

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY ISRAEL**

ARTICLE 9, PARAGRAPH 1 UNCAC

PUBLIC PROCUREMENT

ISRAEL (THIRTEENTH MEETING)

1. Article 9 of the Convention – Integrity in public procurement and management of finances:

Over the past several years, the administration of governmental acquisition in the department of the Accountant General has been working on a digital transformation in the field of governmental acquisition. This work is meant to improve the acquisition process, the control and supervision of governmental acquisition, and to allow acquisition processes to be run in a more equal and transparent manner. Until today, this work has produced several acquisition systems – some have been put into use already, others are in a pilot stage, and some are still being developed. All of the systems were planned in a manner that allows standardization of the acquisition process and production of control and surveillance reports – for the purpose of good governance and corruption prevention. Following are details regarding some of the different systems:

- A. **Yahalom System:** This system is meant for management of short acquisition processes. The main innovation of this system are its centralized and mechanized control abilities. It allows to address a wide range of suppliers, accept their proposals and examine them, in a unified and equal manner. The control and surveillance allowed by the system, is available both live during the tender process, as well as in retrospect.
- B. **Digital Competition:** This system helps in managing the competition between pre-registered and pre-approved suppliers, all competing to supply a certain service. The system includes several mechanisms meant to ensure good governance and equality. One such mechanism draws suppliers from the list of pre-approved suppliers in a manner that ensures equality of opportunity. Another mechanism performs a central supervision of the process for the administration of governmental acquisition and allows production and analysis of reports, during the competition process. A different mechanism appraises the suppliers in order to ensure the quality of suppliers and the intactness of their work. The system also issues a protocol of the opening of the tender box and a summary of the process – without any human involvement – and these are brought before the tender committee.
- C. **Digital Tender Box:** This system allows the submission of bids in public tenders through a digital process – thus enabling digital documentation and supervision of the bids received, their date of submission and their contents. The system prevents alterations of the bids in the middle of the tender process and passing of information to certain bidders.

D. The website of the administration of governmental acquisition: among other things, the website supplies to the public information regarding processes of exemptions. See the website at: <https://mr.gov.il/ilgstorefront/en>.

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
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ARTICLE 9 UNCAC

PUBLIC PROCUREMENT

ISRAEL (SEVENTH MEETING)

In relation to integrity in public procurement and management of public finances (article 9), States parties and signatories may wish to provide information on measures that:

- *Utilize online platforms for the distribution of information relating to public procurement and tenders as a way to prevent corruption, enhance transparency and ensure competition and objective criteria in procurement decision-making.*

When providing information on the use of ICT to increase the transparency of procurement processes, States parties and signatories may wish to refer to their submissions for the sixth intersessional meeting of the Working Group, held in 2015.

Israel utilizes a number of online platforms and ICT tools to ensure the integrity of public procurement and management of public finances. These technological tools are aimed at preventing corruption, enhancing transparency and ensuring competition, in accordance with Article 9 of the Convention.

As outlined in Israel's submission for the sixth inter-sessional meeting of the Working Group, held in 2015, Israel's national procurement system uses public tenders, pursuant to the **Mandatory Tenders Law, 1992** (the "Tenders Law") and the **Mandatory Tenders Regulations, 1993** (the "Tenders Regulations"). This legal framework enables a transparent and competitive working environment, inter alia by establishing broad obligations for using public tenders, imposing strict limitations on exemptions from such obligations and providing tools for improving competition in public tenders. Both the Tenders Law and the Tenders Regulations apply to most public entities, including government ministries, government agencies and authorities, health care establishments, government companies and others.

Documents of any tender in public entities, in the framework of the system, are accessible to the public and, if possible, are published online. Those interested can also subscribe online to receive automatic updates about upcoming tenders.

The **Israeli Government Advertising Agency (LAPAM)** website (<http://www.lapam.gov.il/?lang=en>), centralizes all government advertisements, announcements and notices. This includes providing access to the list of government tenders and to civil service employment opportunities. The objective 3

of LAPAM is to assist citizens find information which had previously only been published in the written press and was often difficult to obtain. LAPAM utilizes the web to disseminate information in a user-friendly way that makes such information easy to locate. The LAPAM site is in addition to the set of varied government services, led by the

Accountant General in the Ministry of Finance, which are made readily accessible for public use.

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ARTICLE 9, PARAGRAPH 1 UNCAC

PUBLIC PROCUREMENT

ISRAEL (SIXTH MEETING)

1. Please describe the measures your country has taken to implement this provision of the Convention.

Ensure the national procurement system is based on principles of transparency, competition and objective criteria in decision-making; establishing in advance the conditions for participation, including selection and award criteria and tendering rules;

Israel's national procurement system uses public tenders, pursuant to the **Mandatory Tenders Law, 1992** (the "Tenders Law") and the **Mandatory Tenders Regulations, 1993** (the "Tenders Regulations"). This legal framework enables a transparent and competitive working environment, inter alia by establishing broad obligations for using public tenders, imposing strict limitations on exemptions from such obligations and providing tools for improving competition in public tenders. Both the Tenders Law and the Tenders Regulations apply to most public entities, including government ministries, government agencies and authorities, health care establishments, government companies and others.

Award criteria and tendering rules: documents of any tender in public entities are accessible to the public and, if possible, they are published online. The documents include the tender terms and details and payment requirements, terms of the required collateral, the decision criteria and their value. The Annex to the Tenders Law regulates the threshold requirements that can be requested by public offices regarding seniority, prior experience and volume of financial turnover, production or supply. According to Section 2A(b) to the Tenders Law, if the public entity issuing the tender wishes to establish requirements that are more restrictive than those listed in the Annex, the entity must explain its decision in the tender documents.

The criteria to select the winning bid, subtests and calculation methods are also published in advance in the tender documents. The criteria are meant to allow maximum advantages to the public entity and include examination of the following: price and quality of the bid; reliability of the bidder, the bidder's skills and experience in the relevant field of expertise, recommendations on its behalf and expressions of satisfaction from previous contracts. In some cases the bidder might also be required to present an adequate level of assurances of labor rights protection. In order to ensure objectivity in the selection process, the tender committee generally consists of at least three members: the public entity's Director General (or an appointed representative on his or her behalf), its chief

legal advisor and its chief accountant. The legal advisor and accountant are independent and are subject to the Attorney General and Accountant General respectively. In addition to the tender committee there is also a tenders' exemption committee, established under the Tenders Regulations, the purpose of which will be explained shortly.

Provide for sufficient time to potential tenders to prepare and submit their tenders and using by default an open tender procedure;

According to Section 15 of the Tenders Regulations, invitations to tender must be publicized a reasonable time in advance before the deadline for the submission of bids, in the press and on the web (in Hebrew and Arabic), to allow potential tenderers sufficient time to submit their bids. Numerous tenders have been executed in the online systems in various sums.

Provide for transparent publishing of all procurement decisions including publishing the invitations to tender;

Publishing invitations to tender: Section 15(a) in the Tenders Regulations requires that notice of every tender issued by the state be made public via a common newspaper, a newspaper in the Arabic language, and via the official website of the Government Procurement Administration.¹ The notice specifies the preliminary requirements, the nature of the service/product to be procured, the tender documents or information on how to acquire them, the manner in which the bid is to be submitted and the final date for submitting bids. Under certain circumstances (i.e. single supplier, foreign supplier, innovative supplier), a public entity is also required to publicize a notice on a pending procurement even when such procurement is exempt from the tender obligation under the Tenders Regulations.

Establish procedures, rules and regulations for review of the procurement process, including a system of appeal;

All appeals of decisions made by both exemption and tender committees are made to designated administrative courts. Every contractual obligation for procurement that is exempt from public tender is published on the official website. This general rule is subject to exceptions concerning the value of the transaction (less than 50,000 NIS – approx. 12,000 Euro), or its confidential nature due to sensitivities relating, *inter alia*, to defense issues, international trade relations or foreign policy. Section 24d of the Regulations permits the Accountant General to inquire into flaws in the tendering process involving tender criteria choices, bid selection and bid rejection. According to Section 24e, the Accountant General may inform the exemption committee of any flaws in the committee's conduct or decisions. If the committee repeats these flaws, the Accountant General may mandate a discussion regarding this matter in a monitoring committee, which will be comprised of the Director General of the Office of the Prime Minister, the Director General of Ministry of Finance and the Accountant General. The

¹ The website of the Government Procurement Administration in the Accountant General's Department: <http://www.mr.gov.il>

aforementioned committee may revoke all or some of the powers of the exemption committee, depending on the seriousness of the flaw.

Provide for a thorough selection of personnel responsible for procurement, including screening procedures;

As noted, members of the tender committee in each public entity include representatives of the public entity's accountant and legal adviser, and the same is true with regards to the tenders' exemption committee. The screening procedures for the personnel include a training program approved by the Accountant General within a year of their appointment to the Committee. In case of failure to abide by this provision, the appointment is annulled.

Establishing a conflict of interest management system with declarations of interest and methods to resolve conflicts in particular cases;

Regulation 10(c) of the Tenders Regulations is aimed at preventing conflicts of interest in tender procedures. It provides that if a member of the tender committee, his/her relative, or a corporation in which he/she holds an interest, or an adviser, or a member of a subcommittee, has a personal or institutional interest in a matter under consideration by the committee, he/she may not participate in the meeting, and another member shall be appointed in his/her place in respect of that matter.

Both committees are independent and are subject to the authority of the Accountant General (professional and administrative subordination) and the Attorney General (professional subordination), and, importantly, not to the authority of the Director General of the public entity or to any other political authority. The accountant and legal adviser in the Committee hold veto power regarding decisions in financial or legal matters, respectively.

Put in place other administrative practices promoting integrity in procurement (such as the rotation of personnel, debarment procedures, etc.).

Common Practices:

A common practice in the Accountant General's department is to limit the term of senior accountants to four years in each position, excluding exceptional cases, and to hold periodic rotations of personnel among senior accountants between the different public entities. Moreover, several government decisions instruct the Civil Service Commission to manage and promote rotation among high rank officials.

Corrective Actions:

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

Where a contract was signed as a result of a flawed procurement process and the winner benefitted from this contract, the State (or any other public entity) may have a cause of action against the winner stemming from the **Unjust Enrichment Law, 1979**. This law allows for restitution of the benefit arising from the contract (even where the State has not incurred financial damages). The claim would be that the enrichment resulted from an illegal contract and therefore was made unjustly. The court has discretion to order full restitution to the State in appropriate cases.

The State would also have a cause of action under the Unjust Enrichment Law, for example, in case a public official took a bribe in exchange for fixing the tender (in such a case, the benefit stemmed from the relationship between the public official and the state, and so this falls into the unjust enrichment category).

Other corrective measures may be taken in the administrative arena. The Office of the State Attorney was involved in a case pertaining to flawed tender procedure for catering services in a government-owned corporation. Even though the criminal investigation did not indicate sufficient evidence of bribery to pursue criminal charges, the position of the Office of the State Attorney was that the evidence was sufficient for administrative measures and therefore it advised the corporation not to extend the contract with the winner. Later it was decided not to enable the winner to make a bid in the following tender. This decision was challenged in an administrative appeal to the designated administrative court. The court held that this decision was reasonable and the appeal was denied.