

Regulation on Industrial Co-operation in Denmark

1. Introduction

Foreign suppliers who sign contracts with the Danish Armed Forces for defence equipment and/or services exceeding DKK 25 million are required to sign an Industrial Co-operation Contract with the Danish Enterprise and Construction Authority (DECA). The Industrial Co-operation Contract must be signed 30 days prior to the signing of the contract with the Danish Armed Forces.

The Industrial Co-operation Contract covers 100 per cent of the value of the contract relating to defence equipment and/or services to be signed with the Danish Armed Forces. Under the terms of the Industrial Co-operation Contract, the foreign supplier must enter contracts with Danish companies for defence-related products. The Industrial Co-operation Contract will include a fulfilment plan and a final date for the fulfilment of the Industrial Co-operation Contract.

Under the terms of Industrial Co-operation Contracts it is agreed that contracts with Danish companies cover all qualifying defence-related transactions such as research and development projects, transfer of technology and know how, training, marketing assistance, financial assistance, purchase orders, subcontracts, and other approved co-operation projects concerning 1) defence-related products, technologies, or services, 2) products, technologies, or services for securing infrastructure and other public security tasks naturally related to defence material technologies, and/or 3) products, technologies, or services for use in civil aerospace and space naturally related to defence materiel technology.

The regulation is based on Danish law as detailed in "*Executive Order on Industrial Co-operation in connection with Procurement of Defence Equipment Nr. 992 of 4 October 2006*" and "*Circular on Industrial Co-operation in connection with Procurement of Defence Equipment No 75 of 4 October 2006*".

2. Objective

The objective of the Industrial Co-operation Contracts is to enhance Danish defence related companies' technological level, market access and co-operation with foreign suppliers of defence equipment and/or services.

3. General requirements

An agreement on industrial co-operation is denominated "Industrial Co-operation Contract" (ICC). ICCs are in the English language.

There are standard agreements for:

- Defence equipment and /or services procurements exceeding DKK 100 million (ICC1)
- Defence equipment and /or services procurements between DK 25 million and DKK 100 million (ICC2)
- Defence equipment and /or services procurements between DKK 5 million and DKK 25 million (ICC3)
- IC-Addendum (addendum to an existing ICC)
- Banking Agreement
- Pre-qualification Banking Agreement

As a main rule ICCs are entered between DECA and the parent company of the foreign supplier. In case of mergers between two or more, the acquiring company will be responsible for the fulfilment of the obligations. The ICCs will be renewed and a revised fulfilment plan will be inserted.

If a foreign state is the vendor in a procurement of new defence equipment by the Danish Armed Forces, DECA will sign an ICC with the foreign supplier involved.

4. Specific requirements

Definitions and delimitation

The industrial co-operation shall be on a technological level equivalent to that contained in the procurement contract by DALO.

Products, technologies, and services are considered applicable if they are:

- defence-related,
- for securing infrastructure and other public security tasks and naturally related to defence material technologies, and/or
- for use in civil aerospace and space and naturally related to defence materiel technology.

In the interpretation of defence-related products, technologies, and services the following will be considered significant:

- it is a direct part of a product, where industrial co-operation is required when procured by the Danish Armed Forces,
- it is used for manufacturing or processing of a product described in the above,
- a Danish export or production license is required, because the product is covered by EU's weapon list, EU's dual-use list or the Danish laws on Weapons or War Materiel,
- it is adjusted to special military specifications,
- it has a specific function in relation to the military assignment and/or
- it concerns development of defence-related products.

Medical and health products will only apply if they have specific military application.

Procurements of defence equipment and/or services between DKK 5 million and DKK 25 million (ICC3)

For contracts with the Danish Armed Forces between DKK 5 million and DKK 25 million the foreign supplier must notify DECA and sign an ICC3. In an ICC3 the foreign supplier commits to enter an ICC2 or ICC1 should the supplier sign contracts with the Danish Armed Forces exceeding DKK 25 million within 5 years.

Procurements of defence equipment and/or services between DKK 25 million and DKK 100 million (ICC2)

For contracts with the Danish Armed Forces between DKK 25 million and DKK 100 million the foreign supplier must sign an ICC2.

Procurements of defence equipment and/or services exceeding DKK 100 million

For contracts with the Danish Armed Forces exceeding DKK 100 million the foreign supplier must sign an ICC1. In an ICC1 the foreign supplier commits to sign defence-related contracts with Danish companies for an amount of at least 30 per cent of the contract value no later than 4 years after signing the contract with the Danish Armed Forces.

Early fulfilment of an ICC1 is encouraged and will be rewarded. A foreign supplier signing contracts with Danish companies for more than 30 per cent within 4 years will be granted a reduction in the total obligation corresponding to the over-fulfilment. If, for instance, the foreign supplier has signed contracts with Danish companies for 40 per cent within 4 years, the total obligation will be reduced from 100 per cent to 90 per cent. If the figure is 50 per cent, the total obligation will be reduced to 80 per cent etc. Hence signing of contracts for 65 per cent of the total obligation within 4 years corresponds to a 100 per cent fulfilment. However, multipliers cannot be used in combination with the reduction for over-fulfilment.

A foreign supplier must undertake to issue a bank guarantee to DECA guaranteeing that contracts with Danish companies will have been signed for an amount equal to at least 30 per cent of the contract value no later than 4 years after signing the contract with the Danish Armed Forces. The bank guarantee must be issued 3 years after the contract with the Danish Armed Forces, covering the unfulfilled balance of the first 30 per cent at that time. 4 years after the contract with the Danish Armed Forces DECA will draw down on the bank guarantee for an amount equal to the unfulfilled amount of the first 30 per cent at that time.

A draw down on the bank guarantee in an amount equal to the unfulfilled amount of the first 30 per cent at that time liquidates all obligations related to the first 30 per cent of the industrial co-operation commitment, but does not release the supplier from the obligation to fulfil the remaining part (i.e. 70 per cent) of the ICC1.

In order to avoid the effect of a bank guarantee in the ICC1, the foreign supplier is encouraged to place orders for the first 30 per cent of the obligation prior to the award and entering of the specific contract with the Danish Armed Forces. This is allowed within the framework of a so-called Pre-qualification Banking Agreement under which orders can be signed up to 2 years prior to the award of the contract with the Danish Armed Forces. The resulting benefits of these contracts do not have to be achieved prior to contracting with the Danish Armed Forces. Before entering the contract with the Danish Armed Forces it is still a pre-requisite to enter an ICC. The balance of the Pre-qualification Banking Agreement will be subtracted to the offset obligation when entering an ICC.

In extraordinary cases, extension of the deadline regarding the fulfilment of the 30 per cent requirement may be approved. In such cases the drawing down on the bank guarantee will be postponed corresponding to the extension.

Addendum (additional contracts to the existing ICC)

If the foreign supplier has an unfulfilled ICC and is awarded additional contracts by the Danish Armed Forces, the foreign supplier is required to sign with DECA an IC-Addendum including a revised fulfilment plan. If, however, the additional contracts are exceeding DKK 100 million a new ICC1 including the special requirements must be signed.

Banking Agreement and Pre-qualification Banking Agreement

The objective of a Banking Agreement is to encourage contractors and their supplier community to engage in new or continued co-operation with Danish companies.

A foreign supplier may request a Banking Agreement with DECA. A Banking Agreement may apply either when the terms of an existing ICC are completed or in preparation of future ICCs. Future contracts with the Danish Armed Forces and future ICCs do not need to be identified at the time the credits are banked.

Banking Agreements are valid for 5 years. If the credit in the Banking Agreement has not been fully utilised within this period, the remaining amount will no longer apply and will be nullified. Furthermore banked credits cannot be applied to fulfil the first 30 per cent contracting requirement.

When the terms of an existing ICC are fulfilled and a Banking Agreement is requested by the foreign supplier, the use of new multipliers will not be accepted in the Banking Agreement.

However, during the pre-qualification for a specific contract with the Danish Armed Forces, any qualifying transaction may, during a 2-year period prior to the signing of the contract with the Danish Armed Forces, include multipliers and may be accepted in a Pre-qualification Banking Agreement for all the foreign bidders on the procurement.

Banked credits cannot be transferred to third parties.

Multipliers and business case

In general a foreign supplier's industrial co-operation obligation will be credited with the value of the contracts it has entered with Danish companies. Certain contracts including R&D, training, technology transfer, marketing assistance, financial assistance, or other transactions which substantially benefit and enhance the technological level and market opportunities of Danish companies may incur multipliers.

Multipliers do not apply under a Banking Agreement when the terms of an existing Industrial Co-operation Contract are fulfilled, however, it is accepted in a Pre-qualification Banking Agreement.

All projects including multipliers need pre-approval by DECA before commencing.

Multipliers above 10 will not be approved.

Multipliers are normally not approved for financing Danish companies expenditures on wages.

Marketing assistance is normally not approved with a multiplier. However, offset credit can be accepted for the resulting sales in a limited time period and within a preset financial frame.

Transfer of technology or know-how can be credited with multipliers of up to 10. The multiplier related to transfer of machinery or equipment is dependent on the uniqueness of transfer and its availability on market conditions. Normally a multiplier above 5 will not be approved in connection with transfer of machinery or equipment.

Immaterial transfer of knowledge such as transfer of licences and other IP-rights or training can be approved with a multiplier. If the value cannot be determined on market basis, it can be established based on the value for receiving company.

Multipliers may be included in satisfying any portion of the Industrial Co-operation Contract. However, multipliers can not be used in combination with reward for the over-fulfilment under the 30 per cent requirement.

For each project involving multipliers a business case must be submitted to DECA. The business case should normally include:

- the objective of the project
- information on the market opportunities (incl. milestones, estimated value on a short and long term)
- information on the uniqueness in the project
- information on the structure of the project (level of participation from both Parties, IP-rights, risk management, criteria for success)
- alternatives for the Parties.

Every request for multiplier must be pre-approved by DECA before commencing a project. DECA will evaluate each project and business case critically before pre-approval. If necessary, DECA may consult external expertise in the evaluation of the projects.

The value for the receiving company will be closely monitored by DECA. If the receiving company has less benefit from the project than outlined in the request for pre-approval, it will be taken into consideration in future IC-projects involving either the foreign supplier or the Danish company.

It is the foreign supplier who is responsible for submitting the business case to DECA. The Danish company can, however, assist at any level the Parties may find relevant.

Swap/Mutual Abatement

Industrial co-operation obligations incurred by Danish companies when selling defence equipment in other countries may be swapped (mutually abated) for a foreign defence equipment suppliers' similar obligations in Denmark.

Based on a request in writing concerning a potential swap from a Danish company or a foreign supplier, DECA may set up an agreement including the authorities responsible for industrial co-operation in the country of the foreign supplier.

Performance period

The ICC must be fulfilled no later than 10 years after the signing of the contract with the Danish Armed Forces, depending on the size of the industrial co-operation obligation and the delivery period to the Danish Armed Forces.

5. Reporting and fulfilment

Annual report on fulfilment

Once a year, on 1 February, the foreign supplier is required to submit a report to DECA concerning the fulfilment of the ICC. The report must be forwarded both electronically and in hard copy. In the report, the foreign supplier is required to account for contracts concluded and invoiced transactions. The report must be based on DECA's format designed for this purpose.

In connection with all supplies or services exceeding DKK 1 million, DECA will ask the Danish company(ies) involved for confirmation, which is to be endorsed either by the Danish company's managing director or chart of accountant. Furthermore, DECA may carry out random checks.

DECA will inform the foreign defence supplier, in writing, of the result of its review and approval of claims.

6. Sanctions

In case of violation of an ICC, the foreign supplier will be excluded from concluding any new contracts with the Danish Armed Forces until the outstanding industrial co-operation obligation, including an eventual bank guarantee, have been fulfilled.

The names of foreign suppliers that have been excluded from concluding new contracts with the Danish Armed Forces will be made public on the DECA's website.

7. The Advisory Board for Industrial Co-operation Contracts

An Advisory Board for Industrial Co-operation Contracts has been established. The members of the Advisory Board are appointed by the Danish Ministry of Defence, Danish Defence Acquisition and Logistics Organization, Confederation of Danish Industries, Defence and Aerospace Industries Association in Denmark (FAD) and the Central Organisation of Industrial Employees in Denmark. The Advisory Board is chaired by DECA.

At least twice a year the Advisory Board is informed on the status of new ICCs and the fulfilment of existing ICCs. The Advisory Board is also briefed on any exemptions from standard requirements in new ICCs.

Furthermore, the Advisory Board is consulted in cases concerning the delimitation of the area of application of industrial co-operation, matters of principals concerning the exclusion of foreign defence equipment suppliers from obtaining new defence contracts, and the pre-approval of multipliers higher than 3.

8. Special circumstances

The Regulation on Industrial Co-operation in Denmark may not have any delaying impact on defence equipment procurements of the Danish Armed Forces if the security of the Realm does not allow for the timely signing of an ICC. In such a case, the foreign supplier is required to sign an ICC with DECA at the earliest possible opportunity after the award or entering of the contract with the Danish Armed Forces. The terms of the ICC still apply fully.

9. Exemption for the Industrial Co-operation Contract requirement

Not all major procurements of defence equipment or services imply an obligation to enter into an ICC. The exceptions are orders placed in Denmark, acquisition of used or civilian equipment, documentation, official journeys and training in connection with the acquisition projects, and building and construction works.

Furthermore, Denmark and other countries may have entered into an agreement that allows for the exemption from the ICC-requirement.

10. Co-ordination between the Danish Armed Forces and DECA

Request for Quotation

When issuing a Request for Quotation (RfQ) to foreign suppliers concerning the procurement of defence equipment or services the Danish Armed Forces must include in the RfQ the information that 30 days prior to contracting with the Danish Armed Forces an ICC must be signed with DECA.

At the same time the Danish Armed Forces will notify DECA and the Confederation of Danish Industries of the Request for Quotation. The notification must include information on the defence equipment or services procured, the required type of ICC, the registration number of the RfQ and the list of foreign defence equipment suppliers who have received the RfQ.

Document to the Parliamentary Finance Committee

When the Danish Armed Forces submit a pleading document on a defence equipment procurement to the Parliamentary Finance Committee for final political approval, the pleading document must state that a foreign supplier is to sign an ICC with the Ministry for Economic and Business Affairs, DECA, prior to the award of a contract by the Danish Armed Forces.

Guidance of foreign suppliers

DECA provides advice to potential foreign suppliers on the signing of ICCs. Among others the Confederation of Danish Industries provides assistance to foreign suppliers in establishing contact with Danish companies producing defence-related products.

Contracts signed with the Danish Armed Forces

The contract signed between the Danish Armed Forces and foreign defence equipment supplier must state that 30 days prior to contracting the supplier must have signed an ICC with DECA, and that an ICC exceeding 100 million DKK includes a requirement for a bank guarantee.

DECA will give the Danish Armed Forces written notification once an ICC is signed with a potential foreign supplier. The Danish Armed Forces can then sign a contract with the foreign supplier.

The Danish Armed Forces will subsequently inform DECA that a contract has been signed with the selected foreign supplier. This communication must include information on the type of defence equipment or services procured, the registration number of the RfQ, contract, or file, the size of the procurement relating to defence equipment or services, and the name of the selected foreign supplier.

Internal guidelines of the Danish Armed Forces

The Regulation on Industrial Co-operation in Denmark must be reflected in the internal guidelines of the Danish Armed Forces.