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CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

COMPUTER PROCUREMENT POLICY

Memorandum by the Secretary of State for Industry

1 E(80)7th meeting invited me to pursue vigorously our new public purchasing policy, emphasising the need to emulate the stimulating support our main competitors give to their own national industries through public purchasing. The meeting called for a shift in Government policy and a broadening of the value for money criterion while remaining within international obligations. In the case of computer procurement, special considerations apply. Both the GATT Code on public purchasing and the EC Public Supplies Directive will oblige us, from 1 January 1981, to modify our present overtly preferential policy towards ICL (outlined at Annex A), since they are based on the principle of international competitive tendering for products with the intention of constraining narrowly any preference for domestic suppliers. This paper, therefore, seeks colleagues' agreement to the principles which should guide our future policy on computer purchasing in central Government.

GENERAL APPROACH

2 Officials have been examining the options for this new computer procurement policy and have agreed that it should reflect the following main considerations:

- a international competition on computers will remain fierce and Governments are expected to continue to use public procurement to give a competitive edge to national companies. We should be no less ready than other governments to adopt a robust approach to interpreting and applying the new Codes;
- b the most effective form of procurement support is through providing industry with experience of new and demanding applications of wide market (particularly export) potential sometimes in association with other support policies (e.g for product development or implementation of standards;

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- c it will remain important to protect the operational needs of users and to weigh the cost-effectiveness and value for money of systems to be acquired;
- d procurement support should be available in future not only to ICL but also to other suppliers in the fast growing areas of information technology, e.g. minicomputers and terminals, and computing services;
- e where a preferential approach can be adopted, it should in most cases apply in future to all equipment manufactured in the UK (e.g. by the US multinationals with plants here), whether or not the supplier is UK-owned. Nevertheless, since UK-owned companies have greater freedom to convert public sector orders into future international competitiveness, the main emphasis of support should remain on them, especially where the application is innovatory;
- f Government and other public sector users should design their systems and draw up specifications in ways which ensure that the resulting systems and products gain ready acceptance in overseas markets - users should avoid unnecessary or expensive features which have no attraction overseas.

OUTLINE OF SPECIFIC POLICY

3 In the light of these considerations officials have reviewed the practical steps which might be taken to improve the competitiveness of the UK computer industry through enlightened procurement support in the new conditions which will apply from 1 January 1981. A key factor is the coverage of the international procurement codes. As Annex B shows, all civil procurement of computers by central Government will be subject to the Code and Directive (and should therefore be undertaken by international competitive tendering) unless the value of the contract is less than £90,000 or certain limited special provisions apply. There are, however, major areas of the public sector outside central Government which are exempt from these provisions and within central Government itself procurement by the Ministry of Defence of operational and weapons systems will stand outside both Code and Directive.

4 It is therefore possible to divide procurements into three main categories. The first is where the tendering procedures laid down in the EC and GATT Codes have to be implemented. In these cases - probably the majority, by number in central Government - UK industry would rely primarily on early intelligence of forthcoming procurements, perhaps supplemented by supported R&D, to get itself into the best position to win in open tender. Where foreign competitors cut their prices ruthlessly, UK companies may often have to improve their own competitive terms. The second is where there is a clear exemption from the EC and GATT

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rules and where there is scope for limiting the suppliers who are invited to tender, in order to maximise the chances of UK industry. The third - and most difficult - is where the circumstances could lead towards open international tendering but where the significance of the requirement to UK industry may make it desirable to stretch interpretation of the Codes to the limit to justify the more limited or even single tendering.

5 At Annex C is a summary of the conclusions reached by officials on the treatment of public sector computer procurement in these three categories. More work needs to be done on some of the details of the new policy, but I invite the Committee to agree six specific recommendations which will underpin both the further planning work and the subsequent operation of the new policy:

- a an overriding intention that Government should use its buying to facilitate British firms' success in world markets;
- b the establishment of a central machinery for reviewing future requirements, examining their industrial implications and advising on the appropriate procurement approach, in the light of both the international agreements and the demands of Parliamentary accountability. (Paragraphs 2 - 4 of Annex C).
- c encouragement of positive discrimination in favour of UK-owned companies, in the initial discussions on future requirements which take place directly between public sector users and potential suppliers (paragraph 6 of Annex C)
- d the development of a policy for computer procurement outside the ambit of the international Codes which limits tenders, as far as possible, to equipment manufactured in the UK (paragraph 7 of Annex C)
- e continued use of single tender in certain circumstances (e.g. because of software compatibility) which are consistent with the international Codes and have suitable safeguards against PAC criticism (paragraph 8 of Annex C)
- f where industrial considerations are of particularly high importance the use of deliberate measures, in a minority of cases, to give UK industry a greatly improved chance of securing an order which would otherwise be awarded by open international tender (paragraph 9 of Annex C)

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6 I consider that computer procurement policy, when operating within this framework, will provide a satisfactory balance between the need for support and the stimulus of competition for UK industry. It should also ensure that both users' requirements and the effective use of public expenditure are given full weight in individual decisions, without the need for frequent reference back to Ministers. I recognise, in particular, the importance to computer using Departments of the new arrangements and their concern that these should not have an adverse impact on the efficiency of their computer operations. User Departments will be fully involved by Department of Industry officials in the further work to get the new policy off the ground. These Departments can play a very positive role in the new policy, for example by not drawing their specifications narrowly, but in a way that will help UK industry reach a wider market with more competitive products. It can be mentioned here that similar policies should also prove effective in related areas of information technology, especially in the procurement of advanced office equipment - the central reviewing and advisory machinery for computer procurement should ideally be capable of dealing with a wider range of equipment and requirements, to allow for the convergence of technology.

7 Finally, I should stress to colleagues that public purchasing objectives in this field will depend for their success on a positive will in all the parties concerned to work together constructively to make the new arrangements succeed. The opportunities to help UK domestic industry will be much more limited than before and require careful identification.

NEXT STEPS

8 Officials will complete the work necessary by the end of this year to clarify the remaining points of detail, to set in place the central reviewing machinery and to draw up initial policy guidance to purchasing bodies.

9 In parallel, they will be considering the kind of public statement that should be made about the new policy. We need not go out of our way to explain the detail of it to our competitors, but we should, at least, make explicit reference to the ending of the existing preference for ICL and our intention to observe the GATT and EC rules. Further there may be a need for a statement at some stage about limitations on competitive tendering in the areas not subject to the GATT and EC provisions, given the considerable industrial and Parliamentary interest in the field.

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CONCLUSION

10 Colleagues are invited to:

- a approve the guiding principles set out in paragraph 2;
- b agree that the six specific recommendations in paragraph 5 should underpin future computer procurement policy in central Government;
- c instruct officials to complete by the end of this year the outstanding work summarised in paragraph 10 of Annex C;
- d endorse the approach to the public sector generally in paragraph 3 of Annex C.

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Department of Industry  
19 November 1980

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STATEMENT BY MINISTER OF STATE, CIVIL SERVICE DEPARTMENT  
27 JULY 1977

(Extracted from Hansard Written Answers Cols 227-228)

COMPUTERS

Mr Joseph Dean asked the Minister for the Civil Service whether he will make a statement about the internal review of Government policy for the procurement of computers for Government use.

Mr Charles R Morris: The arrangements under which computers are currently purchased for central Government use were reported to this House on 2nd March 1971 [Vol 812, col 419] as follows:

- (1) to acquire large computers - those more powerful than Atlas - and computers leading into them by single tender action from ICL, subject to satisfactory price, performance and delivery date, save in exceptional circumstances where the penalties of transferring from another manufacturer would be too great;
- (2) to acquire other computers by single tender action where there are reasons for seeking compatibility or flexibility, subject to the same proviso about price, performance and delivery;
- (3) in all other cases, including those in which the appropriate manufacturers are unable to meet the conditions specified in (1) and (2), to seek competitive tenders, including so far as possible at least one offering a system manufactured in the United Kingdom and to award the contract strictly on the merits of the evaluation.

The Government have decided to continue for the time being substantially the same arrangements for purchasing computers for the central Government. Subject to the important provisos set out in 1971, computers in the power range corresponding to the ICL 1904S, 2960, 2970, 2976 and 2980 machines will in future be acquired by single tender action from ICL. As before, these arrangements do not commit the Government to purchasing a large computer within this power range where it would be more efficient to meet a particular requirement by a system made up of smaller machines.

In reaching this decision, the Government have taken note of a recent directive on public supplies issued by the European Economic Commission which provides for the exemption of procurement of ADP equipment from the scope of the directive until the end of 1980. The Government are ready to co-operate in any co-ordinated European approach to public procurement from the European computer industry.

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GATT CODE/EEC DIRECTIVE - EXEMPTIONS AND EXCLUSIONS

EXCLUSION OF SERVICE CONTRACTS AND LEASING

Contracts where at least 50% of the value relates to services are excluded from both the EEC Directive and the GATT Code.

The GATT Code applies only to outright purchases and thus excludes leasing arrangements. The USA may press for leasing to be included. The EEC Directive covers all "contracts for pecuniary consideration".

EXEMPTION FROM OPEN TENDER

This is permitted under both the GATT Code and EEC Directive:-

- a when competitive tender has been tried unsuccessfully;
- b when, unavoidably, time does not permit competitive tendering;
- c where, for reasons of compatibility with existing equipment, orders for replacement parts or extensions to existing installations have to be placed with the original supplier;
- d for products which for patent or copyright reasons are obtainable only from a single source;
- e for the purchase of a prototype or first product in the course of a contract for research, experiment, study or original development;
- f on national security grounds.

VALUE OF CONTRACT

Both the GATT Code and EEC Directive set similar financial limits below which they do not apply. In the case of the Directive it is 200,000 units of account and for the GATT Code SDR 150,000. The latter represents the lesser amount and currently equates to some £90,000.

AREAS SPECIFICALLY EXCLUDED

Here there is some variation in the coverage which may be summarised thus:-

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	EEC DIRECTIVE	GATT CODE
Government defence purchases	"Warlike stores" excluded. All other computers - administrative, scientific and R and D - included, subject to security considerations.	All computers excluded.
Local Government	All included.	All excluded.
Nationalised Industries	All excluded.	All excluded, except for postal business of Post Office.
Universities	All excluded.	Only UGC purchases included.



FUTURE PROCUREMENT POLICY FOR COMPUTERS  
CONCLUSIONS OF INTERDEPARTMENTAL DISCUSSIONS BY OFFICIALS

Paragraph 4 of the memorandum by the Secretary of State for Industry refers to three main categories of procurements after 1 January 1981 - first, those under the tendering rules of the EEC Directive and GATT Code; second, those where these clearly do not apply; and third, those which would normally fall within the ambit of the international rules but where special action is taken, for reasons of industrial policy, to bring about some exemption which ensures that the requirement is met from UK industry. Procurement under other international agreements (eg NATO) is excluded from these observations.

2 Common to all three categories would be the need to supplement the close and direct consultation between users and suppliers, which lies at the heart of the general policy we have adopted, with a central machinery for reviewing the forward requirements of Departments and other public sector bodies. Formalising the review of future requirements would serve two main objectives. First, the identification of key technical trends, for subsequent discussion with industry, would give a better match between what customers will require and what UK suppliers can offer. Second, where appropriate, the procurement approach to requirements in the public sector should be agreed in advance, taking account of the various exception and exclusion provisions in the GATT and EEC arrangements.

3 Officials main recommendation is therefore the establishment of this central reviewing machinery. This should not make extra demands on Departmental resources since the main change in central Government would be in associating the Department of Industry with the discussion of those requirements which already takes place between Departments and the CSD's Central Computer and Telecommunications Agency (CCTA) and seeing that their implications for industry are given due consideration. The Lord President's letter of 23 September to Departmental Ministers headed "Use of Computers" envisages review and consultation procedures which would fit well into the procurement context too. It would be necessary, over a longer timescale, to build up a similar approach to reviewing the computing plans of public sector customers outside central Government, notably the nationalised industries, universities and the local authorities, whose purchasing practices are already being considered by sponsoring Departments in the context of our overall policy. Although it is envisaged that

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the Department of Industry would take a leading role in co-ordinating this latter work, it might be appropriate to provide a link also to the Official Committee recently set up to consider general policy on Information Technology.

4. More work will have to be done by officials to determine the detailed operation of this central machinery, but it is the clear intention that it should not act as a delaying mechanism in the procurement operations of user organisations and that it should concentrate on establishing guidance on the procurement approach to broad categories of requirements or types of equipment rather than on determining policy in a large number of individual cases. In central Government, in particular, an important part of its task will be in helping to provide guidance on the balance to be struck between industrial policy considerations and the requirements of Parliamentary accountability and of the international agreements.

5. If this general approach is endorsed by the Committee officials feel that it would be helpful, both in their further detailed planning work and in the subsequent operation of the new policy, to have Ministerial endorsement also for certain specific recommendations which have emerged from the inter-departmental discussions.

6. The first, which would apply whatever approach to tendering is finally used, is that all Departments and public sector bodies concerned with the procurement of computers, especially the major customers, should exercise positive discrimination in favour of UK-owned companies in the contracts they build up with industry when discussing their future requirements. These contracts would enable users to design systems and draw up specifications in ways which ensure that the resulting systems and products gain ready acceptance in overseas markets. Users should avoid unnecessary or expensive features which have no attraction overseas. Positive discrimination would recognise that UK-owned companies can usually apply a much greater economic multiplier to public sector contracts than can the multinationals and that in the majority of cases the eventual tendering is likely to be done on an open basis. While it would obviously be impossible - and indeed wrong - to refuse information on future requirements to other companies, the timing and completeness of such briefings could readily differ, in appropriate cases, from those given to the main UK-owned companies. In the first category of procurements identified earlier this would be the main defence for UK industrial interests, since it would establish the basis of the operational requirement. Considerable discretion will need to be exercised in operating positive discrimination, as it would be very difficult to defend internationally if foreign competitors could establish that it was a systematic practice.

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7. The second is that the policy developed for central Government (and recommended to other parts of the public sector) to cover computer procurement outside the ambit of the GATT and EEC Codes - the second category referred to in paragraph 1 should be based on limiting tenders, wherever possible, to equipment manufactured in the UK, insofar as this can be sustained within the more general framework of the Treaty of Rome. This approach is likely to be of particular relevance to contracts below the £90,000 limit or where considerations of national security override the normal international tendering rules. It would require lists to be drawn up of approved tenderers for broad categories of equipment, to be updated at regular intervals and, probably, commended to other parts of the public sector. Initially, at least, it might well be necessary in many instances to limit open tender to include suppliers not manufacturing here, in order to take account of the customer's past investments in software etc, but it would also be possible to apply time-limits to such special inclusions in order to encourage more inward investment by the multinationals in appropriate cases. Normal competition appraisal procedures would apply once the list of tenderers was established. The practical and legal (ie Treaties of Rome) aspects of this tendering approach require further study, including the criteria needed for entry of firms onto the approved list. In drawing up the latter, such factors as the amount of contribution to UK employment and/or exports would of course be important considerations.

8. The third is that there should continue to be some use of the single tender approach, with suitable safeguards to meet PAC scrutiny, where we consider it can be justifiably employed without infringement of the GATT and EEC rules; and that public sector purchasers should pay particular attention to the scope for this approach when extending or replacing existing ICL systems. Software compatibility provides a powerful practical argument in favour of single tender in such circumstances and there seems little doubt that it will provide a popular defence of continued preferential public procurement in other countries, using the exemption provisions of the Codes. However, the precise way it should be employed in the UK in future - especially in central Government - will need further examination once the principle is endorsed.

9. The fourth is that where the industrial importance of a procurement is particularly high - the third category identified in paragraph 1 - we should take special action to ensure that the requirement is met from a UK - and probably a UK-owned - source. This action might take a number of forms, though all would have to take account of user interest too. At the simplest it might involve some amendment of a draft operational requirement

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before it was issued for competitive tender. In other cases it might rest on a decision that the procurement would be conducted outside the EEC and GATT rules, even though a strict interpretation would call for those rules to apply. Considerations of national security might be called into use in other instances. These special procurements would be identified some years in advance by the central reviewing machinery. It would be impractical to draw up hard and fast criteria, but clearly whether risk of challenge under the GATT or EEC rules should be run would depend on assessment in each case of the importance of the industrial benefits; it would be quite inappropriate to court international approbation for marginal industrial gain. Likewise the implications for Parliamentary accountability and Government financial control would have to guide the decisions reached on the approach to procurements in this category, as with other non-competitive contracts placed by Departments. All these matters would be for careful and objective resolve by the central reviewing machinery and decisions would be made well before a tendering competition took place. In a minority of cases where major industrial policy issues arise, Ministers may need to be involved. In these cases, officials would attempt to set out the particular benefits of the procurement to UK industry to be considered against defined risks which procurement from home industry would bring.

#### FURTHER WORK

10 Officials will therefore need to undertake the following more detailed work by the end of this year to underpin Ministerial endorsement of the above recommendations:-

- i the discussion arrangements between users and suppliers, and for central monitoring by CCTA and DoI (paragraphs 2-6);
- ii the practical and legal aspects of limited tendering including the criteria for entry of firms to an approved list (paragraph 7);
- iii the circumstances in which single tender exemptions could justifiably be invoked (paragraph 8);
- iv the extent to which the national security consideration would be used to support more limited tendering procedures, and the identification of criteria relevant in those cases where specific Ministerial direction was required (paragraph 9).

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