



Ministry of Economy and Industry
Industrial Cooperation Authority, ICA

THE MINISTRY OF ECONOMY AND INDUSTRY

THE INDUSTRIAL COOPERATION AUTHORITY, ICA

MANDATORY INDUSTRIAL COOPERATION

GENERAL GUIDELINES AND DEFINITIONS

This is not an official translation and has no binding force.

Whilst reasonable care and skill have been exercised in the preparation hereof, no translation can ever perfectly reflect the original. In the event of any discrepancy between the original Hebrew and this translation, the Hebrew alone will prevail.



i. General

The Industrial Cooperation Authority, (hereinafter: the "**ICA**") is a regulatory body responsible, *inter alia*, for the promotion and development of local industry, by rendering it obligatory for Foreign Companies and Suppliers (hereinafter: "**Foreign Supplier**") entering into contracts with the State of Israel, including with Government Corporation, local Corporation and health funds (hereinafter: "**Israeli Buyer**" or "**Buyer**"), to undertake local subcontracting, investments, research and development in Israel, transfer of know-how or purchase of Israeli Made Goods, or Work in Israel (hereinafter: "**Industrial Cooperation**").

The legal framework for the activity of the ICA is governed by the Mandatory Tenders Law, 5752 - 1992 (hereinafter: "**Mandatory Tenders Law**"), the Mandatory Tenders Regulations, 5753-1993 (hereinafter: "**Mandatory Tenders Regulations**") ,the Mandatory Tenders Regulations (Mandatory Industrial Cooperation), 5767 - 2007 (hereinafter: "**Mandatory Industrial Cooperation Regulations**" or "**the Regulations**"), the Municipalities Regulations (Mandatory Industrial Cooperation), 5770-2010 (hereinafter: "**the Municipalities Regulations**"), the Mandatory Tenders Regulations (Contracts with the Defense Establishment), 5753 - 1993 (hereinafter: "**the Defense Establishment Regulations**"), the Mandatory Tenders (Preference of Israeli Made Goods), Regulations, 5755-1995 (hereinafter: "**Preference of Israeli made Goods Regulations**"), the Rules Of The Accountant General, Finance and Economy-Instructions 7.12.5 and the Government Procurement Agreement (hereinafter: "**the GPA Agreement**") in case it applies to the tender or the contract.

These Guidelines are in pursuance of the power vested in the ICA under the provisions of the Statutes and the Regulations enumerated above.

For the avoidance of doubt, it should be clarified that in these Guidelines, wherever the word "tender" or "contract" appears, this also means contracts made not by way of a tender, in accordance with Regulation 3(a) of the Mandatory Industrial Cooperation Regulations.

II Definitions

The terms contained in these instructions shall have the same meanings as those and as such are defined in the Mandatory Tenders Law, the Mandatory Industrial Cooperation Regulations, the Mandatory Tenders (Preference of Israeli Made Goods) Regulations



Ministry of Economy and Industry
Industrial Cooperation Authority, ICA

(hereinafter: "**the Law and the Regulations**"). Wherever any conflict exists, then the Law and the Regulations shall prevail.

Without derogating from the foregoing and solely for reasons of convenience, the following is a list of the principal terms that are to be used in these instructions:

- ✓ **Buyer** - the State, a Government Corporation, a Local Corporation and a Health Fund. In the definition in the Regulations there are certain exceptions with regard to Government Companies (see Sections 63A, 4(a) of the Government Companies Law, 5735-1975).
- ✓ **Contract** - a transaction for the purchase of goods, services or land or the carrying out of work, regardless of whether or not it is made by way of tender.
- ✓ **First Contract** - a Contract of a Buyer, including any option granted to the Buyer under that Contract.
- ✓ **Continuation Contract** - a contract made for the purpose of expanding or extending a first contract, other than by virtue of an option given to the Buyer under the first contract, as defined in Regulation 3(4) of the Mandatory Tenders Regulations.
- ✓ **Local Sub-Contract** - a contract of a Foreign Supplier that won a tender, for the purchase of Israeli Made Goods or for the execution of Work or services in Israel, all for the purpose to carry out the contract which is the subject of the tender.
- ✓ **Israeli Made Goods** - Goods manufactured in Israel or in the Area or another place, with the approval of the ICA provided that the price of the Israeli content therein constitutes at least 35 percent of the Bid Price (including taxes, levies, statutory fees, insurance and transportation expenses) unless confirmed otherwise in advance by the ICA.

For the purposes of this definition:

"Production" - the generation of goods or their substantial transformation as a result of which new or different goods or services were obtained;

"Israeli content Price" - as defined in the Preference of Israeli Made Goods Regulations;



Ministry of Economy and Industry
Industrial Cooperation Authority, ICA

- ✓ **Positive Implementation** - the amount of positive (excess) balance of implementation of a Foreign Supplier under an UICA.
- ✓ **Multiplier** - recognition of activity in certain spheres of activity and in certain areas, in relation to the extent of industrial cooperation, at rates in excess of 100 percent.
- ✓ **Foreign Supplier** - a manufacturer, supplier or importer of imported goods or a supplier of work that is not performed in Israel, whether himself or by means of others.
- ✓ **Foreign Supplier under monitoring** - a Foreign Supplier who, according to the records of the ICA, is not meeting the targets of its approved Implementation Plan or his commitment to the undertaking of industrial cooperation.
- ✓ **Foreign Supplier who is an Importer** - an Israeli Importer of imported goods, either by himself or through others.
- ✓ **Potential Foreign Supplier** - a Foreign Supplier who intends to submit a bid for a Tender or to enter into a Contract with an Israeli Buyer for a particular transaction and who has not yet received notification as to his success in the Tender.
- ✓ **Foreign Supplier under a UICA** - a Supplier who has signed an Umbrella Agreement for industrial cooperation with the ICA, in which a calculation is made of the total of all the business activity of the Supplier and his procurements in Israel without the necessity of receipt of a separate Undertaking for each procurement.
- ✓ **Work in Israel** - work, including services, that is performed in Israel or in the Area by an Israeli citizen or a permanent resident of Israel or a corporation registered in Israel, or in another place with the prior approval of the ICA.
- ✓ **Credit** - a request for recognition of implementation of a commitment to industrial cooperation.
- ✓ **Contract Value** - the sum of all payments, including taxes, included in the Contract, and *inter alia*:



- Any payment which the Israeli Buyer is required to pay to any party to the Contract with it and which that party to the contract is required by the terms of the contract to transfer to another.
- An estimate of the sum of the payments which any third party is required to pay to any party to the contract with the Israeli Buyer by virtue of the contract.
- The sum of payments, including payments as stated in the Sections mentioned above, that are included in an option of the Israeli Buyer under the Contract.

III. Legally Obligated Contracts

- ✓ Every contract between Israeli Buyer and Foreign Supplier which its value exceeds an amount in new Shekels equivalent to 5 million Dollars (hereinafter: "**Obligated Tender**" or "**Obligated contract**").
- ✓ A Continuation Contract to a obligated tender or an obligated contract, which its value exceeds an amount in new Shekels equivalent to 500,000 Dollars, and made within a period of 5 years from the date of the original binding contract (hereinafter: "**Obligated Continuation Contract**").

In this regard the following should be clarified:

"**Contract Value**" - as detailed in the definitions section above;

"**Foreign Supplier**" - any supplier who satisfies one of the following conditions:

- In relation to goods - a manufacturer, supplier or importer of goods that are not Israeli made goods.
- In relation to work (including services) - a supplier of work not performed in Israel or in the Area by an Israeli citizen or a permanent resident of Israel or a corporation registered in Israel

The location of incorporation, the official address or business center of the Foreign Supplier or its shareholders is immaterial in this regard. A supplier will be defined as a "Foreign Supplier" according to the place of manufacture of the goods that are being



Ministry of Economy and Industry
Industrial Cooperation Authority, ICA

supplied to the Israeli Buyer as part of the tender or the contract (and in relation to work, also depending upon the identity of the party carrying out the work).

It should also be clarified that in a case in which the bid for the tender is being submitted by an importer, the manufacturer of the imported goods is deemed a "Foreign Supplier" in all respects.

For the removal of doubt, it should be clarified that in the event that the Contract Value, excluding an option, is lower than 5 million dollars and the Contract Value together with the option included in it exceeds 5 million dollars, the contract shall be legally obligated.

It should further be clarified that **these instructions are applicable to all types and forms of contracts**, regardless of whether they are performed by the Israeli Buyer itself or through another, including, contracts being performed in advanced procurement methods (PPP/PFI/BOT), franchises, contracts for the procurement of services, such as leasing services, services purchased as part of contracts for the purchase of goods such as maintenance works and so forth.

These instructions also apply in relation to a "framework tender" when the value of the contract for such purpose is the total estimate of the framework tender. Mandatory industrial cooperation will apply upon success of the foreign supplier in the framework tender for as long as the maximum potential contract value exceeds 5 million dollars. If the actual orders of the Israeli Buyer from the Foreign Supplier, at the end of the contract period amount to less than the obligation amount, the foreign supplier will be credited accordingly. For explanatory purposes:

In framework tenders, the Israeli Buyer is required to include the "ICA Attachment" in any preliminary stage of the tender, such as pricing stage or in a preliminary tender process or at any other preliminary stage, the total value of which is over \$ 5 million. It should be clarified that even if a number of Foreign Suppliers win the preliminary or the tender process, each successful supplier shall be required to perform industrial cooperation according to his relative share (even if the amount of the contract with him is less than \$5 million).

If the bid is only for an item price without quantity, the scope of the required industrial cooperation will be determined according to the assessment of the Israeli Buyer.

If there is a number of winners, the industrial cooperation obligation will be divided equally, unless proven otherwise, during the obligation period. It will be possible to



update the amount of the obligation in accordance with the documents presented by the Foreign Supplier.

In this regard:

"Framework Tender" - as defined in Regulation 17F of the Mandatory Tender Regulations - a tender in which more than one supplier is selected (hereinafter **"framework tender supplier"**), and where under the terms and conditions of the tender, following on from it, framework agreements are to be concluded with any **"framework tender supplier"**, and where the identity of the supplier from whom any order of goods, work or services will actually be executed, will be determined from time to time during the period of the framework agreement, under the terms and conditions of the framework tender.

"Framework Agreement" (between an Israeli Buyer and a Foreign Supplier) An agreement for the purchase of goods, work or services, concluded with a particular supplier on a particular subject and for a defined period, where a detailed breakdown of the goods, work or services that are to be provided in the framework thereof, their quantity or amount, is unknown at the time the agreement is concluded, and are determined by the Israeli Buyer, by way procurement orders from time to time during the agreement period.

Note:

In any case that concerns contracts that do not include procurement of goods or in special, complex and unprecedented circumstances, not specifically referable to the matters contained in these Guidelines, the Israeli Buyer must apply, in advance and before the tender documents are published, to the ICA and clarify with it specifically and on the merits in essence whether the obligation of industrial cooperation applies and to what extent.

IV. The Extent of Industrial Cooperation

- ✓ The required extent of industrial cooperation amounts to a sum equivalent to at least 35% of the value of the transaction or the contract Value, when at least 20% (of the Contract Value) must be performed in a way of a local subcontracting.
- ✓ If the purpose of the transaction or the contract is to purchase security equipment of the Ministry of Defense, including a reference unit within its meaning in the



Ministry of Economy and Industry
Industrial Cooperation Authority, ICA

Defense Establishment Regulations, the extent of the Industrial Cooperation required shall be at least 50% of the value of the transaction or the Contract Value (with the exception of contracts of the Defense Establishment financed by aid funds in respect of which a special purpose arrangement applies).

- ✓ In respect of tenders that are concerned with civil procurement to which the GPA Agreement applies, the extent of required industrial cooperation from suppliers from the signatory countries, will amount to only 18%.

V. The Methods of Industrial Cooperation

Industrial Cooperation shall be performed by means of local subcontracting, investments, research and development, transfer of know-how or purchase of Israeli Made Goods or of Work in Israel, including services, or in any other manner approved by the ICA, except for the following:

- ✓ Expenses, including agent's commission, incurred by the foreign supplier in promotion of its sales in Israel.
- ✓ Purchase of shares of companies that are subject to the Securities Law, at a rate at which the buyer does not become an interested party as defined in that Law.
- ✓ Grants made by the Government as part of an investment program, purchase or financing of R&D works, will not be deemed to be industrial cooperation.

VI. Period of Implementation of the Binding Undertaking for Industrial Cooperation.

The Binding Commitment to Industrial Cooperation must be performed during the period of validity of the Contract, the subject of the tender. However, the ICA may, for reasons pertaining to the nature of the industrial cooperation or complexity of the tender, extend the period of time allocated for the implementation of industrial cooperation.