

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1994 Nr. 252

A. TITEL

*Protocol tot wijziging van de Overeenkomst inzake overheidsopdrachten;
Genève, 2 februari 1987*

B. TEKST¹⁾

Protocol amending the Agreement on Government Procurement

The Parties to the Agreement on Government Procurement, hereinafter referred to as the "Agreement"),

Acting in accordance with Article IX:7 of the Agreement,

Hereby agree to amend the Agreement as follows:

Article I

1. Article I: I (a)

First sentence: delete "the procurement of products" and replace by "any procurement of products, through such methods as purchase or as lease, as rental or hire-purchase, with or without an option to buy".

2. Article I: I (b)

(1) Replace "SDR 150,000" in first and second sentence by "SDR 130,000".

(2) Add footnote 3 to first sentence:

"3. This Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article V:4."

(3) Third sentence: Redraft the language after the comma as follows:

"the basis for application of this Agreement shall be either the actual value of similar recurring contracts concluded over the pre-

¹⁾ De Franse en de Spaanse tekst zijn niet afgedrukt.

vious fiscal year or twelve months adjusted, where possible, for anticipated changes in quantity and value over the subsequent twelve months, or the estimated value of recurring contracts in the fiscal year or twelve months subsequent to the initial contract. The selection of the valuation method by the entity shall not be used with the purpose of circumventing the Agreement.”

- (4) Add the following after the amended third sentence:

“In cases of contracts for the lease, rental, or hire-purchase of products, the basis for calculating the contract value shall be:

- (i) in the case of fixed-term contracts, where their term is twelve months or less, the calculation should be based on the total contract value for its duration, or, where their term exceeds twelve months, its total value including the estimated residual value;
- (ii) in the case of contracts for an indefinite period, the monthly instalment multiplied by forty-eight;
- (iii) if there is any doubt, the second basis of calculation, namely (ii), is to be used.

In cases where a proposed procurement specifies the need for option clauses, the basis for application of this Agreement shall be the total value of the maximum permissible purchases, lease, rentals or hire-purchases, inclusive of optional purchases;”

Article II

1. Add new Article II:2:

“2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, the Parties shall ensure:

(a) that their entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership;

(b) that their entities shall not discriminate against locally-established suppliers on the basis of the country of production of the good being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of paragraph 4 of this Article.”

2. Renumber paragraphs 2 and 3 to become paragraphs 3 and 4.

Article III

1. Article III: 3

Replace “purchasing” in last sentence by “procuring”.

2. Article III:7

The reference to “paragraph 13” should be replaced by reference to “paragraph 14”.

3. Add new Article III:10:
 "10. Technical assistance referred to in paragraphs 8 and 9 above would include translation of qualification documentation and tenders made by suppliers of developing country Parties from a GATT language designated by the entity, unless developed country Parties deem translation as burdensome, and, in that case, explanation shall be given to developing country Parties upon their request addressed either to the developed country Parties or to their entities."
4. Renumber paragraphs 10–14 to become paragraphs 11–15.
5. Article III: 10 (to become Article III: 11)
 Replace "notices about proposed purchases" in first sentence by "notices about proposed procurements"; and replace "purchased or to be purchased" in first sentence by "procured or to be procured".
6. Article III:12 (to become Article III:13)
 Replace "purchase" in last sentence by "procurement".

Article IV

1. Article IV:1
 Replace "purchased" in first sentence by "procured".
2. Add new Article IV:4:
 "4. Procurement entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement."

Article V

1. Article V:1
 The references to paragraphs "7" and "15" should be replaced by "8" and "16", respectively.
2. Article V:2 (b)
 1. Add new sentence at the beginning of the existing provision:
 "any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question."
 2. the present sentence "any conditions etc." should start with a capital letter. Semicolon at the end of present sentence should be replaced by period. The following sentence should be added thereafter:
 "The financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity as well as its activity in the territory of the procur-

ing entity, taking due account of the legal relationship between the supply organizations;”

3. Article V:2 (c)
Replace “purchase” in first, second and third sentence by “procurement”.
4. Article V:2 (d)
Add the following words between “shall ensure that” and “all qualified suppliers”:
“suppliers may apply for qualification at any time; and that”
5. Add new Article V:2 (f):
“f) the Parties shall ensure that
 - (i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for different procedures;
 - (ii) efforts be made to minimize differences in qualification procedures between entities;”
6. Article V:2 (f) (to become Article V:2 (g))
Replace the words “(a) to (e) above” by “(a) to (f) above”.
7. Add new Article V:3:
“3. Entities shall not provide to any potential supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.”
8. Renumber Article V:3–16 to become Article V:4–17.
9. Article V:3 (to become Article V:4)
Replace “purchase” in heading and first sentence by “procurement”.
10. Article V:4 (to become Article V:5)
Replace “purchase” in first sentence of both first and second part of this provision by “procurement”.
11. Article V:4 (a) (to become Article V:5 (a))
Redraft as follows:
“the nature and quantity, including any options for additional quantities, of the products to be supplied and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products to be procured;”
12. Replace period after sub-paragraph 4 (g) – to become 5 (g) – by semicolon.
13. Add new Article V:5 (h):
“(h) whether the entity is inviting offers for purchase, lease, rental or hire-purchase, or more than one of these methods.”

14. Article V:5 (to become Article V:6)
Replace “purchase” in first sentence by “procurement”.
15. Article V:6 (a)(i) (to become Article V:7 (a)(i))
Replace “purchased” by “procured”.
16. Article V:6 (c) (to become Article V:7 (c))
Replace the reference to “paragraph 3” by “paragraph 4”.
17. Article V:7 (to become Article V:8)
 1. Replace “purchase” in first sentence by “procurement”.
 2. Replace the reference to “paragraphs 2–6” by “paragraphs 2–7”.
18. Article V:8 (to become Article V:9)
Replace “purchase” in both sentences by “procurement”.
19. Article V:9 (a) (to become Article V:10 (a))
Replace “purchase” by “procurement”.
20. Article V:9 (b) (to become Article V:10 (b))
Redraft as follows:
“Consistent with the entity’s own reasonable needs, any delivery date shall take into account such factors as the complexity of the proposed procurement, the extent of sub-contracting anticipated, and the realistic time required for production, de-stocking and transport of goods from the points of supply.”
21. Article V:10 (a) (to become Article V:11 (a))
Replace “thirty days” by “forty days” and “paragraph 3” by “paragraph 4”.
22. Article V:10 (b) (to become Article V:11 (b))
 1. Replace “thirty days” and “paragraph 3” in the first sentence by “twenty-five days” and “paragraph 4 of this Article”, respectively;
 2. Replace “thirty days” in the second sentence by “forty days”.
23. Article V:10 (c) (to become Article V:11 (c))
 1. Replace “thirty days” in the first sentence by “forty days”;
 2. Replace “Paragraph 3” and “thirty days” in the second sentence by “paragraph 4 of this Article” and “forty days”, respectively.
24. Article V:10 (d) (to become Article V:11 (d))
Redraft as follows:
“(d) The periods referred to in (a), (b) and (c) above may be reduced in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 5 of this Article. In this case, the period for the receipt of tenders shall in no case be less than twenty-five days. The second or subsequent publication should include a reference to per-

mit the identification of the first publication.”

25. Add new Article V:11 (e):

“(e) The periods referred to in (a), (b), (c) and (d) above may be reduced where a state of urgency duly substantiated by the entity renders impracticable the periods in question but shall in no case be less than ten days from the date of the publication referred to in paragraph 4 of this Article.
26. Add new Article V:11 (f):

“(f) The Parties shall ensure that their entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.”
27. Article V:12 (to become Article V:13)
Redraft first part as follows:

“13. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including information required to be published in the notice of proposed procurement, except for paragraph 5 (g) of this Article, and the following:”
28. Article V:14 (h) (to become Article V:15 (h))
Add a sentence to the end of the existing provision as follows:

“In the limited number of cases where offset procurement opportunities or similar conditions are required, these requirements shall be included in the notice of proposed procurement and tender documentation;”
29. Note to Article V:14 (h) (to become Note to Article V:15 (h))
 1. The reference in the heading and in the first sentence to “paragraph 14 (h)” should be replaced by “paragraph 15 (h)”.
 2. Add a second sentence, to read:

“When known, these requirements shall be specified in the notice of proposed procurement and tender documentation.”
30. Add new Article V:15 (i):

“(i) option clauses shall not be used in a manner which circumvents the provisions of the Agreement;”
31. Add new Article V:15 (j):

“(j) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.”
32. Article V:15 (to become Article V:16)
The reference to “paragraphs 1–14” in the first sentence should be replaced by “paragraphs 1–15”.
33. Article V:15 (d) (to become Article V:16 (d))
 1. Replace “purchase” by “procure”.
 2. Add footnote 4 at the end of this provision as follows:

“4). It is the understanding that “existing equipment” referred to

- in Article V:16 (d) includes software to the extent that the initial procurement of the software was covered by the Agreement”.
34. Article V:15 (e) (to become Article V:16 (e))
 - (1) Replace “purchases” in first sentence by “procures”. In second sentence replace “purchases” by ‘procurements’ and the reference to “paragraphs 1–14” by paragraphs 1–15”.
 - (2) Renumber footnote 3 to become footnote 5.
 35. Article V:16 (to become Article V:17)
 - (1) In second sentence, replace “purchasing” by “procuring” and “purchased” by “procured”.
 - (2) The references in first and second sentence to paragraph 15” should be replaced by “paragraph 16”.

Article VI

1. Article VI:1

Introduce the following new paragraph 1:

“1. Entities shall publish a notice in the appropriate publication listed in Annex II not later than sixty days after the award of a contract(s) under Article V:15 or 16.

These notices shall contain⁶ :

 - (a) nature and quantity of products in the contract award(s);
 - (b) name and address of the entity awarding the contract;
 - (c) date of award;
 - (d) name(s) and address(es) of winning tenderer(s);
 - (e) value of winning award(s) or the highest and lowest offer taken into account in the award of the contract;
 - (f) where appropriate, means of identifying the notice issued under Article V:4;
 - (g) the type of procedure used;
 - (h) where appropriate, justification according to Article V:16 for the use of such procedure.”

“⁶) It is understood that certain information on the contract award may not be published in cases of those contracts where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.”
 2. Renumber present Article VI:1–9 to become Article VI:2–10.
 3. Article VI:3 (to become Article VI:4)

Replace the period at the end of the provision by comma, and add the following:

“the value or values of the tenders and the name and address of

the winning tenderer. It is understood that the criteria contained in paragraph 9 of this Article are also applicable to the information requirements above.”

4. Article VI:4 (to become Article VI:5)
Replace “purchasing” by “procuring”.
5. Article VI:6 (to become Article VI:7)
Replace “purchase” In first sentence by “procurement”. Replace “purchasing” in second sentence by “procuring”.
6. Article VI:9 (to become Article VI:10)
Amend first sentence as follows:
“The Parties shall collect and provide to the Committee on an annual basis statistics on their procurements covered by this Agreement.”
7. Article VI:9 (a) (to become Article VI:10 (a))
Delete the first word “global”, delete semicolon at the end and add the following: “on a global basis and broken down by entities;”
8. Article VI:9 (b) (to become Article VI:10 (b))
Amend as follows:
“(b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products according to a uniform classification system to be determined by the Committee, and country of origin of the product;”
9. Article VI:9 (c) (to become Article VI:10 (c))
Amend as follows:
“(c) statistics, broken down by entity, and by category of product, on the number and total value of contracts awarded under each of the cases of Article V, paragraph 16 showing country of origin of the product;”
10. Add new Article VI: 10 (d):
“(d) statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in Annex I.”

Article VII

1. Article VII: 1
After the word “Chairman” in second sentence, add “and Vice-Chairman”.
2. Article VII:5
The reference to “Article VI, paragraph 8” should be replaced by “Article VI, paragraph 9”.

Article IX

Article IX:3

Footnote 4 should be renumbered footnote 7.

Annex II

The reference to "Article V, paragraph 3" in the title should be replaced by "Article V, paragraph 4". The word "Purchases" should be replaced by "Procurements".

Annex III

The reference to "Article V, paragraph 6" should be replaced by "Article V, paragraph 7".

Annex IV

The reference to "Article VI, paragraph 1", should be replaced by "Article VI, paragraph 2".

This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade who shall promptly furnish to each Party to the Agreement and to each contracting party to the General Agreement on Tariffs and Trade a certified copy thereof and a notification of each acceptance of the Protocol.

This Protocol shall be open for acceptance, by signature or otherwise, by the Parties to the Agreement, until 1 October 1987, provided that the period during which this Protocol may be accepted may, by a decision of the Committee on Government Procurement, be extended beyond that date.

Reservations may not be entered in respect of any of the provisions of this Protocol.

This Protocol shall enter into force on the ninetieth day following the date of its acceptance by all Parties to the Agreement, provided that it shall not enter into force before 1 January 1988.

This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

DONE at Geneva this second day of February, one thousand nine hundred and eighty-seven in a single copy, in the English, French and Spanish languages, each text being authentic.

Het Protocol is overeenkomstig de tweede paragraaf van zijn Slotbepalingen door ondertekening of anderszins aanvaard voor de volgende Staten en Internationale Organisatie:

Noorwegen	29 mei 1987
Zweden	24 juli 1987
Hong Kong	17 augustus 1987
Oostenrijk	4 september 1987
Canada.	23 september 1987
Finland.	25 september 1987
Japan.	28 september 1987
Zwitserland	29 september 1987
Singapore	30 september
de Verenigde Staten van Amerika	5 oktober 1987
Israël.	11 november 1987
de Europese Economische Gemeenschap.	16 november 1987

C. VERTALING

De vertaling in het Nederlands is afgedrukt in het *Pb.* EG L 71 van 17 maart 1980 blz. 44 c.v.

D. PARLEMENT

Het Protocol behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk wat betreft Aruba aan het Protocol kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Protocol zijn ingevolge de vierde paragraaf van de Slotbepalingen van het Protocol op 14 februari 1988 in werking getreden voor alle Staten Partij bij de Overeenkomst inzake overheidsopdrachten.

J. GEGEVENS

Van de op 12 april 1979 te Genève tot stand gekomen Overeenkomst inzake overheidsopdrachten, naar welke Overeenkomst wordt verwezen in de preambule tot het onderhavige Protocol zijn tekst en vertaling geplaatst in *Trb.* 1994, 251.

Van de op 30 oktober 1947 te Genève tot stand gekomen Algemene Overeenkomst betreffende Tarieven en Handel (GATT), naar welke Overeenkomst wordt verwezen aan het Slot van het onderhavige Protocol, is de tekst geplaatst in *Trb.* 1966, 1; zie ook, laatstelijk, *Trb.* 1967, 160. Van het op 8 februari 1965 te Genève tot stand gekomen Protocol tot wijziging van de Algemene Overeenkomst betreffende Tarieven en Handel door invoeging in die Overeenkomst van een Deel IV met

betrekking tot handel en ontwikkeling zijn tekst en vertaling geplaatst in *Trb.* 1966, 87. Zie ook *Trb.* 1967, 164. De GATT-Overeenkomst van 1947, zoals verbeterd, aangevuld of gewijzigd, is opgenomen in de op 15 april 1994 te Marrakesh tot stand gekomen Algemene Overeenkomst betreffende Tarieven en Handel (GATT 1994), welke als bijlage is opgenomen in de op 15 april 1994 te Marrakesh tot stand gekomen Overeenkomst tot oprichting van de Wereldhandelsorganisatie (WTO). De Engelse tekst van deze laatste Overeenkomst is geplaatst in *Trb.* 1994, 235.

Uitgegeven de *drieëntwintigste* november 1994.

De Minister van Buitenlandse Zaken,

H. A. F. M. O. VAN MIERLO