

**REQUEST FOR INFORMATION PURSUANT TO PARAGRAPHS 1 AND 2
OF ARTICLE XIX OF THE AGREEMENT ON
GOVERNMENT PROCUREMENT**

Communication from the United States

The following communication, dated 11 September 1998, has been received from the delegation of the United States with the request that it be distributed to the Members of the Committee on Government Procurement.

During the last two years, the United States has repeatedly raised its concerns with the procurement practices of the Korea Airport Construction Authority (KOACA). As we indicated in the 25 June 1998 meeting of the WTO Government Procurement Committee, the United States remains disturbed by Korea's repeated assertion that its commitments under the Agreement on Government Procurement (GPA) do not apply to KOACA. This assertion has serious implications for United States commercial interests and for the bilateral balance of rights and obligations established under the GPA. The United States urges Korea to reflect on this issue and to affirm, on that basis, that procurement conducted by KOACA is subject to and will be implemented in accordance with the provisions of the GPA.

Pursuant to paragraphs 1 and 2 of Article XIX of the GPA and in order to expedite the resolution of this important issue, the United States requests that Korea respond in writing to the attached list of questions relating to KOACA and its procurement practices. This information is requested without prejudice to the United States' rights under Articles XXII and XXIV of the GPA and any other relevant provisions of the WTO.

ATTACHMENT

1.
 - (a) Please explain the legal and operational relationship between the Korea Airport Construction Authority (KOACA) and the Ministry of Construction and Transportation.
 - (b) Please describe the extent to which the Ministry of Construction and Transportation has legal responsibility for managerial oversight of KOACA.
 - (c) In what way does the Ministry of Construction and Transportation exercise that responsibility?
 - (d) How are KOACA's president and other senior officials chosen? What approvals are required for each appointment?
 - (e) Please describe the extent to which the Ministry of Construction and Transportation or any other entity of the Korean government has legal authority to approve KOACA's budget and management plans.
 - (f) Please cite and provide copies of the legal or administrative authorities governing these issues.
2.
 - (a) What percentage of KOACA's annual budget is accounted for by appropriations from the Ministry of Construction and Transportation or other Korean government entities?
 - (b) What percentage of KOACA's annual budget is provided by sales of Korean public assets?
 - (c) What percentage of KOACA bonds or other debt, if any, is directly held or underwritten by the Korean government?
 - (d) What percentage of KOACA's budget is funded from private sector investments or other contributions?
 - (e) To what extent do any other Korean government entities have legal or budgetary authority over KOACA?
3. Please explain the relationship between KOACA and the "New Airport Development Group under the Ministry of Transportation", referred to in Korea's July 1991 written response to United States questions regarding government procurement for airport construction.
4. Please explain the relationship between KOACA and the "airport construction division of the Korea Airport Authority", referred to on KOACA's Internet web site at <http://www.airport.or.kr>.
5. Please explain the relationship between the "New Airport Development Group under the Ministry of Transportation", referred to in Korea's July 1991 response to United States questions regarding government procurement for airport construction, and the former airport construction division of the Korea Airport Authority, referred to on KOACA's Internet web site.

6.
 - (a) At the time bilateral negotiations between the United States and Korea relating to Korea's participation in the GPA were concluded (1993), to what extent was the "New Airport Development Group under the Ministry of Transportation" responsible for airport construction projects in Korea?
 - (b) Please identify all government entities that were responsible for airport construction projects at that time and the relationship of those entities to KOACA, which was established subsequently.
7.
 - (a) Is KOACA responsible for all airport construction projects currently being planned or implemented by government entities in Korea?
 - (b) If not, what other Korean government entities are responsible for planning and implementing airport construction projects?
 - (c) Please provide information on the estimated budgets of these entities.
8. Recent KOACA tender announcements include the requirement that "foreign firms should participate in the bid with local Firms (leading or prime company) as consortium members or subcontractors".
 - (a) What is the intent of this provision?
 - (b) Are there any circumstances in which United States or other non-Korean firms may qualify independently (i.e., as a "leading or prime company") to participate in this and similar KOACA procurement opportunities, or is partnership with a Korean firm a mandatory condition for qualification?
 - (c) Under what legal authority does KOACA have the authority to impose this requirement?
9. In recent KOACA tender announcements, all suppliers have been required to hold licenses and registration for manufacturing operations in Korea in order to qualify to participate.
 - (a) What is the purpose of this requirement?
 - (b) Does this preclude suppliers that have not established manufacturing facilities in Korea from qualifying as a prime contractor?
 - (c) For suppliers that do not have manufacturing facilities in Korea, can possession of appropriate manufacturing licenses issued by United States or other non-Korean authorities satisfy this requirement? If so, under what circumstances?
 - (d) Under what domestic law does KOACA have the authority to impose this requirement?
 - (e) Does KOACA require that equipment supplied under these contracts be produced in Korea?

10. The United States requests that Korea provide complete copies of the following documents (in English, if available):
 1. The Korean Airport Authority Act, and any related implementing or enforcement decrees.
 2. The IIA Construction Promotion Law, promulgated or announced on or around 31 May 1991, and any other related laws and implementing or enforcement decrees affecting what has become known as the Incheon International Airport.
 3. The Seoul Metropolitan Area New International Airport Construction Corporation Act, and any related implementing or enforcement decrees.
 4. The General Construction Basic Law, and any related implementing or enforcement decrees.
 5. The Electrical Construction Law, and any related implementing or enforcement decrees.
 6. Regulations of the Ministry of Construction and Transportation or other entities pertaining to the creation, purpose and functions of the "Corps of the New International Airport Construction Project".
 7. The Government Organization Act of the Republic of Korea.
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