

- (c) When a Tenders Committee decides that a foreign supplier is the winner of a tender, then a contract shall be signed with him only after ICA certified its satisfaction that the provisions of this Chapter have been complied with; if ICA fails to inform the buyer of its opposition within 14 days after the Tenders Committee decision has been delivered to it, then the buyer may sign the contract.
- (d) If the total contractual ties with a foreign supplier exceed NS 3 million a year, then ICA may sign an umbrella agreement, in which a summary account is made of all of the foreign supplier's business activity and acquisitions in Israel, making it unnecessary to obtain separate undertakings for each transaction.

Required volume of business cooperation

- 8. (a) The volume of business cooperation shall be in an amount equal at least to 35% of the value of the transaction or of the contract, as the case may be; however, in respect of business cooperation in the fields of activity enumerated in subregulation (b), the provisions made there shall apply.
- (b) In the following fields of activity the amount of investment or financing shall be taken - for purposes of determining the volume of business cooperation - to be an amount equal to 150% thereof:
 - (1) direct investment in advanced technology in Israel, less VAT;
 - (2) direct investment in industry in Israel, in fields other than advanced technology, less VAT;
 - (3) financing of industrial research and development activity in Israel, where at least 50% of the ownership and its benefits, or of the right to utilize them remain the property of the developer in Israel.
- (c) ICA may prescribe the form of the undertaking for business cooperation, in accordance with these regulations; the said form shall be published in Reshumot.
- (d) ICA may, on application by the buyer, exempt in advance from mandatory business cooperation, or it may approve in advance business cooperation at a rate lower than 35%, if one or more of the following conditions applies:
 - (1) a requirement for business cooperation or a determination of the rate at 35%:
 - (a) in respect of a Government company, a Government subsidiary or a Government reference unit, within its meaning in Mandatory Tenders Regulations (Defense Establishment Contracts) 5753-1993 - it will have an adverse effect on the buyer's profitability or on the ordinary course of his business;
 - (b) in respect of body corporate set up by Law - it will have an adverse effect on the implementation of the body corporate's tasks under the Law;
 - (2) the contract constitutes a commercial or political breakthrough;
 - (3) the contract has special characteristics;
 - (4) an umbrella agreement, as said in regulation 7(d), is in effect between ICA and the foreign supplier;
 - (5) the foreign supplier is the only supplier;
 - (6) the contracts relate to the acquisition of fuel.
- (e) An exemption or an aforesaid lower rate shall be stated in the tender documents.

Local subcontract

9. (a) If the value of the contract in a tender exceeds NS 15 million, it is in a field of technology, and if ICA is of the opinion that it is important for the advancement of industry and technological development in Israel, and if there is an industry in Israel capable of entering into local subcontracts with the foreign supplier, then the tender documents shall include one of the following:
- (1) a provision on the foreign supplier's undertaking - within his undertaking on the volume of business cooperation as said in regulation 8 - to let local subcontracts to an extent of not less than 20%; in a said case the provisions of subregulations (b) and (c) shall not apply;
 - (2) a provision on preference for proposals for imported goods, in accordance with the volume of local subcontracts incorporated in them.
- (b) When comparing between proposals by different foreign suppliers, preference shall be given because of local subcontracts, to the extent of 1% of the proposed price for the first 10% of local subcontract, and an additional 1% for every additional 5% of local subcontract included in the proposal, to be carried out as part of the undertaking for business cooperation; the maximum preference for local subcontracts shall not be greater than 5%.
- (c) If, in an audit carried out by the buyer or by ICA, it is found that the actual volume of local subcontracts was less than the undertaking of the foreign supplier, in consideration whereof he was accorded preference, then the price due to the foreign supplier shall be reduced by the degree of preference according to actual implementation, and 1% shall also be subtracted from the value of the contract for every 1% of local content not implemented in spite of his undertaking; the provisions of this subregulation shall be included in the tender documents.
- (d) If a foreign supplier undertook to enter into a local subcontract as aforesaid or if he was given preference because of local content, then he shall - without derogating from his obligation under the provisions of regulation 7(a)(2) - present to the buyer and to ICA at the conclusion of the work an auditor's certificate on the volume and nature of local subcontracts actually carried out.

Period for implementation of undertaking for business cooperation

10. The undertaking for business cooperation shall be implemented during the period in which the contract, which is the subject of the tender, is in effect. ICA may, for considerations that relate to the manner of the business cooperation or to the complexity of the contract, extend the period for the implementation of the business cooperation.

Application for change of decision

11. (a) The buyer may apply to a committee, composed of the Minister of Finance, the Minister of Industry and Trade and the Minister concerned - or of persons authorized by each of these for this purpose - (hereafter: committee) for a change of the decision of ICA; the committee may ratify the decision of ICA, change it, cancel it or return the matter to ICA with instructions.
- (b) In matters that concern the Office of the President, the Knesset, the State Comptroller's Office, the Bank of Israel and the Central Elections Committee, instead of "the Minister concerned" in subregulation (a), read "the Director General of the Office of the President", "the Chairman of the Knesset", "the Governor of the Bank of Israel", "the State Comptroller" and "the Chairman of the Central Elections Committee", as the case may be.
- (c) The committee shall have the power to exempt a buyer in advance from the applicability of regulations 3 and 4, for reasons which shall be recorded; notice of a said

exemption shall be given in the tender documents, and in a public tender also in the newspaper advertisement.

(d) A decision by the committee shall be treated like the decision of a Ministerial Committee, established under the Basic Law: The Government.

Enforcement of undertaking for business cooperation

12. ICA shall - after a contract has been signed between a buyer and a foreign supplier - follow up on the implementation of undertakings for business cooperation, including the classification of fields of activity for the calculation of the volume of business cooperation, if such is necessary under regulation 8.

CHAPTER FOUR: APPLICABILITY

Limits on applicability to Government companies

13. The Government may exempt a Government company or a Government subsidiary from the applicability of some or all of these regulations. The Ministerial Committee on Privatization, within its meaning in the Government Companies Law 5735-1975, may exempt a said company from the applicability of some or all of these regulations because of reasons connected to privatization.

Import of defense equipment

14. These regulations shall not apply to imports by the defense establishment, which are financed by foreign country support funds.

Exemption for reasons of defense

15. The Director General of the Ministry of Defense may exempt transactions that are not financed by foreign support funds from the applicability of Chapter Three, for reasons connected with national security.

Refined fuels

16. The provisions of Chapter Two of these regulations shall not apply to the import of refined fuels.

Exemption for the Bank of Israel

17. These regulations shall not apply to contracts of the Bank of Israel, the subject of which is the issue of currency.

Updates

18. The amounts said in regulations 4(a), 5(b), 7(d) and 9(a) shall be updated on January 1 of each year, beginning with the year 1996, at the rate of change of the index over the index known on January 1 of the preceding year.

Effect

19. These regulations shall apply to tenders published from January 1, 1995.

expired March 1997.

MANDATORY TENDERS REGULATIONS (PREFERENCE FOR PRODUCTS FROM NATIONAL PRIORITY AREAS) 5755-1995

By its powers under section 3A(a) of the Mandatory Tenders Law 5752-1992 (hereafter: the Law) and with approval by the Knesset Constitution, Law and Justice Committee, the Government hereby makes these regulations:

CHAPTER ONE: INTERPRETATION

Definitions

1. In these regulations -

"Area "A"" and "Area "B"" - within the meaning of "National Priority Area "A"" and "National Priority Area "B"" in the Capital Investment Encouragement Order (Designation of Areas for Purposes of the Schedule to the Law) 5753-1993 (hereafter: the Areas order);

"National Priority Area" - as defined in the Areas order;

"goods from Area "A" or "B"" - goods made in Israel that were produced in Area "A" or in Area "B", as the case may be, by a person at least half of whose employees permanently live in Area "A" or in Area "B", as the case may be, but in respect of Area "B" they may live in Area "A", and the work component in the production of the goods in that Area - and in respect of Area "B" also in Area "A" - constitutes at least 40% of the proposed price;

"services from Area "A" or "B"" - work or services performed by an Israel citizen, a permanent Israel resident or a body corporate registered in Israel, and at least half of whose employees who perform that work or those services permanently live in Area "A" or in Area "B", as the case may be, but in respect of services from Area "B" they may live in Area "A", and one of the following applies to them:

- (1) the work or the services are performed in Area "A" or "B", and the work component in respect of the work in that area - and in respect of work in Area "B", also in Area "A" - constitutes at least 40% of the proposed price;
- (2) the work or the services are not performed in Area "A" or "B", and the work component constitutes at least 50% of the proposed price;

"employee" - an employee of the proponent, including the employee of a subcontractor and of a supplier who perform services or supply goods for purposes of the contract that is the subject of the tender;

"work component" - the cost of labor, including wages and allocations to benefit funds, as defined in the Wage Protection Law 5718-1958, payments to National Insurance, to tax authorities, severance terms, pensions or other monetary benefits connected with the work, paid to employees because of the contract;

"customer" - any Government Ministry, exclusive of reference units within their meaning in Chapter Two of the Mandatory Tenders Regulations (Defense Establishment Contracts) 5753-1993 (hereafter: Defense Establishment Regulations);

"engineering construction work" - as defined in the Engineering Construction Contractors (Registration) Law 5729-1969.

Meaning of other terms

2. Terms in these regulations, which were not defined in regulation 1, shall be interpreted within their meaning in the Mandatory Tenders Regulations 5753-1993, in the Mandatory Tenders Regulations (Preference for Israel Products and Mandatory

Business Cooperation) 5755-1995 (hereafter: Israel Products Regulations) and in respect of defense establishment contracts - also within their meaning of the Defense Establishment Regulations.

CHAPTER TWO: PREFERENCE OF PRODUCTS FROM NATIONAL PRIORITY AREAS)

Condition for receipt of order

3. As a condition for getting preference, the proponent will be required to declare in the tender documents that the proposal is for goods or services from Area "A" or "B", as the case may be, and as condition for getting the order he will be required to produce an auditor's certification thereof.

Rate of preference

4. (a) The customer shall include in the tender documents - and in a public tender, also in the notice in newspapers - conditions under which preference will be given to offers of goods or services from National Priority Areas, in accordance with these regulations within the framework of the price criterion; the rate of the said preference shall not exceed the price proposal that would have won the tender, if not for the preference, with the addition of the following percentages:
 - (1) 10% in respect of goods or services from Area "A", in respect of purchases by any Ministry other than the Ministry of Defense;
 - (2) 5% in respect of goods or services from Area "B" in respect of purchases by any Ministry;
 - (3) 15% in respect of goods or services from Area "A", in respect of purchases by the Ministry of Defense.
- (b) The percentages of preference said in subregulation (a) and in regulation 3 of the Israel Products Regulations shall in no manner amount to more than 15% cumulatively.

Deciding on the winner

5. (a) If, after the proposals have been weighted in accordance with the prescribed criteria and without the preference said in these Regulations and in the Israel Products Regulations, the winner is a proponent who is not a foreign supplier and is not a supplier of goods or services from Area "A", then the customer shall reweight the proposals of goods or services from National Priority Areas, so that - for the criterion of price - the price shall be taken into consideration after deduction of the percentage of preference under regulation 4(a)(1) or (2) or (3) as the case may be, by dividing the price of a proposal of goods or services from a National Priority Areas by 1.15, by 1.05 or by 1.10, as the case may be.
- (b) If after the said reweighting, the proposal of a proponent of goods or services who is not from a National Priority Area received the highest weighted result, then that supplier shall be chosen as the winner of the tender.
- (c) If, after the said reweighting, the proposal of a proponent of goods or services from a National Priority Area received the highest weighted result, or a result that is equal to that of goods or services not from a National Priority Area, then the customer shall propose to the proponent of that proposal to contract