

KOREA – MEASURES AFFECTING GOVERNMENT PROCUREMENT

Request for Consultations by the United States

The following communication, dated 16 February 1999, from the Permanent Mission of the United States to the Permanent Mission of the Republic of Korea and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with Korea pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article XXII of the Agreement on Government Procurement (GPA) with respect to certain procurement practices of the Korean Airport Construction Authority (KOACA) and other entities concerned with the procurement of airport construction in Korea, which are inconsistent with Korea's obligations under the GPA. Procurement practices of which we are aware include:

- Qualification: Requirements that, in order to be eligible to bid as a prime contractor, an interested supplier must have a license which in turn requires that the supplier have manufacturing facilities in Korea. This requirement appears to be inconsistent with Article III(1), Article VIII and Article XVI of GPA.
- Domestic partnering: Requirements that foreign firms partner with local Korean firms in order to qualify to participate in tendering procedures. For example, one solicitation for bids states that: "Foreign firms should participate in a bid with local firms (leading or prime company) as consortium members or subcontractors." We are also aware of other examples of partnering requirements. Such requirements appear to be inconsistent with Article III(1), Article VIII, and Article XVI of the GPA.
- Absence of access to challenge procedures: The GPA requires that member countries provide effective procedures enabling suppliers to challenge alleged breaches of the GPA arising in the context of procurements. However, such procedures do not exist for airport construction procurements. This appears to be inconsistent with Article XX of the GPA.
- Inadequate bid deadlines: There are impositions of deadlines for the receipt of tenders that are shorter than 40 days. This appears to be inconsistent with Article XI of the GPA.

KOACA and other entities procuring airport construction are within the scope of Korea's list of central government entities, as specified in Annex 1 of Korea's coverage of obligations in Appendix I of the GPA. Consequently, pursuant to Article I(1) of the GPA, Korea's obligations under the GPA apply in full with respect to the procurement of airport construction. The above practices nullify or impair benefits accruing to the United States under the GPA, whether or not they violate Korea's GPA obligations.

During negotiations with Korea for its membership into the GPA, the United States bargained in good faith for the coverage of airport construction. The United States' GPA commitments with respect to Korea and its acceptance of Korea as a party to the Agreement were based on a balance of opportunities and obligations which included Korea's coverage of airport construction. Korea's subsequent assertion that KOACA and other entities responsible for airport construction are not covered by the GPA seriously disrupts that mutually-agreed balance.

We look forward to receiving your reply to the present request, and propose that representatives of our governments meet for consultations during the week of 22 February 1999.
