

## **Guidelines for Industrial Co-operation in Denmark**

### **1. Scope**

1.1. The guidelines shall apply to the Danish Ministry of Defence's acquisitions of new defence equipment and defence services at a value of more than DKK 50 million from foreign suppliers.

### **2. Definitions**

2.1. "Industrial co-operation" is defined as a foreign supplier's fulfilment of an obligation to co-operate with companies in Denmark.

2.2. "Defence equipment" and "defence services" are defined as in EU directive 2009/81/EC of 13 July 2009 as amended.

2.3. A company in Denmark is defined as a company registered in Denmark, and where an essential part of the industrial co-operation in question concerns competencies and capabilities in Denmark.

### **3. Obligations for industrial co-operation**

3.1. Obligations for industrial co-operation shall be laid down in compliance with EU law, particularly Article 346 of the Treaty on the Functioning of the European Union.

3.2. In connection with each of the Danish Ministry of Defence's acquisitions of defence equipment and defence services, the Ministry of Defence shall assess whether and which obligations for industrial co-operation are necessary and proportionate for the protection of Denmark's essential security interests.

3.2.1. The Ministry of Defence shall define the requirements to be imposed on foreign suppliers through obligations for industrial co-operation. Each of these requirements must be necessary and proportionate for the protection of Denmark's essential security interests.

3.2.2. The Ministry of Defence may define requirements aimed at maintaining and developing industrial competences and capabilities within specific strategic areas in the National Defence Industrial Strategy which are necessary for development, production,

maintenance, operation and performance of tasks related to the acquisition or corresponding defence equipment if this in itself is considered to be an essential security interest. It must be demonstrated that imposing obligations for industrial cooperation is necessary to maintain and develop the industrial competences and capabilities identified and that this objective cannot be achieved through less restrictive means.

These obligations must support the development of long-term strategic co-operation between the foreign supplier and companies in Denmark in order to ensure the availability of the necessary competencies and capabilities and/or the security of supply concerning the specific acquisition of defence equipment and defence services

3.3. If this assessment by the Ministry of Defence is negative, cf. para 3.2., foreign suppliers will not be met by obligations for industrial co-operation.

3.4. If this assessment by the Ministry of Defence is positive, cf. para 3.2., the Ministry of Business and Growth shall assess whether obligations for industrial co-operation will distort competition on the market for non-military goods and services.

3.5. If it is the assessment of the Ministry of Business and Growth that industrial co-operation will not distort competition on the market for non-military goods and services, cf. para 3.4, the Ministry of Business and Growth shall decide whether obligations for industrial co-operation must be imposed on the foreign suppliers involved in the specific acquisition.

#### **4. Implementation of obligations for industrial co-operation**

4.1. If obligations for industrial co-operation are imposed, information on the obligations as well as the requirements defined by The Ministry of Defence, c.f. paras 3.2.1. and 3.2.2., must be included in relevant documents concerning the specific acquisition to the Danish Parliamentary Finance Committee, the Danish Ministry of Defence's tender and procurement documents and the Danish Ministry of Defence's procurement contracts with foreign suppliers.

4.2. If obligations for industrial co-operation are imposed, foreign suppliers shall be required to contact the Ministry of Business and Growth in order to enter into a contract on industrial co-operation. The contract on industrial co-operation shall be signed at least 10 days prior to the signing of the acquisition contract with the Danish Ministry of Defence.

4.3. In exceptional cases, when it is not possible to enter into a contract on industrial co-operation prior to the signing of the acquisition contract

with the Ministry of Defence, cf. para 4.2., the foreign suppliers must accept in the acquisition contract the obligation to conclude a contract on industrial co-operation with the Ministry of Business and Growth, as soon as possible after signing the acquisition contract.

4.4. If the acquisition by the Ministry of Defence is made in co-operation with other nations, the Ministry of Business and Growth may approve that possible obligations for industrial co-operation are determined within the framework of an agreement concluded together with other nations.

4.5. If the Danish Ministry of Defence procures defence equipment and defence services directly from other nations, possible obligations for industrial co-operation shall be directed towards the actual, underlying foreign suppliers, if such suppliers can be identified.

4.6. If the Danish Ministry of Defence procures defence equipment and defence services from a broker, possible obligations for industrial co-operation shall be directed towards the actual, underlying foreign suppliers, if such suppliers can be identified

## **5. Fulfilment of obligations for industrial co-operation**

5.1. The fulfilment must meet the requirements defined by the Ministry of Defence, c.f. paras 3.2.1. and 3.2.2., as described in the tender and procurement documents.

5.2. In order to meet the requirements defined by the Ministry of Defence, c.f. paras 3.2.1. and 3.2.2., the fulfilment may include, but is not limited to, the following ways of co-operation:

- A. The foreign supplier's procurement of defence equipment and defence services from companies in Denmark.
- B. The foreign supplier's participation in development projects with companies in Denmark that develop competencies and capabilities which are necessary for the protection of Denmark's essential security interests, cf. para 3.3. The foreign supplier's participation may take the form of transfers of technology and software, etc., investment in development projects, advisory services and making facilities available.

5.3. It is a requirement that the fulfilment takes place within a period which is determined by the Ministry of Business and Growth on the basis of the scope and time of delivery of the acquisition and the need to ensure the security of supply concerning the specific acquisition for a relevant period of time.

5.4. The fulfilment may start from the point in time when a foreign supplier is selected for the specific acquisition.

5.5. If the fulfilment concerns development projects, cf. para 5.2.B., the foreign supplier must obtain a pre-approval from the Ministry of Business and Growth, before the project activities can be approved as fulfilment. The foreign supplier shall be required to use the application form for development projects provided by the Ministry of Business and Growth. A binding confirmation in writing from the CEO of the involved company in Denmark must be submitted along with the application for pre-approval.

5.6. Concerning development projects, the Ministry of Business and Growth may approve the use of multipliers, cf. para 5.1.5.B, if it can be demonstrated that the contribution from the foreign supplier in these cases can meet in a more effective way the requirements defined by the Ministry of Defence (cf. 3.2.1 and 3.2.2).

5.7. Multipliers may be approved up to a maximum of:

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|---|-----------------|
| A. Transfers of technology, software, etc.: | Multiplier of 7 |
| B. Funding of development projects:         | Multiplier of 5 |
| C. Advisory services:                       | Multiplier of 5 |
| D. Making facilities available:             | Multiplier of 3 |

## **6. Reporting fulfilment of obligations for industrial co-operation**

6.1. The foreign supplier must report to the Ministry of Business and Growth on the fulfilment of obligations for industrial co-operation once a year. This must take place no later than 15 February. The report must be made electronically in a template provided by the Ministry of Business and Growth.

## **7. Approval of fulfilment of obligations for industrial co-operation**

7.1. The Ministry of Business and Growth can only approve industrial co-operation fulfilling the requirements by the Ministry of Defence, c.f. para 3.2.1. and 3.2.2.

7.2. Concerning the procurement of sales and services from Danish companies, cf. para 5.2.A., the Ministry of Business and Growth can approve invoices concerning defence equipment and defence services specified with date and products as fulfilment of obligations for industrial co-operation.

7.3. Concerning development projects, cf. para 5.2.B., the Ministry of Business and Growth can approve activities consistent with the pre-approval of the development project as fulfilment of obligations for industrial co-operation.

7.4. Before approving the fulfilment of obligations for industrial co-operation, the Ministry of Business and Growth may ask the CEO of the involved company in Denmark to confirm in writing the reported sales and development projects. Concerning investments as part of a

development project, the Ministry of Business and Growth may ask the involved company in Denmark to provide a statement from an authorised Danish accountant concerning the transfer of funds to the company in Denmark.

7.5. The Ministry of Business and Growth can approve the fulfilment of obligations for industrial co-operation if an essential part of the industrial co-operation relates to competencies and capabilities in Denmark. If this is not the case, the Ministry of Business and Growth can approve the part of the industrial co-operation that relates to competencies and capabilities in Denmark. In this connection, information shall be obtained from the company in question in Denmark.

## **8. Sanctions for non-fulfilment**

8.1. The contract on industrial co-operation between the foreign supplier and the Ministry of Business and Growth contains milestones for 50 per cent and 100 per cent fulfilment of the obligations for industrial co-operation.

8.2. By signing the contract on industrial co-operation, the foreign supplier agrees to pay a penalty, if the milestones for 50 per cent and 100 per cent fulfilment are not met. The amount shall be paid to the Ministry of Business and Growth. The penalty shall be allotted to the Treasury and credited to § 08.21.25.

8.2.1. There shall be a penalty of 15 per cent of the amount which has not been fulfilled at the time of the milestones for 50 per cent and 100 per cent fulfilment, cf. para 8.1.

8.2.2. In connection with framework contracts, there shall be a penalty of 50 per cent of the amount which has not been fulfilled three years after the termination of the framework contract.

8.3. The Ministry of Business and Growth may, after consultations with the Ministry of Defence, exclude a foreign supplier from obtaining new contracts with the Ministry of Defence for a specific period, if the foreign supplier continuously grossly fails to fulfil his obligations despite repeated requests from the Ministry of Business and Growth, or abstains from entering into a contract on industrial co-operation with the Ministry of Business and Growth.

## **9. Commencement**

9.1. These guidelines shall come into effect on 1 July 2014.

9.2. Contracts on industrial co-operation between the Ministry of Business and Growth and foreign suppliers, which have been signed before the entering into force of these guidelines, shall remain unchanged.

## **10. Information and involvement of the defence industry**

10.1. In the “Forsvarets Materielnævn” (Advisory Board for Defence Procurement), the Ministry of Defence shall inform of future procurement of defence equipment and defence services as well as possible obligations for industrial co-operation. The participants in the Advisory Board for Defence Procurement are: the Danish Defence Acquisition and Logistics Organization (chair), the Ministry of Defence, Defence Command Denmark, the confederation of Danish Industry, representatives of the defence industry, the Economic Council of the Labour Movement, the Trade Council of Denmark and the Danish Business Authority.

10.2. In the “Følgegruppe for industrisamarbejde” (Advisory Board for Industrial Co-operation), the Ministry of Business and Growth shall inform of the state of affairs concerning contracts on industrial co-operation with foreign suppliers and consult on pre-approval of development projects, decisions of a principled nature, sanctions against foreign suppliers, cf. para 8.3., and the fulfilment of obligations for industrial co-operation. The participants in the Advisory Board for Industrial Co-operation are the Danish Business Authority (chair), the Confederation of Danish Industry, the Central Organisation of Industrial Employees in Denmark (CO-Industri), the Ministry of Defence and the Danish Defence Acquisition and Logistics Organization,

10.3. Annually, the Ministry of Business and Growth shall inform the Danish Parliament of the state of affairs concerning industrial co-operation. The Ministry of Defence shall contribute to the report subject to request by the Ministry of Business and Growth.

10.4. On the website, <http://danishbusinessauthority.dk/industrial-co-operation>, the Danish Ministry of Business and Growth provides information on:

- Guidelines on industrial co-operation
- The National Defence Industrial Strategy
- The concept for contracts on industrial co-operation between the Ministry of Business and Growth and foreign suppliers
- A list of foreign suppliers with obligations for industrial co-operation, including current outstanding obligations and contact data.
- The annual reports to the Danish Parliament.