projected and/or estimated additional purchases shall be published on an annual basis with additional announcements as necessary in the Kampo. This notice shall constitute an invitation to participate and shall contain the following information: (a) type, category and quantity of the products to be procured (projected purchasing plans), (b) delivery date, if any, (c) final date, if any, and the address for submitting applications, as well as the language in which they must be submitted, and (d) NTT contact point.

Further information on the following points, namely (a) amount of products by categories actually purchased in a previous fiscal year; (b) technical information, including general description of products; (c) any information necessary for obtaining specifications and other documents; (d) the amount and terms of payment of any sum payable for procurement documentation; (e) the fact that the winning proposal will be selected from suppliers which have completed the qualification process; (f) the fact that one winning proposal will be selected or, in the case that more than one supplier is necessary to assure stable supply, the number of suppliers to be selected, shall also be published in the above Notice or reference will be made in that Notice that this information is published in the NTT procurement guidebook.

(2) Qualification/Selection

12. NTT shall establish and maintain lists of qualified suppliers (see para. 9). Upon application by a firm at any time, NTT will initiate the qualification/selection process. NTT, in the process of qualifying/selecting suppliers, shall give equal treatment to all applicants whether foreign or domestic. If, after publication of the above-mentioned notice, a supplier not yet qualified requests to participate, NTT shall start the qualification/selection procedure without delay. Suppliers requesting to participate in procurement opportunities shall be permitted to submit proposals and shall be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure for a particular procurement opportunity. If the applicant, though not finally selected as a successful supplier in a previous application, had already undergone part of the qualification procedure, the applicant will be exempted from all or part of the relevant screening procedure. The number of suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

Track III (Developing new product)

(1) Invitation/announcement and documentation

13. When NTT determines that there is need to develop/procure a product under this procedure, NTT will issue an invitation for participation. This invitation will simultaneously be published in the Kampo and sent to firms which are interested in and/or capable of producing the product envisaged. Firms responding to the published announcement shall be treated in a manner no less favorable than those responding to the NTT-issued invitations.

14. The text of the invitation/announcement and a summary thereof along with all necessary documentation will be prepared according to the format and procedures *mutatis mutandis* of track II, except that the documentation shall specify the nature of the R & D involved and the selection factors to be used in this area.

(2) Selection of development/production partners, and award of contracts

15. Applications, to be considered for selection, must (1) conform to the essential requirements of the invitation/announcement, and (2) be from suppliers which comply with the conditions for participation. Proposals shall be evaluated in terms of the selection criteria set forth in the procurement documentation. The applicant(s) determined to be the most advantageous in terms of the selection criteria shall be selected and be awarded the contract(s). If it appears that no application, or applications, as the case may be, is obviously most advantageous in terms of the selection criteria listed in the documentation, NTT will, in subsequent negotiations, give equal consideration to all applicants within the competitive range. Field testing of prototypes may be required as part of the selection process leading to award of contracts.

16. Those firms who have been awarded contracts through this procedure will be considered as qualified suppliers for follow-on purchases. This fact will be specified in the invitation/announcement.

Track III-A (Follow-on purchases)

17. Additional units of products initially purchased via track III will be purchased via track III-A. The procedures governing the selection and award of contracts under track III shall apply *mutatis mutandis* for track III-A except as provided for below.

(1) Announcement

18. Announcement of projected and/or estimated additional purchases shall be published on an annual basis with additional announcements as necessary in the Kampo. This notice shall constitute an invitation to participate and shall contain the following information: (a) type, category and quantity of the products to be procured (projected purchasing plans), (b) delivery date, if any, (c) final date, if any, and the address for submitting applications, as well as the language in which they must be submitted, and (d) NTT contact point.

Further information on the following points, namely (a) amount of products by categories actually purchased in a previous fiscal year; (b) technical information, including general description of products; (c) any information necessary for obtaining specifications and other documents; (d) the amount and terms of payment of any sum payable for procurement documentation; (e) the fact that the winning proposal will be selected from suppliers which have completed the qualification process; (f) the fact that one winning proposal will be selected or, in the case that more than one supplier is necessary to assure stable supply, the number of suppliers to be selected, shall also be published in the above Notice or reference will be made in that Notice that this information is published in the NTT procurement guidebook.

(2) Qualification/selection

19. NTT shall establish and maintain lists of qualified suppliers (see para. 16). Upon application by a firm, NTT will initiate the qualification/selection process at any time. NTT, in the process of qualifying/selecting suppliers, shall give equal treatment to all applicants whether foreign or domestic. If, after publication of the above-mentioned notice, a supplier not yet qualified requests to participate, NTT shall start the qualification/selection procedure

without delay. Suppliers requesting to participate in procurement opportunities shall be permitted to submit proposals and shall be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure for a particular procurement opportunity. If the applicant, though not finally selected as a successful supplier in a previous application, had already undergone part of the qualification procedure, the applicant will be exempted from all or part of the relevant screening procedure. The number of suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

General

(1) Complaints

20. NTT will maintain a complete record of each procurement process including a complete record of all matters concerning each contract awarded. Unsuccessful applicants shall be informed by written communication or publication that the selection has been completed within seven working days of the completion of the selection/award of a contract. Upon request, NTT will promptly supply unsuccessful applicant(s) with pertinent information concerning the reason why its application was not selected, including the relative advantages of the application which was selected and the name of the winning firm(s).

21. NTT shall provide procedures for prompt hearing and review of complaints arising in connection with any phase of the procurement process.

(2) Information

22. In relation to track II-A and track III-A, NTT shall publish annually in the *Kampo*:

- (1) An enumeration of the lists of qualified suppliers maintained (see para. 9 and para. 16), including their headings, in relation to the products or categories of products to be purchased through the lists;
- (2) The criteria for inscription on these lists and the screening procedures involved, including
 - Technical qualifications;
 - Information necessary for establishing the financial, commercial, and technical capacity of suppliers;
 - The means by which qualifications will be verified;
 - Specific qualification criteria, such as compatibility, quality control, and stable supply;
- (3) The period of validity of the lists, and the formalities for their renewal.

23. Relevant information concerning purchases of NTT will be released for the convenience of suppliers:

- (1) Guidebooks—including, *inter alia*, NTT's purchasing policy, the organization for purchasing, the purchasing procedures;
- (2) Each fiscal year's management program, plant engineering program;
- (3) Economic evaluation method;
- (4) Guidelines concerning construction, operation and maintenance instructions to be attached to supplied products.

24. A new interface will be set up to:

- (1) Actively assemble product information in the telecommunications market;
- (2) Provide a centralized interface with suppliers who wish to sell their products to NTT and to deal effectively and promptly with their sales activities, inquiries and requests for consultations.

ATTACHMENT II

PROCEDURES OF NON-BINDING ARBITRATION

Any dispute between Japan and the United States relating to the operation of the present arrangements, which cannot be settled through consultation, will be submitted for an advisory report to a tribunal of three arbitrators, one to be designated by each Party, and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator will not be a national of either Party. Each Party will designate an arbitrator within two months of the date of delivery by either Party to the other Party of a diplomatic note requesting arbitration of a dispute; and the third arbitrator will be agreed upon within one month after such period of two months.

If either Party fails to designate its own arbitrator within two months, or if the third arbitrator is not agreed upon within the time limit indicated, either Party may request the good offices of an acceptable independent person to make the necessary appointments by choosing the arbitrator or arbitrators. Both Parties will endeavor to conclude such an arbitration within one year.

Both Parties will use their best efforts under the powers available to them to put into effect the opinion expressed in any such advisory report.

Furthermore, each Party may take appropriate measures to re-establish reciprocity in the field of government procurement consistent with the outcome of such consultations or arbitration and the international obligations of Japan and the United States.

II

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON

December 19, 1980

Dear Dr. Okita:

I acknowledge receipt of your letter of today's date attached herewith on the subject of NTT procurement procedures, with the attachments entitled "NTT Procurement Procedures" and "Procedures of Non-binding Arbitration."

I confirm on behalf of my Government that the views and arrangements presented in your letter are acceptable to the United States. Therefore, we consider Code coverage discussions to be satisfactorily completed.

The Government of the United States, and the Federal Communications Commission in particular, is committed to the openness and transparency of the U.S. telecommunications market, without regard to nationality of the manufacturers. This policy relates to both mainline equipment, including those involving research and development, and the interconnect market, and, in our view, would lead to an open market that provides competitive and non-discriminatory market opportunities in the United States.

We are also prepared to meet as appropriate or periodically to review the above, including any difficulties that Japan may experience in the U.S. market. In the spirit of "mutual reciprocity" in "access opportunities to each other's markets," as agreed in the June 2, 1979, Joint Statement, the Government of the United States will consider such actions as are necessary to insure comparable openness and transparency

in the U.S. and the Japanese markets for telecommunications. We understand from your letter that your Government will do the same.

We anticipate that these arrangements will be in effect through 1983 and they will be reviewed in connection with the three-year review foreseen in the Code. After such review, they may continue, if appropriate, for a further period of three years. We also share your hope that these arrangements will encourage other countries to join the United States and Japan in working towards reciprocal and worldwide liberalization of procurement in the field of telecommunications. We look forward to a close relationship with the Government of Japan in this area.

If a dispute with respect to the operation of these arrangements should arise that cannot be satisfactorily settled, my Government stands ready to enter into expeditious consultations with the Government of Japan. Should consultations not resolve the dispute, either party may appeal to the nonbinding arbitration procedures attached to your letter.

Sincerely,

[Signed]

REUBIN O'D. ASKEW

Dr. Saburo Okita
Government Representative for
External Economic Relations
Chiyoda-Ku
Tokyo, Japan

JOINT STATEMENT

December 19, 1980

The Government of Japan and the Government of the United States, pursuant to paragraph 1.-(B)-(1) of the Joint Statement on June 2, 1979, held a series of discussions on the interconnect market. As a result of these discussions, the following conclusion was reached.

1. The Japanese side stated the following with respect to the customer-provided equipment (interconnect) market of Japan:

- (1) NTT will make type approval available for all classes of customer-provided equipment such as PBXs and key telephone systems as from January 1, 1981.
- (2) NTT will continue to publish all relevant documents and other information or requirements for having a product accepted for type approval in documents on Type Approval Application Procedures, Technical Requirements, and Technical References. The above documents or information will also be made available upon request. Technical requirements will, wherever appropriate, be specified in terms of performance criteria rather than design criteria.
- (3) NTT will accept test data in any area from domestic and foreign firms and laboratories as fulfilling requirements for type approval in a non-discriminatory manner, provided that such test data are acquired through designated test procedures or, where no procedure is designated, through reasonable test procedures. The NTT will be available to exchange views on different test procedures, on request, to seek a mutually acceptable understanding concerning test procedures and data. Final decision on the acceptance of type approval will be made by the NTT.

- (4) Upon submission of test data, NTT will grant or deny type approval expeditiously (normally within two months for all equipment except for more complicated types of equipment such as PBXs and key telephone systems where more time may be involved). Complaints arising from denial of type approval will be reviewed by the designated division of the NTT.
- (5) After completion of installation, NTT will, in general, complete inspection of installation within approximately two weeks of the date inspection is requested.
- (6) NTT will hold, as appropriate, a series of seminars in order to acquaint firms wishing to sell customer-provided equipment to the Japanese market with the technical requirements concerned.
- (7) NTT will publish the following documents and others as appropriate in English to facilitate sales by foreign manufacturers to the customer-provided equipment in Japan:

Technical Requirements:

- Technical Requirements for Terminal Equipment Connected to Leased Circuits*
- Technical Requirements for Specified Circuit Utilization Contracts*
- Technical Requirements for Telephone Ancillary Equipment and Key Connected Equipment*
- Technical Requirements for Private Branch Exchange (PBX) Systems*
- Technical Requirements for Public Communication Circuit (Telephone) Utilization Contracts*
- Technical Requirements for Public Communication Circuit (Telegraphy) Utilization Contracts*
- Technical Requirements for Telex Ancillary Equipment*
- Technical Requirements for Acoustic Couplers*

Guidebook:

- Procedures for Use of Customer-provided Equipment*

Technical References:

- Technical Reference for Leased Circuits and Specified Circuits Utilization
- Technical Reference for Data-communication Utilizing the General Switched Telephone Network
- Technical Reference for Data-communication Utilizing the Telex Network

2. The U.S. side reiterated its policy that non-discriminatory treatment should continue to be provided to both foreign and domestic suppliers in its interconnect market, in particular, with respect to the above measures that NTT will take. It also stated that it is the policy of the Government of the United States to keep its interconnect market open, and that it will use its best efforts to facilitate reciprocally sales to the interconnect market in the United States.

3. Both Governments will be prepared to consult promptly in respect of the above at the request of either Government.

* Already published.