

# Rules on industrial participation in defence procurement in Finland

1 January 2012 (rev. 25 April 2013, 11 May 2017 and 25 June 2018)

## 1. Principles governing the use of industrial participation

1.1. The obligation for industrial participation can be imposed, when the conditions in Article 346 section 1 of TFEU are met, in defence procurement that is of vital importance for the country's defence and security.

The industrial participation obligation is not imposed in the case of procurements subject to the regulations of the European Union's Directive 2009/81/EC on defence and security procurement.

1.2. The necessity for the obligation of industrial participation and the extent of the obligation shall be assessed separately for each case, at the latest before the invitation to tender is submitted. In addition to the objectives of industrial participation referred to below, the assessment shall pay attention to whether the objectives can be achieved in any other way than through the obligation of industrial participation.

## 2. Objectives of industrial participation

2.1. The objective of industrial participation is to develop and maintain the production, technology and expertise in the defence and security industry that is critical with respect to national defence, state security or functions vital to society, as well as to improve and safeguard the national security of supply.

2.2. Industrial participation will ensure that the technology and expertise that are critical in terms of security of supply in relation to the defence equipment to be procured will be available to the armed forces even during a crisis and in emergency conditions comparable to a crisis

## 3. Areas of industrial participation

3.1. A foreign defence materiel supplier (hereafter Contractor) shall focus the industrial participation activities solely on the following areas, taking account of the objectives described above in section 2:

### 3.1.1. Direct industrial participation

(a) The object of direct participation is especially participation in the manufacturing, assembly, integration, testing or development of the defence materiel to be purchased, to ensure that all the expertise and technology, considered necessary for military security of supply, be obtained for the service, maintenance and further development of said materiel in accordance with the objectives in section 2.2.

(b) In an invitation to tender concerning an individual defence materiel purchase, the procurement authority may specify in further detail the projects for direct industrial participation.

### 3.1.2. Indirect industrial participation

(a) The objects of indirect participation are transfers of technology and expertise, which are important with respect to the key security interests of the state, to the Finnish defence and security industry. Indirect industrial participation refers especially to transfers of critical technology and expertise to Finland in the form of industrial, technological or research cooperation, for example.

(b) Industrial participation can also be used to promote the technological development and internationalisation of small and medium-sized companies in the defence and security sector operating in areas of expertise and technology that are critical to national defence and state security.

(c) Companies manufacturing products for dual use and products, services or systems that are critical to the security of supply may, at the discretion of the Finnish Committee on Industrial Participation, be regarded as parties to industrial participation in the defence and security industry referred to in sections 3.1.2. (a) and (b).

## 4. Transactions qualifying for industrial participation

4.1. The Finnish Committee on Industrial Participation may approve a transaction for indirect industrial participation purposes provided that all of the following conditions are met:

(a) the transaction pertains to an area qualifying for industrial participation referred to in section 3.1.2.;

(b) the Contractor has, in a verifiable way, been instrumental in creating the transaction that is an object of industrial participation, meaning that the transaction was unlikely to have taken place without an active contribution from the Contractor;

(c) the industrial participation significantly benefits the Finnish defence and security sector;

(d) a point of departure for the participation is that the Finnish partner shall in no event bear the Contractor's costs arising from industrial participation nor the costs of services acquired by the Contractor from third parties.

The Finnish Committee on Industrial Participation may make an exception and agree that a Finnish partner shall bear a pre-determined share of the project costs if the participation project so requires.

4.2. Transactions not pertaining to section 3. above or the continuation of established business relationships are not eligible transactions, nor are transactions with a value of less than EUR 20,000 and any transactions that may be lost due to industrial participation.

4.3. As a rule pre-performance arrangements are not allowed in industrial participation. As an exception and only in strategic projects in view of the national defence it may be agreed that the tenderer launches transactions before the procurement contract has been concluded, if considered necessary separately for each case. This requires contractual arrangements between the tenderer and the Ministry of Defence.

## 5. Determining the crediting value

5.1. Transactions are normally accepted at the full value of the Finnish content of the contract. The Finnish content of the contract includes Finnish material, labour, added value and other elements of Finnish origin.

5.2. If the Finnish Committee on Industrial Participation deems it justified, it may decide that the crediting value is lower than the full value according to the domestic content.

5.3. Transactions concerning direct industrial participation may be accepted according to the full value of the contract providing that the domestic content of the contract is significant.

5.4. If the Finnish Committee on Industrial Participation deems it justified, it may apply a multiplier of 1.5–3 in the assessment of the value of a transaction referred to in section 3.1.2. (b).

5.5. If a participation project concerning product development, technology, production or any similar activity has no contract value or the contract value is not representative in the Committee's opinion, the Committee determines a crediting value in each case separately on the basis of the resulting benefit to the Finnish partner. No multipliers will be granted in such a case.

5.6. The value of transactions concerning industrial participation is recorded in the currency in which the procurement contract was made. In cases when the claim for credit is presented in another currency it will be converted at the euro foreign exchange reference rates published by the European Central Bank.

5.7. The value date is the date when the claim was accepted by the Committee.

## **6. Procedure**

6.1. The Contractor shall submit all requests to the Finnish Committee on Industrial Participation in writing. A separate request shall be drawn up for each project on a form accepted by the Finnish Committee on Industrial Participation.

6.2. The Contractor can also seek a preliminary opinion from the Finnish Committee on Industrial Participation on the eligibility of a future industrial participation project, the crediting value and the multipliers possibly applicable to it under section 5.4.

6.3. Along with the request, the Contractor shall enclose documents verifying the implementation of the transaction, sufficient grounds for why the transaction should be deemed suitable for industrial participation and a confirmation of the Finnish partner written on a special form. Any additional information requested by the Committee shall be submitted to the Committee without delay. With respect to requests for a preliminary opinion and pre-performance arrangements under section 4.3, this procedure shall be complied with, as applicable.

6.4. The final decision on the eligibility of the projects shall be made by the Ministry of Economic Affairs and Employment at the proposal of the Committee.

## **7. Accounts held by the Finnish Committee on Industrial Participation**

7.1. All transactions approved by the Finnish Committee on Industrial Participation and their crediting value are recorded in an account on industrial participation kept by the Committee. The entries to the account on industrial participation shall show the extent to which the Contractor has fulfilled the industrial participation obligation or the situation of the pre-performance arrangements.

7.2. The Finnish Committee on Industrial Participation shall inform the Contractor without delay of the decisions made by the Finnish Committee on industrial Participation or the Ministry of Economic Affairs and Employment and of any changes concerning the account on industrial participation.

## **8. Validity of the information**

8.1. The Contractor is responsible that the information supplied by itself to the Finnish Committee on Industrial Participation, the Ministry of Economic Affairs and Employment or the Ministry of Defence is true and correct and not misleading. The Contractor shall also take all necessary

measures to ensure that information provided by a third party concerning a transaction is also true and correct and not misleading.

8.2. The Contractor shall ensure that the Finnish Committee on Industrial Participation has sufficient access to all of the documents concerning the transaction between the Contractor and a third party (including Finnish companies) that it needs in order to be able to verify that the transaction meets the terms and conditions under these rules.

8.3. If it is subsequently discovered that a decision concerning the approval of a transaction was based on incorrect, incomplete or misleading information or if for any reason other than a case of force majeure the transaction has in actual fact not been carried out in the agreed manner, the Finnish Committee on Industrial Participation may revoke its decision either fully or partly and revise the entries in the account on industrial participation to correspond to the new decision.

## **9. Confidentiality**

The Ministry of Economic Affairs and Employment and the Finnish Committee on Industrial Participation will handle the information concerning the Contractor's industrial participation obligation and its implementation as confidential in accordance with the Act on the Openness of Government Activities (621/1999).