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Review of the APEC Non-Binding Principles (NBPs) on Government Procurement

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**Government Procurement Experts' Group Meeting
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Government Procurement Experts' Group

APEC Non-Binding Principles on Government Procurement: (September 2006)

Introduction

The Government Procurement Experts' Group (GPEG) was established in 1995 to consider ways to achieve increased transparency and enhanced liberalisation of government procurement markets in accordance with the [Bogor Declaration](#).

GPEG developed a set of APEC Non-Binding Principles on Government Procurement (NBPs), which were endorsed by APEC Leaders at their meeting in 1999 in Auckland, New Zealand. The NBPs have contributed to the successful promotion of transparency and the liberalisation of government procurement markets across member economies. The first round of voluntary reviews and reports to GPEG against the NBPs has been completed by member economies.

GPEG members will work towards the application of these principles, taking into account the General Principles in the Osaka Action Agenda, including the General Principle of flexibility. Individual member economies are in the best position to decide on the applicability of individual elements of the NBPs, taking into account the specific characteristics of their economy and the costs and benefits of adopting specific measures. The NBPs will not prejudice the positions of members in their future negotiations of free trade agreements, regional trade agreements, or in the World Trade Organisation (WTO).

At their meeting in Los Cabos, Mexico, in October 2002, APEC Leaders adopted the *Statement to Implement APEC Transparency Standards*, calling for the development of transparency standards specific to each work area of the Osaka Action Agenda. GPEG developed *Transparency Standards on Government Procurement* (based on the transparency provisions in the NBPs), which were endorsed by APEC Leaders and adopted as part of the Leaders' Transparency Statement at their meeting in Santiago, Chile, in November 2004.

The transparency standard for government procurement replaces the transparency NBP. This document incorporates the NBPs and the separate transparency standard. The NBPs on Government Procurement are:

1. [Value for Money](#)
2. [Open and Effective Competition](#)
3. [Accountability and Due Process](#)
4. [Fair Dealing](#) and
5. [Non Discrimination](#).

The NBPs provide information on these issues and include links to additional information to inform the practical implementation of these principles. The examples

on practices included represent some of the possible ways to give effect to the elements of the principles, and are not intended to be prescriptive or exhaustive.

1. Value for Money

- 1.1 Value for money is the benefit gained by means of identifying the product or service that provides the most advantage to stakeholders, when considered over the entire procurement cycle from identification of need to disposal of an asset. These advantages include price and cost but also relate to factors beyond these.
- 1.2 Government procurement practices and procedures should be directed to achieving the best available value for money in the acquisition of goods and services to deliver, or support the delivery of, government programmes.
- 1.3 The test of the best available value for money is a comparison of relevant benefits and costs on a whole-of-life basis. In a procurement process achieving value for money requires a comparative analysis of *all* relevant costs and benefits of each proposal throughout the whole procurement cycle. This is called whole-of-life costing and it follows that value for money is an important consideration during each phase of a procurement.
- 1.4 A typical procurement process involves identification of need and desired outcomes, planning the procurement and selecting a procurement method, approaching the market, evaluation of suppliers and their offers, negotiation and award of contract, delivery of goods and performance of services, management of contracts, and disposal of assets.
- 1.5 Purchase price alone is not an adequate indicator of value for money. The lowest-priced compliant offer does not necessarily represent best value for money. Rather, when assessing alternative procurement solutions whole-of-life consideration includes factors such as:
 - market maturity;
 - the performance history of each prospective supplier;
 - the relative risk of each proposal;
 - financial considerations including benefits and costs over the whole procurement cycle; and
 - the evaluation of contract options.
- 1.6 In order to be in the best position to determine value for money when conducting a procurement process approaches to the market need to clearly specify relevant conditions for participation and evaluation criteria for a given procurement. This enables the proper identification, assessment and comparison of the costs and benefits of all submissions on a fair and equitable basis over the whole procurement cycle.
- 1.7 Further information on assessing [value for money](#) on a whole-of-life basis is available here.

2. Open and Effective Competition

- 2.1 Competition is an important element in achieving due process, fair dealing and value for money in a procurement.
- 2.2 Open and effective competition requires the use of competitive procurement processes.
- 2.3 When undertaking a procurement, governments need to conduct an appropriately competitive process of a scale commensurate with the size and risk profile of the particular procurement.
- 2.4 Procurement processes should aim to provide appropriate opportunities to potential suppliers and encourage open and effective competition in government markets.
- 2.5 Government procurement opportunities should be open and accessible to all suppliers. The bidding environment should be predictable. New suppliers should have the opportunity to enter the market.
- 2.6 In many economies, government policy determines specific procurement procedures to encourage competition and eliminate discrimination in a procurement process. Governments should consider the costs imposed on governments and potential suppliers when determining how a procurement process should be conducted. These costs should be assessed considering the scale, scope and relative risk of the proposed procurement, and how value for money and effective competition may be achieved.
- 2.7 Governments should respond to conditions that limit competition as soon as they are identified. Limitations should be effectively addressed.
- 2.8 Further information on [Open and Effective Competition](#) is available here.

3. Accountability and Due Process

- 3.1 Accountability is a primary consideration throughout the entire procurement cycle.
- 3.2 Accountability in terms of government procurement is a government's responsibility to stakeholders for their procurement activities. Governments must be accountable for their procurement processes given the large amounts of public money expended through procurement activities.
- 3.3 Accountability means that officials are responsible for the actions and decisions that they take in relation to procurement and for the resulting outcomes. Officials are answerable for such activity through established lines of accountability.
- 3.4 Government officials have the responsibility of ensuring that any procurement process is open and transparent and that decisions are justified. This is best achieved by ensuring that procedures are in place to guarantee that procurement processes are conducted in an accountable manner and that procurement related actions are documented, defensible and substantiated in accordance with government policies.
- 3.5 Due process is an important element of accountability, as well-planned, conducted and documented procurements that accord with government policy are more likely to withstand external scrutiny. Processes that ensure accountability can include transparency measures such as documentation, policy and legislative obligations, disclosure of information, reporting, and complaints processes.
- 3.6 Due process is an established course for government process carried out regularly, fairly and in accordance with established legislation, rules and principles. Due process is designed to safeguard the rights of the individual.
- 3.7 Due process also requires that procurement legislation and regulations must be related to legitimate government interests and may not contain provisions that result in the unfair or arbitrary treatment of an individual supplier or economy. Due process should safeguard the right of an aggrieved supplier to a fair hearing.
- 3.8 Independent scrutiny such as audit facilitates accountability and due process.
- 3.9 Further information on [Accountability and Due Process](#) is available here.

4. Fair Dealing

- 4.1 Fair dealing is the transacting of business in a manner characterized by openness and full disclosure. Fair dealing also involves avoiding conflicts of interest and self-dealing, such as transactions undertaken by a government official on his or her own behalf. The procurement process should be designed and procurement activities should be conducted in a fair, reasonable and equitable manner and with integrity.
- 4.2 Fair dealing is especially important in government procurement because it involves the expenditure of public funds and procurement activities are thus subject to public scrutiny.
- 4.3 Commercially sensitive information should be kept secure and should not be used for personal gain or to prejudice fair, open and effective competition.
- 4.4 Ethics are the rules or standards governing the conduct of an individual or group. This set of principles of right conduct establishes the moral boundaries or values within which officials work. Ethical behaviour encompasses the concepts of honesty, integrity, probity, diligence, fairness, trust, respect and consistency.
- 4.5 Ethical behaviour identifies and avoids conflicts of interest and does not make improper use of an individual's position.
- 4.6 A procurement conducted in an ethical manner will enable government officials and potential suppliers to deal with each other on a basis of mutual trust and respect. Adopting an ethical and transparent approach enables business to be conducted fairly.
- 4.7 Government officials have an obligation to treat all participating potential suppliers as equitably as possible. Governments should also ensure that procedures are in place to treat all potential suppliers fairly. These procurement process rules need to be clear, open, well understood and applied equitably to all parties to the process.
- 4.8 Further information on [Fair Dealing](#) is available here.

5. Non Discrimination

- 5.1 Non Discrimination aims to prevent bias for or against businesses or products.
- 5.2 Suppliers should be assessed on their ability to meet the requirements of the procurement, based on their legal, commercial, technical and financial abilities. Although size and location may at times be valid technical considerations, suppliers should not be excluded from tendering opportunities or denied equitable treatment because of their degree of foreign or domestic affiliation or ownership, location or size.
- 5.3 Bids should be evaluated and contracts awarded strictly according to the published criteria. Government should also not discriminate against suppliers on the basis of considerations such as gender, culture and beliefs, or ethnic origins.
- 5.4 Information on procurement opportunities should be equitably provided to all potential suppliers.
- 5.5 The procurement process rules need to be clear, open, well understood and applied equitably.
- 5.6 Further information on [Non Discrimination](#) is available here.

6. Transparency

Transparency provides assurance that procurement processes undertaken by governments are appropriate and that policy and legislative obligations are being met. Transparency involves governments taking steps to support appropriate scrutiny of their procurement activity. Transparency in general is addressed in the *APEC Transparency Standards*¹. This document contains the *Transparency Standards on Government Procurement*.

¹ Document Number 028



Government Procurement Experts' Group

APEC Non-Binding Principles on Government Procurement: Additional Information (September 2006)

Value for Money

Government procurement procedures should be directed towards achieving the best available value for money in the acquisition of goods and services to deliver, or support the delivery of, government programmes.

As defined by the revised NBPs on Government Procurement, the test of the best available value for money is a comparison of relevant benefits and costs on a whole-of-life basis.

The following information is supplementary to the NBPs and aims to assist governments, industry and the public in understanding how value for money is achieved in government procurement. This includes:

1. [Assessment of need and desired outcomes](#);
2. [Selection of an appropriate procurement method](#); and
3. [Evaluation of suppliers and their offers](#).
4. [The procurement process](#) itself should also provide value for money.

1. Assessment of need and desired outcomes

1.1 The desired outcomes of a procurement activity should be accurately identified. This assists government officials in identifying those factors that will contribute to the value of the procurement's outcome. Government officials should not over-specify or under-specify the attributes and performance required to accomplish their objectives as these actions may affect the quality of value for money achieved.

1.2 In practice, in identifying the desired outcomes of a procurement activity, government officials may consider:

- where, why and when the need arises and for how long and for which unit or location;
- the program objectives and functional requirements, with a focus on what is to be achieved rather than how it is to be done, to encourage innovative solutions that may improve the value for money outcome;
- whether the need is for the replacement or enhancement of existing resources, or to meet an entirely new requirement; and
- any alternatives, including the use of in-house resources.

1.3 Buyers may also develop a business case, including:

- consideration of funds availability;
- analysing and refining the initial statement of need;
- taking specialised advice from technical and procurement experts and on product availability, industry capability and potential risks or constraints;
- identification and treatment of any risks related to the procurement;
- anticipated costs and benefits on a whole of life basis;
- identifying the costs of project management, including support requirements for technical and commercial expertise at the project approval stage, when these resources will need to be identified and the project team appointed.

2. Selection of an appropriate procurement method

- 2.1 Government officials should, according to the needs of each procurement situation, choose the method that is likely to achieve the best value for money outcome. This includes encouraging levels of competition among suppliers commensurate with the anticipated value for money benefits from that competition.
- 2.2 No single type of procurement fulfils all requirements. Government officials should choose the method for each procurement that would best enable them to achieve value for money outcomes from a range of procurement methods according to the circumstances of each purchase. Procurement processes should be designed to facilitate appropriate levels of competition.
- 2.3 In practice, while open and competitive tendering should generally be the preferred method of tendering, in selecting the appropriate procurement method, government officials may take into account:
- the strategic importance of the procurement;
 - the complexity and/or cost of the procurement;
 - the complexity of the marketplace and environment in which that procurement shall be undertaken; and
 - constraints such as urgency, compatibility with existing goods and services, or existence of a sole source of supply.

3. Evaluation of suppliers and their offers

- 3.1 Government officials should evaluate suppliers and their offers to identify the bid offering the best value for money.
- 3.2 Government officials should:
- evaluate offers in a comprehensive and fully professional manner by taking account of the benefits and costs involved on a whole-of-life basis;
 - establish or verify the competence, viability and capability of prospective suppliers;
 - confirm that products offered comply with requirements including fitness for purpose and time frames and reflect an understanding of the needs of the end-user;

- assess and allow for relevant risks;
 - ensure that unnecessary costs are avoided and other costs are reduced wherever possible; and
 - ensure that the contractual agreements entered into are a comprehensive and accurate reflection of the terms, conditions and obligations agreed between the suppliers and government officials.
- 3.3 In practice, supplier evaluation may be done through a pre-qualification process and/or be part of the evaluation of bids. When evaluating suppliers, government officials may consider their management competence, financial status, technical competence and other matters such as their legal identity, previous contract performance and similar information that will provide an indication of the suppliers capability to meet the procurement requirements. Evaluation criteria should be published as part of the procurement documents.
- 3.4 Evaluation of offers should be done in a whole-of-life context, so as to ensure that the best value is obtained for the procurement. Besides price and fitness for purpose, other factors that may be taken into account include performance, quality, reliability, delivery, inventory costs, running costs, warranties and after-sale support, and disposal.
- 3.5 In addition, negotiation, if not prohibited, may be considered to improve the value of a procurement outcome under certain circumstances, for example, when:
- it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the tender notices or documentation;
 - only one tender is received;
 - potential suppliers raise reasonable objections or propose alternatives to the prescribed terms and conditions;
 - offer prices are unfair and unreasonable in the circumstances; or
 - there are substantial risks for either party warranting negotiation.
- 3.6 As a good policy, and to provide the government officials with the legitimacy for conducting negotiations, it is advisable to state in the tender notices and/or tender documentation that the government officials reserve the right to negotiate for the best offer and, if the submission of alternative proposals is allowed, that alternative proposals that improve the value of the offer may be submitted.

4. The procurement process providing value for money

- 4.1 Procurement systems should themselves represent value for money.
- 4.2 Government officials should regularly monitor and evaluate their procurement systems to ensure that they are efficient, effective, and appropriate and continue to represent value for money. Costs to government officials and suppliers of procurement activities should be minimised as far as possible.
- 4.3 This may be achieved by the following practices:

- procurements are effectively planned and approved prior to commencement;
- specifications are not unnecessarily complex or onerous;
- procurement activity is not unnecessarily complex, costly or time-consuming, but is still designed to adequately deliver value for money outcomes;
- pre-qualification, short listing and staged-procurement are undertaken where appropriate;
- evaluation criteria and conditions for participation are not unduly complex or costly for government officials and suppliers to address;
- contracts resulting from procurement activities should be managed so as to produce the best available value outcomes; and
- procurement officials should be trained and competent.



Government Procurement Expert's Group

APEC Non-Binding Principles on Government Procurement: Additional Information (September 2006)

Open and Effective Competition

Government procurement should be open and procurement methods should suit market circumstances. Government procurement should be transparent and readily accessible to the public and in particular to all potential suppliers. In addition, there should be a predictable bidding environment in which suppliers can readily evaluate their competitiveness and their chances of winning contracts.

The following information is supplementary to the NBPs and aims to assist governments, industry and the public in understanding how open and effective competition is achieved in government procurement. This includes:

1. Encouraging competition in government procurement;
2. Responding to conditions that limit competition; and
3. Non-discrimination.

1. Encouraging Competition in Government Procurement

- 1.1 Procurement processes should be designed to encourage levels of competition among suppliers, commensurate with the anticipated value for money benefits from that competition.
- 1.2 Considerations include:
 - ensuring that the maximum number of potential suppliers are able to compete. This includes ensuring access for potential new suppliers to opportunities, consistent with value for money principles and with the efficient operation of the procurement system;
 - ensuring that procurement procedures are flexible enough to accommodate market conditions; and
 - avoiding unnecessary costs for government officials and suppliers.
- 1.3 In practice, government officials may choose from open, limited or restricted procurement processes depending on the circumstances of each procurement.
- 1.4 The following may be necessary to ensure that a procurement action facilitates effective competition:

- specifications are adequate and drawn up, where possible, in terms of performance, functional and/or operational requirements using international or other relevant standards;
- "or equivalent" should be added to a particular trademark, patent, design or type, specific source of origin, producer or supplier prescribed in tender documentation;
- sufficient time for preparing submissions is allowed to enable interested suppliers to participate in the procurement process;
- where practicable, sufficient time is allowed to enable interested suppliers to initiate and complete any necessary qualification procedures;
- requests for offers are made in good time, effectively promoted in the market and are clear, succinct and informative;
- submissions are evaluated expeditiously on a whole-of-life basis against notified criteria, giving all participating suppliers full opportunity to demonstrate the benefits they can provide; and
- any negotiation undertaken with suppliers is conducted in a structured and ethical manner by trained and experienced negotiators.

- 1.5 Good market knowledge can help government officials to design and plan the procurement process, to identify possible new sources of supply as well as to conduct the procurement in the most effective manner. Government officials may use methods such as Invitation to Register Interest or Request for Proposals to identify the market and available or possible products or services, or to encourage suppliers to propose solutions where the fundamental nature of a solution to a requirement is not clear.

2. Responding to conditions that limit competition

- 2.1 Government officials should ensure that limitations to competition are effectively addressed.
- 2.2 Competition may be limited by factors such as existence of monopolies or cartels, limited number of qualified suppliers, urgency of requirements, need for compatibility with existing products and difficulty in persuading suppliers to bid. Government officials should adjust their procurement method to achieve the best value for money in such limited competition situations.



Government Procurement Experts' Group

APEC Non-Binding Principles on Government Procurement: Additional Information (September 2006)

Accountability and Due Process

Government procuring agencies and government officials are seen to be accountable to their governments, the end users, the public and suppliers for the efficient, cost-effective and fair conduct of their procurement.

The following information is supplementary to the NBP of Accountability and aims to assist governments, industry and the public in understanding how accountability is achieved in government procurement. This includes:

1. [Accountability throughout the Procurement Process](#);
2. [Record keeping](#);
3. [Independent scrutiny](#); and
4. [Review Mechanisms](#).

1. Accountability throughout the Procurement Process

1.1 Governments should establish clear procurement laws, regulations, policies, and procedures to ensure that procurement processes are open and transparent and that decisions are justified. These measures should be widely available and known to government officials who undertake procurement. Government officials should follow them without intentional or negligent infraction throughout the entire procurement process.

2. Record Keeping

2.1 Proper records should be kept of the entire procurement process, including decisions and actions taken during the procurement process and the reasons for taking them, to an extent that is sufficient to justify the decisions and actions taken. These records should be retained for a predetermined period.

2.2 In practice, matters that should be documented include:

- specifications of the items and/or services to be procured;
- approval to spend public monies;
- selection of procurement methods and justification for selections;
- criteria for evaluating and selecting successful submissions;
- discussions with potential suppliers before submissions are due;

- opening and authentication of the submissions received;
- names of the suppliers who have participated in the procurement process;
- contents of invalid submissions and reasons they have been excluded from the process based on non-compliance with conditions for participation and evaluation criteria;
- decisions on selection of successful submissions including assessment against conditions for participation;
- authorisation and signing of contracts; and
- reasons for varying a contract.

3. Independent Scrutiny

3.1 Mechanisms for the scrutiny of the procurement process and channels for review of complaints should be available. Governments should ensure that robust accountability frameworks are in place to ensure procurement decisions withstand external scrutiny.

3.2 Scrutiny mechanisms should be put in place to support and ensure accountability and due process. Such mechanisms should operate in ways that are independent, according to their circumstances, scope, and objectives, and are not subject to the authority, control or influence of scrutinised entities. They should also treat, and be seen to treat, all parties even-handedly and fairly.

3.3 In practice, such mechanisms may include:

- management controls and internal audit procedures designed to ensure efficiency, economy and probity in a government official's use of public resources;
- internal scrutiny of actions or decisions of a government official or section within an agency by another official or section of that agency; and
- scrutiny by another government agency, which may or may not be independent of government influence, such as an ombudsman and/or government audit organization.

4. Review Mechanisms

4.1 Mechanisms should be put in place for handling complaints about procurement processes or alleged breaches of procurement laws, regulations, policies and procedures which cannot be resolved through direct consultation with the procuring agency in the first instance. Such mechanisms should provide independent, impartial, transparent, timely and effective procedures for the review of such complaints or alleged breaches by suppliers who have, or have had, an interest in the procurement concerned.

4.2 In practice, this can include:

- designating a review body for the purpose of an objective and impartial review of the complaints or alleged breaches. The review body may take the form of a court, an independent review body, a government

agency not directly involved in the procurement, or a reputable private sector arbitration or mediation service. The review body should have no interest in the outcome of the procurement and its members should be secure from external influence during the review;

- providing for correction of the breaches or compensation for the loss or damages caused, which may be limited to the costs of tender preparation or protest;
- making information on the review mechanism including its scope, objectives and operations, and the rights and obligations of all parties involved, readily available and accessible to suppliers; and
- making the review mechanism available equally to domestic and foreign suppliers.



Government Procurement Experts' Group

APEC Non-Binding Principles on Government Procurement: Additional Information (September 2006)

Fair Dealing

Fair dealing promotes public confidence in the procurement process and mutual trust and respect between the buyers and suppliers. This includes a clear understanding by all parties to a proposed transaction in regard to their obligations and expectations. This will in turn encourage participation and contribute to achieving the best value for money in the acquisition of goods and services. Unethical behaviour, on the contrary, will add costs to and/or reduce the quality of the goods and services procured and damage the image of the procuring entity.

The following information is supplementary to the NBPs and aims to assist governments, industry and the public in understanding how fair dealing is achieved in government procurement. This includes:

1. [The Procurement Process](#);
2. [Disclosure of Interests](#);
3. [Gifts, Benefits and Hospitality](#);
4. [Confidentiality and Accuracy of Information](#); and
5. [Separation of Responsibilities and Authorisation](#).

1. The Procurement Process

1.1 The procurement process should be fair and seen to be fair, and should treat all parties even-handedly.

1.2 This may be achieved by the following practices:

- contact between government officials and suppliers should be on a formal basis once the formal procurement process starts;
- all suppliers should be accorded fair and equitable opportunity and treatment at all stages of procurement;
- qualifications of suppliers and technical specifications should not be prepared, adopted or applied to create unfair advantages to some suppliers;
- submissions should be kept securely until they are opened by designated officials, who should authenticate the submissions and keep a duplicate copy before passing them to the officers responsible for the evaluation process. There should be clear policy or regulations setting out the circumstances under which they would be excluded from the procurement process.

- clear and reasonable time limits should be set for various stages of the procurement process and should be followed strictly by all parties. In particular, there should be a clearly defined policy on whether and in what circumstances late offers may be accepted;
- evaluations should be undertaken by more than one evaluating staff member or a committee to verify that the offers contain all the published conditions for participation and evaluation criteria;
- any short listing process for negotiations should be conducted in a fair and equitable manner and any negotiations should be conducted in a structured and ethical manner;
- bids should be evaluated and contracts awarded strictly according to the published criteria. Any action that the buyer is entitled to take, such as negotiations or cancellation of approaches to the market, should be included in the published documentation; and
- complaints or appeals from suppliers should not prevent them from participating in future procurement processes.

2. Disclosure of Interests

- 2.1 Government officials should not allow the pursuit of private interests to interfere with the proper discharge of their official duties. Also, they should not allow their conduct to warrant any suspicion of conflict between their official duties and their private interests.
- 2.2 Early and open disclosure of personal interests will allow management to prevent a conflict of interest from arising.
- 2.3 In practice:
- Government officials should disclose any interest, directly or indirectly possessed, which conflicts or might reasonably be thought to conflict with their public duties, or improperly influence their conduct in the discharge of their public duties; and
 - procuring agencies should have a systematic way to address conflict of interests. For example, where a procurement officer possesses an interest which conflicts with their public duties, the basis of that interest should be discontinued, or the person should cease the duties involved or obtain management permission to continue.

3. Gifts, Benefits and Hospitality

- 3.1 Government officials should not solicit or accept gifts, benefits or hospitality which might influence or be perceived to influence the conduct of their duties. Potential suppliers should not seek to influence government officials in their duties by gifts, benefits or hospitality.
- 3.2 In practice:
- government officials should not solicit or accept benefits or advantages whether for themselves, their immediate family or business concern or

trust with which they are associated from persons who have or seek to have contracts with their agencies;

- government officials should not accept any gift or hospitality from suppliers except as may be permitted under the rules of their agencies;
- when it is difficult to decide whether an offer of gift or hospitality is acceptable or not, government officials should decline the offer or seek the advice of a superior;
- government officials should report to management immediately any attempts by suppliers to undermine impartiality and independence of action by the offer of benefits or other form of inducement;
- government officials should avoid occasions where their presence may appear to imply a close relationship with the suppliers or lead to perception of a conflict of interest;
- procuring agencies should have a clear policy on whether their officials may accept any purchasing privileges offered to them by suppliers. If such privileges are allowed, value and quantity limits should be set. It is vital that the requirement for fairness and equity is not compromised by this practice, which can place government officials under pressure to regard certain suppliers favourably.

4. Confidentiality and Accuracy of Information

- 4.1 Information given by government officials in the course of their work must be accurate, impartial and not designed to mislead.
- 4.2 In practice, government officials should:
- not give one supplier's prices to another to meet or beat;
 - not reveal details of commercial arrangements, including the details of contract pricing, in a way that compromises the commercial interests of the supplier or contractor concerned;
 - safeguard commercially sensitive information physically so that other parties do not release it deliberately or inadvertently; and
 - not use information obtained in the course of official duties to gain directly or indirectly a pecuniary advantage for themselves or for any other person.
- 4.3 If a procuring agency engages consultants to assist in the tender evaluation process, they should also be subject to the principles above. The contractual agreements with such consultants should contain a statement to this effect. The contractual agreements with such consultants should also stipulate that information gained during the tender evaluation may not be disclosed for a specified period after the evaluation.

5. Separation of Responsibilities and Authorisation Power

- 5.1 To minimise the risk of unethical behaviour including fraud and corruption, a procuring agency should separate where practicable the various responsibilities and authorisations in procurement. One method of achieving this is to rotate duties to ensure that key decision areas are not continuously in the control of one individual. Rotation can reduce the risk

of biased relationships developing between a particular staff member and a supplier, or the appearance of this.



Government Procurement Experts' Group

APEC Non-Binding Principles on Government Procurement: Additional Information (September 2006)

Non-Discrimination

Procurement laws, regulations, policies, and administrative guidelines should not be prepared, adopted or applied so as to afford preference to or bias against, the goods, services or suppliers of any particular economy.

The following information is supplementary to the NBPs and aims to assist governments, industry and the public in understanding how non-discrimination is achieved in government procurement.

The use of discriminatory practices in government procurement undermines the competitive process and thus the ability of member governments to achieve the best possible value for money outcomes.

3.1 In practice, non-discrimination can be achieved through the following:

- the same information on procurement opportunities should be available in a timely manner to all potential suppliers. For example, publishing tender information on the Internet allows information to be available instantaneously to all interested suppliers regardless of their location;
- criteria for qualification of suppliers, evaluation of bids, and award of contracts should be based solely on the ability to meet the procurement criteria and conditions for participation published in the approach to the market;
- where open tendering is not practical, selective invitation to tender should be based on non-discriminatory and objective conditions for participation, consistent with the open and effective competition principles and practices;
- tender specifications should not be prepared, adopted or applied to create bias for or against the goods, services or suppliers of any particular economy;
- submissions should be evaluated and contracts awarded strictly according to the published criteria;
- post-tender negotiations, if allowed, should be notified in the tender notice and tender documentation. In the course of negotiations, government officials should not discriminate between goods, services or suppliers of different economies. Also, any opportunity to submit revised bids should be provided on a non-discriminatory basis;
- any debriefing should be available to all participating suppliers, and review procedures to all participating suppliers and suppliers having an

- interest in the procurement concerned, on a non-discriminatory basis;
and
 - suppliers should not be unjustifiably excluded from the procurement process.
- 3.2 Notwithstanding the above, the principle of non-discrimination should not prevent member economies from taking actions that are necessary for the protection of their essential security interests relating to the procurement of arms, ammunition or war materials; or to procurement indispensable for security or defence purposes. This exception should have limited application; it should not be used in an arbitrary or unjustifiable manner with the intention or effect of unnecessarily undermining the non-discrimination principle or restricting international trade.
- 3.3 A government procurement measure that is necessary to protect human, animal or plant life or health or the environment is consistent with the principle of non-discrimination, provided such a measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between member economies where the same conditions prevail or a disguised restriction on trade between the member economies.



APEC Leaders' Transparency Standards Santiago, Chile – 21 November 2004

Government Procurement

Introduction

The Government Procurement Experts Group (GPEG) was established in 1995 to consider ways to increase transparency of, and liberalise, government procurement markets in accordance with the goals of the Bogor Declaration. APEC identified and agreed a collective action plan for government procurement. A key component of the plan was to develop a set of non-binding principles on government procurement. This was in line with the APEC General Principle of flexibility, enunciated in the Osaka Action Agenda: "Considering the different levels of economic development among the APEC economies and the diverse circumstances in each economy, flexibility will be available in dealing with issues arising from such circumstances in the liberalisation and facilitation process".

In 1999 GPEG completed the Non-Binding Principles on Government Procurement (NBPs) that identify elements and illustrative practices on the principles of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination. The NBPs have the support and commitment of all Economies and have been adopted as the basis of the Government Procurement section of APEC economies' annually revised Individual Action Plans recording progress towards the Bogor goals of free and open trade and investment.

The NBPs have been a major contributor to the success of Economies and GPEG in promoting transparency in government procurement. The majority of GPEG members have completed their voluntary reviews and reports of their government procurement systems against the non-binding principle of Transparency. Through this process, Economies are exploring how best to implement the principles and to voluntarily bring their systems into conformity with them. This general transparency principle applies to all aspects of government procurement, including the elements of the general operational environment, procurement opportunities, purchase requirements, bid evaluation criteria and award of contracts. Establishing and maintaining transparent procurement markets not only assists Economies to learn from each other but also enables industry to obtain a clear understanding of the procurement markets operating within member economies.

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the "Statement to Implement APEC Transparency Standards" ("Leaders'

Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

Paragraph 7 of the Leaders’ Statement states that, consistent with the transparency standards in paragraphs 1-6 of the Leaders’ Statement, Economies will follow the transparency provisions contained in the APEC Government Procurement Experts Group (GPEG) NBPs. In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed that “APEC sub-fora that have elaborated transparency provisions should review these regularly and, where appropriate, improve, revise or expand them further,” and also instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Ministers Responsible for Trade meeting in Khon Kaen on June 2-3 “instructed officials to complete work underway to develop area-specific Transparency Standards.”

The Transparency Standards on Government Procurement, as set out below, are consistent with and fully reflect the General Principles in the Leaders’ Statement and the transparency-related provisions of the NBPs. Implementation of both the Transparency Standards on Government Procurement and the NBPs will promote transparency in government procurement in the Asia-Pacific region.

Transparency Standards on Government Procurement

Transparency in the government procurement context means that sufficient and relevant information should be made available to all interested parties consistently and in a timely manner through a readily accessible, widely available medium. This applies to all aspects of government procurement, including the general operational environment, procurement opportunities, purchase requirements, bid evaluation criteria and award of contracts.

1. Consistent with paragraph 1 of the Leaders’ Statement, each Economy will:
 - (a) ensure that its laws, regulations, and progressively judicial decisions, administrative rulings, policies (including any discriminatory or preferential treatment such as prohibitions against or set asides for certain categories of suppliers), procedures and practices (including procurement methods) related to government procurement (collectively referred to as “procurement rules”) are promptly published or otherwise made available, for example, via the Internet, in such a manner as to enable interested persons and other Economies to become acquainted with them;
 - (b) designate an official journal or journals and publish the procurement rules in such journals on a regular basis and make copies of the journals readily available to the public (e.g., via the Internet); and
 - (c) promote observance of the provisions of this paragraph by the regional and local governments and authorities within its customs territory.
2. Each economy will disseminate information on its procurement rules, for example, by:

- (a) publishing either a positive or negative list of the procuring entities subject to its rules; and
- (b) providing a description of its procurement rules on the APEC Government Procurement Experts Group Home Page and linking its government procurement Home Page, where available, with the APEC Government Procurement Experts Group Home Page.

3. Consistent with paragraph 2 of the Leaders' Statement, when possible each Economy will publish in advance any procurement rules that it proposes to adopt; and provide, where applicable, interested persons a reasonable opportunity to comment on such proposed procurement rules.

4. Consistent with paragraph 3 of the Leaders' Statement, each Economy will endeavor upon request from an interested person or another Economy to promptly provide information and respond to questions pertaining to any actual or proposed rules. Each Economy will also establish contact points for such inquiries.

5. Consistent with paragraph 4 of the Leaders' Statement, in administrative proceedings applying to any procurement rule, each Economy will ensure that:

- (a) wherever possible, persons of another Economy that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
- (c) its procedures are in accordance with domestic law.

6. Consistent with paragraph 5 of the Leaders' Statement, where warranted, each Economy will ensure that appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for sensitive prudential reasons, regarding matters covered by these Standards, that:

- (a) provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the matter;
- (b) provide parties to any proceeding with a reasonable opportunity to present their respective positions;
- (c) provide parties to any proceeding with a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority; and
- (d) ensure, subject to appeal or further review under domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.

7. Each Economy will endeavour to maximize transparency in access to procurement opportunities. This should be accomplished where possible by:

- (a) where open tendering is adopted, publishing procurement opportunities in a medium readily accessible to suppliers (e.g., on the Internet);
- (b) making the same information on procurement opportunities available in a timely manner to all potential suppliers;
- (c) publishing contact details of purchasers, and their product/ service purchase interests, for suppliers wishing to register their interest in being notified of bidding opportunities that may not be publicly advertised;
- (d) making available early advice of complex high-value procurement needs through staged procedures such as public requests for information, requests for proposals and invitations for pre-qualification, and allowing adequate time for interested suppliers to prepare and submit a response;
- (e) making publicly available requirements and procedures for pre-qualification of suppliers; and
- (f) any time limits established for various stages of the procurement process.

8. Each Economy will make available for suppliers all the information required to prepare a responsive offer. This should include where possible:

- (a) providing in procurement notices the following information: the nature of the product or service to be procured; specifications; quantity, where known; time frame for delivery; closing times and dates; where to obtain tender documentation, where to submit bids, and contact details from which further information can be obtained;
- (b) providing any changes to participating suppliers; and
- (c) providing tender documentation and other information to suppliers promptly on request.

9. Each Economy will maintain transparent criteria for evaluating bids and evaluate bids

and award contracts strictly according to these criteria. This should be done where possible by:

- (a) specifying in procurement notices or tender documentation all evaluation criteria, including any preferential arrangements; and
- (b) maintaining, for a predetermined period proper records of decisions sufficient to justify decisions taken in the procurement process.

10. Each Economy will award contracts in a transparent manner. This should be accomplished where possible by:

- (a) publishing the outcome of the tender including the name of the successful supplier and the value of the bid; and
- (b) as a minimum promptly notifying unsuccessful suppliers of the outcome of their bids and where and when contract award information is published, and debriefing unsuccessful suppliers on request.

11. Consistent with paragraph 11 of the Leaders' Statement, an Economy does not need to disclose confidential information where such disclosure would impede law enforcement, the enactment of laws, or that would be contrary to the public or national interest, or compromise security of the economy concerned or that would prejudice the legitimate commercial

interests of particular persons or enterprises. Each economy will keep commercially sensitive information secure and prevent its use for personal gain by procurement officials or to prejudice fair, open and effective competition.