

"relative" - spouse, sibling, parent, or offspring, as well as a parent or spouse of any of these;

"interested party" - within its meaning in the Securities Law 5728-1968.

**Submission of tender proposals, their examination and decisions by the Tenders Committee**

17. (a) Proposals to the Tenders Committee shall be submitted by the proponents over their signature in a sealed envelope, in the manner, at the time, in the place and in the number of copies specified in the tender documents; if the number of copies was not specified in the tender documents, then proposals shall be delivered in two copies; until they are opened, the envelopes shall be kept in a special box (hereinafter: tender box), which shall be opened by the Tenders Committee; minutes shall be kept at the time the tender box is opened, recording also the number of envelopes found in the box, their contents, identity, and - as far as possible - also the price offered or asked, as the case may be.
- (b) The proposals shall be examined by the Tenders Committee within a reasonable period of time after the last date for their submission; the Tenders Committee shall not consider proposals that were not found in the tender box on the last date for their submission.
- (c) In its examination of proposals the Tenders Committee may avail itself of the help of one or more experts.
- (d) If proposals are found to include clerical or arithmetic errors, for which there is only one possible correction, then the chairman of the Tenders Committee shall correct them; the correction shall be recorded in the minutes and the proponent informed of them.
- (e) Subject to the provisions of subregulation (d), the Tenders Committee shall disqualify proposals if - in its opinion - they are based on incorrect assumptions, or if the prices stated in them are unreasonable in consideration of the estimate, or if they include intentional errors designed to mislead the committee, unless it decides otherwise for reasons that shall be recorded.
- (f) Proposals submitted otherwise than in accordance with the proposal requested in the tender documents, or to which a basic reservation or fundamental change was appended, shall be disqualified.
- (g) The committee may, for reason that shall be recorded in the minutes, clarify with a proponent particulars of his proposal, as well as other particulars required by it in order to make a decision; particulars of the clarification shall be recorded in the minutes.
- (h) After the examination of all proposals and after the necessary particulars have been clarified, the Tenders Committee shall make its decision; the committee may decide, for reasons that shall be recorded, not to choose any proposal at all, in order to assure the greatest benefit to whoever held the tender; if all the proposals submitted diverged from the estimate by more than 25%, then generally the Tenders Committee shall not choose any proposal, and the provisions of subregulation (k) shall apply, unless the committee decides otherwise for reasons that shall be recorded.
- (i) A Tenders Committee may decide - on special grounds which shall be recorded - to choose a proposal, even if it was the only proposal submitted, or if it alone remained to be considered.
- (j) A Tenders Committee may also decide to choose several suitable proposals and to divide the contract between their proponents, according to the principles for division spelled out below, or to make a contract for part of the transaction, which is the subject of the tender, on condition that notice of the

possibility of dividing the contract or of a partial contract as aforesaid was given in the tender documents, and if the participants were also allowed to submit partial proposals; the following are the principles for division:

- (1) division by items, when the transaction for which the tender was held includes more than one item of goods, real estate, work or services; if it is decided to divide, then the winning proponent shall be chosen as if a separate tender had been held for each item;
  - (2) division by quantities of a single item of goods, real estate, work or services, whoever holds the tender being entitled to state that proposals for smaller quantities than those stated by him will not be accepted; if it is decided to divide, then the contract shall be made with that proponent, whose proposal was chosen as the most suitable for the entire quantity proposed by him or which he is able to supply or carry out; if an additional quantity remains, then a contract shall also be made with the proponent whose proposal was chosen as the second most suitable proposal, up to the quantity proposed by him or which he is able to supply or carry out; and so forth until contracts are made for the entire quantity in the tender;
  - (3) division by areas; if it is decided to divide, then a winning proponent shall be chosen for each area, as if a separate tender had been held for each area;
- (k) If no proposal was submitted at a tender, or if a single proposal was weighed and the Tenders Committee decided not to accept it or if it chose none of the proposals, then the following provisions shall apply:
- (1) if the tender was a closed one and the Tenders Committee is not convinced that a contract on the transaction which was the subject of the tender is urgently needed, then an additional tender shall be held, and if in that also no winner is chosen, then the Tenders Committee may exempt from the obligation to hold a tender;
  - (2) if the tender was a closed one and the Tenders Committee is convinced that a contract on the transaction which was the subject of the tender is urgently needed, then the Tenders Committee may exempt from the obligation to hold a tender;
  - (3) if the tender was an open one, then the Tenders Committee may exempt from the obligation to hold a tender;
- when the Tenders Committee decides to exempt from the obligation to hold a tender under the provisions of this regulation, then it shall have the powers of an Exemption Committee under regulation 8(g).
- (l) Meetings of the Tenders Committee shall be held with the participation of at least a majority of its members, including its chairman, and decisions shall be adopted by the vote of a majority of committee members present, shall be reasoned and shall be recorded in minutes, which shall be signed by the committee members; in case of a tied vote, the committee chairman shall decide.
- (m) Every participant in a tender shall be notified which proponent's or proponents' proposal was chosen by the vote of the Tenders Committee, and in an ordinary tender the committee shall also include the price of the proposal or proposals chosen; during a period of 30 days after the date of the said notification, a participant in an ordinary tender may inspect the winning proposal, unless the Tenders Committee decided - by a reasoned decision - not to permit inspection of all or of part of the proposal, because of reasons of

security, or of commercial or professional secrecy; inspection may be made conditional on payment to cover expenses.

**Participation in meetings of exemption and Tenders Committees**

18. (a) Notwithstanding the provisions of regulations 8(b), 14(a) and 15(a), public representatives shall not participate in meetings of the various exemption and Tenders Committees on transactions that carry a security classification of "secret" or higher, unless they are privy to the information on the transaction under consideration; the implementation of the provisions of this regulation is conditional on the Director's approval and on the participation of the Legal Adviser of the defense establishment or of his representative as a member of the committee, in place of the public representative.
- (b) The provisions of regulation 16(e) shall apply, mutatis mutandis, to the participation of members of Exemption Committees, Tenders Committees, and committees for the approval of recognized suppliers.

**International treaties**

19. These regulations shall apply to the extent that they do not conflict with any obligation of the State under an international treaty or under a reciprocity agreement concluded before this Law went into effect.

**Ministry of Defense Rules**

20. The Director shall, from time to time and in consultation with the Accountant General, make provision for the implementation of this Chapter in Ministry of Defense Rules.

**Reference units**

21. (a) Subject to the provisions of this regulation, the provisions of Chapter Three shall apply, mutatis mutandis, to a reference unit, and for that purpose, wherever the terms "Government company" or "company" appear, replace them with the term "reference unit", and for this purpose -
  - (1) the provisions of regulation 24(a)(3) shall be deemed to read:
  - " (3) a reference unit shall not be obligated to hold a tender in respect of a transaction with a body corporate established for the commercialization of the reference unit's technologies and products, within the field of that activity, provided the Minister of Defense authorized the transaction or transactions of its type; "
  - (2) regulation 28(a) shall be deemed to read:
  - " (a) The Director General of a reference unit shall, with the approval by the Director, appoint one or more Tenders Committees, each composed of at least three members, including the chairman and the accountant of the reference unit or his representative. "
  - (3) in regulation 31, for "control committee" read "internal comptroller";
  - (4) read regulation 32 as follows:
- "32. The Director General of the reference unit shall prescribe, from time to time, rules for the implementation of this Chapter, which require approval by the Director in consultation with the Accountant General. "
- (b) The provisions of regulation 3(17) apply to a reference unit.

### CHAPTER THREE: COMPANIES FOR WHICH THE THE MINISTER OF DEFENSE IS RESPONSIBLE

#### Definitions

22. In this Chapter, "Government company" - any Government company or Government subsidiary, for which the Minister of Defense is responsible.

#### Applicability of the provisions of Chapter Two

23. Subject to the provisions of this Chapter, regulations 3(1) to (4), (6) to (12), (14) to (16), (24), (26), (27), (31), (36) and (37), 5(a)(1), (2), (4), (6), (7) and (9), 11, 12, 17 and 18(b) shall apply, mutatis mutandis, to a Government company, and for this purpose, wherever the term "Ministry of Defense" appears in Chapter Two, it shall be replaced by "Government company", and wherever the term "Director" appears, it shall be replaced by "Director General of the company".

#### Exemption from mandatory tender

24. (a) In addition to those provisions of regulation 3, which apply to a Government company, a Government company shall not be under obligation to hold a tender in respect of a transaction, which is one of the following:
- (1) a transaction - or one of a type of transactions - in respect of which holding a tender would have an adverse effect on the company's profitability, competitiveness, business opportunities, its professional or commercial secrets or its ability to play a role or carry out a task with which it is charged by an enactment, or its ability to supply a vital commodity or service to the public;
  - (2) a transaction with a value of not more than NS 100,000; in respect of companies with an annual contract volume of more than NS 500 million - a contract with a value of not more than NS 300,000;
  - (3) a transaction with a Government subsidiary by its parent company, with another Government subsidiary of the same company, or with a Government company that controls that company;
  - (4) a transaction with whoever conducted a tender, in consequence of the company's winning that tender;
  - (5) a transaction with the winner of a central tender, on terms that are no worse for the Government company than the terms of the central tender; in this paragraph, "central tender" - a public tender conducted by the Accountant General;
  - (6) a transaction, the subject of which is the extension or taking of credit, investments, banking services, the sale or acquisition of securities or other capital market activities;
  - (7) (a) a transaction for the performance of scientific or literary work or a transaction for the performance of other professional work, which requires special knowhow, expertise or qualifications, or special relations of trust, including research, engineering planning, architecture, engineering supervision, private investigations, actuarial work, legal consultancy, engineering consultancy, medical consultancy, economic consultancy, surveying, auditing, systems analysis, programming, property value assessment, medical consultancy, engineering consultancy on construction jobs, design or graphics;  
(b) a transaction aforesaid in this paragraph shall be carried out after the examination of several likely proposals; suppliers shall be

- approached, if that is done, and chosen as far as possible in rotation, in a fair manner and in order to assure the greatest benefit to whoever places the order;
- (8) a transaction of a company, other than a company that exclusively supplies an essential service to the public, in which 10% or more of the voting power at general meetings or the right to appoint 10% or more of the Directors are not held, jointly or severally, by the State, by a Government company, by a local authority or by a body corporate set up by Law, and also a transaction of a subsidiary of an aforesaid company;
  - (9) a transaction for the acquisition of services or goods from the Ministry of Defense, from a reference unit, from any one of the Government Ministries or from a reference unit of a said Ministry.
- (b) In addition to the provisions of subregulation (a), a Government company shall not be under obligation to hold a tender in respect of a transaction with a resident of a foreign country or in respect of a transaction that is to be carried out abroad, if it is one of the following:
- (1) a sale transaction or a transaction with a resident of a foreign country for the acquisition of services;;
  - (2) a transaction for the acquisition of goods or a transaction for the acquisition of services that is not exempt from mandatory tender under paragraph (1), in respect of which the Director of the ordering unit certified that - to the best of his knowledge - there is no producer of goods or of services of the acquired type in Israel;
  - (3) a transaction by a representation or branch of the company in a foreign country, for its own use;
  - (4) a purchase transaction in compliance with an undertaking for reciprocal purchases in a sale transaction with a customer in a foreign country.
- A contract said in paragraphs (2) and (3) shall be made after the examination of several proposals.

#### **Closed tender**

25. (a) In addition to those provisions of regulation 5A which apply to a Government company, a Government company shall not be obligated to hold a public tender, but rather a closed tender in respect of a transaction, the subject of which is research and development.
- (b) In a closed tender, a call for proposals shall be addressed only to certain proponents, which by their characteristics, grade and security clearance are suitable for the implementation of the transaction, in respect of which the tender is held; if possible, they shall not number fewer than three; the suppliers asked to submit proposals shall be chosen, as far as possible, in rotation in order to give them a fair chance and to assure the greatest benefit to whoever holds the tender.
- (c) Any supplier, who meets the conditions of the Government company - including conditions in respect of his experience - may participate in a closed tender, in addition to the suppliers from whom proposals were requested, if he so requests and if he submits the tender documents within the time set for the submission of proposals.

#### **Preconditions for participation in tender**

26. A Government company may make participation in a tender conditional on relevant