

## Mandatory Tenders Law, 5752-1992

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## Mandatory Tenders Law, 5752-1992\*

### Definitions

**1.** In this Law –

"government corporation" – A government company, a government subsidiary or a corporation established by law.

"land" – As defined in the Basic Law: Israel Lands.

"defense establishment" – The Israel Defense Forces, the Ministry of Defense and its auxiliary units, and companies for which the Minister of Defense is responsible.

"health fund" – As defined in the National Health Insurance Law, 5754-1994.

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Amended in [Sefer HaChukkim 5752 No. 1400](#) of August 13, 1992, p. 250 ([Hatza'ot Chok 5752 No. 2140](#), p. 403) – Amendment No. 1.

[Sefer HaChukkim 5753 No. 1407](#) of January 7, 1993, p. 22 ([Hatza'ot Chok 5753 No. 2150](#), p. 6A) – Amendment No. 2.

[Sefer HaChukkim 5753 No. 1419](#) of May 14, 1993, p. 108 ([Hatza'ot Chok 5753 No. 2151](#), p. 36) – Amendment No. 3; effective as of May 16, 1993.

[Sefer HaChukkim 5754 No. 1440](#) of November 21, 1993, p. 25 ([Hatza'ot Chok 5754 No. 2216](#), p. 90) – Amendment No. 4; effective as of November 15, 1993.

[Sefer HaChukkim 5754 No. 1459](#) of March 24, 1994, p. 122 ([Hatza'ot Chok 5754 No. 2260](#), p. 396) – Amendment No. 5; effective as of March 16, 1994.

[Sefer HaChukkim 5754 No. 1472](#) of July 8, 1994, p. 244 ([Hatza'ot Chok 5754 No. 2288](#), p. 528) – Amendment No. 6; effective as of June 29, 1994.

[Sefer HaChukkim 5758 No. 1495](#) of December 22, 1994, p. 46 ([Hatza'ot Chok 5755 No. 2312](#), p. 65) – Amendment No. 7.

[Sefer HaChukkim 5757 No. 1607](#) of January 7, 1997, p. 33 ([Hatza'ot Chok 5757 No. 2556](#), p. 32) – Amendment No. 8 in section 15 of the State Economic Arrangements Law (Legislative Amendments to Achieve the Budget Goals for 1997), 5757-1996; see section 15(b) regarding effective date.

[Sefer HaChukkim 5758 No. 1645](#) of January 15, 1998, p. 73 ([Hatza'ot Chok 5758 No. 2690](#), p. 20) – Amendment No. 9 in section 25 of the Law for Increasing Growth and Employment and for Achieving the Budget Goals for Fiscal Year 1998 (Legislative Amendments), 5758-1998; effective as of April 1, 1998.

[Sefer HaChukkim 5758 No. 1663](#) of March 31, 1998, p. 185 ([Hatza'ot Chok 5758 No. 2675](#), p. 178) – Amendment No. 10.

[Sefer HaChukkim 5761 No. 1791](#) of June 4, 2001, p. 392 ([Hatza'ot Chok 5761 No. 3000](#), p. 622) – Amendment No. 11; see section 3 regarding effective date and scope.

[Sefer HaChukkim 5762 No. 1824](#) of January 21, 2002, p. 100 ([Hatza'ot Chok 5761 No. 3010](#), p. 671) – Amendment No. 12.

[Sefer HaChukkim 5762 No. 1861](#) of July 30, 2002, p. 512 ([Hatza'ot Chok 5762 No. 3171](#), p. 886) – Amendment No. 13; see section 2 regarding effective date and scope.

[Sefer HaChukkim 5763 No. 1874](#) of November 20, 2002, p. 59 ([Hatza'ot Chok 5762 No. 3162](#), p. 851) – Amendment No. 14; effective 30 days after the date of entry into effect of the regulations regarding transactions of a local corporation, as stated in sections 4, 5.

[Sefer HaChukkim 5763 No. 1875](#) of November 31, 2002, p. 83 ([Hatza'ot Chok 5762 No. 3188](#), p. 959) – Amendment No. 15; effective as of January 1, 2003, and see section 3 regarding scope.

[Sefer HaChukkim 5763 No. 1901](#) of August 6, 2003, p. 545 ([Hatza'ot Chok HaMemshala 5763 No. 45](#), p. 574) – Amendment No. 16.

[Sefer HaChukkim 5765 No. 2031](#) of October 2, 2005, p. 1004 ([Hatza'ot Chok HaMemshala 5765 No. 205](#), p. 1238) – Amendment No. 17; effective as of August 1, 2005; see sections 3, 4 regarding scope and validity. Correction of error in [Sefer HaChukkim 5766 No. 2038](#) of December 8, 2005, p. 54

[Sefer HaChukkim 5766 No. 2057](#) of June 15, 2006, p. 356 ([Hatza'ot Chok HaMemshala 5766 No. 236](#), p. 298) – Amendment No. 18 in section 60 of the State Economic Arrangements Law (Legislative Amendments to Achieve Budget Goals and Fiscal Policy for the 2006 Fiscal Year), 5766-2006; see section 62 regarding effective date.

[Sefer HaChukkim 5768 No. 2142](#) of March 27, 2008, p. 385 ([Hatza'ot Chok HaKnesset 5768 No. 188](#), p. 68) – Amendment No. 19; effective 60 days after the date of its publication and applies to tenders published from that date.

[Sefer HaChukkim 5771 No. 2270](#) of December 30, 2010, p. 136 ([Hatza'ot Chok HaKnesset 5768 No. 250](#), p. 426) – Amendment No. 20 – Temporary Order; effective for two years.

[Sefer HaChukkim 5772 No. 2356](#) of May 14, 2012, p. 390 ([Hatza'ot Chok HaKnesset 5772 No. 440](#), p. 100) – Amendment No. 21.

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## Complete up-to-date version

"religious council" – A religious council established under the Jewish Religious Services Law [Consolidated Version], 5731-1971.

(Amendment No. 18)  
5766-2006

"institution of higher education" – Any of the institutions listed below, to whose budget the government contributes directly or indirectly:

(1) An accredited institution within the meaning of section 9 of the Council for Higher Education Law, 5718-1958 (in this section – the Council for Higher Education Law).

(2) An institution that received a permit or authorization under section 21A of the Council for Higher Education Law.

(3) An institution that grants a degree which is recognized under section 28A of the Council for Higher Education Law.

(Amendment No. 18)  
5766-2006

"Council for Higher Education" – Within the meaning of the Council for Higher Education Law.

### **Mandatory Tending**

(Amendment No. 8)  
5757-1996

(Amendment No.9)  
5758-1998

(Amendment No. 14)  
5763-2002

(Amendment No. 18)  
5766-2006

**2.** (a)<sup>1</sup> The State and any government corporation, religious council, health fund and institution of higher education may not enter into a contract for the execution of a transaction in goods or in land, or for the execution of work, or for the purchase of services, except pursuant to a public tender that allows every person an equal opportunity to participate in it.

(Amendment No. 12)  
5762-2002

(Amendment No. 21)  
5772-2012

(b) A tender holder may not discriminate between bidders based on disability, gender, sexual orientation, marital status, age, parentage, race, religion, nationality, country of origin, outlook or party membership. In this subsection, "disability" – physical, mental or psychological impairment within the meaning of the Equal Rights for People with Disabilities Law, 5758-1998.

(Amendment No. 12)  
5762-2002

(c) For purposes of subsection (b) –

(1) Discrimination is deemed also as the setting of irrelevant conditions.

(2) A differentiation that is required by the character or nature of the tender is not deemed discrimination.

### **Conditions for Participaton in a Tender**

(Amendment No. 19)  
5768-2008

**2A.** (a) A tender holder may not set a condition for a bidder's participation in the tender, unless the condition is required by the character or nature of the tender.

(b) If a tender holder sets a condition with respect to any of the matters listed in column A of the Schedule, that poses a stricter requirement than indicated in column B of the Schedule, or a condition that requires proven experience in work with the tender holder or with any of the entities listed in section 2, it shall explain its decision in the tender documents.

(c) The Minister of Finance, with the approval of the Knesset Constitution, Law and Justice Committee, may modify, by order, the Schedule.

### **Encouragement of Women in Business**

(Amendment No. 19)  
5768-2008

**2B.** (a) In this section –

"certification" – An accountant's certification that in a particular business, a woman holds control and that none of the following is fulfilled:

(1) If an officer who is not a woman serves in the business – he is not a relative of the woman holding control.

(2) If one-third of the directors are not women – they are not relatives of the woman holding control.

"means of control" – As defined in the Banking (Licensing) Law, 5741-1981.

"female holder of control" – A female officer in a business who holds, alone or

<sup>1</sup> According to Amendment No. 14, the Law is also to apply to a local corporation. Amendment No. 14 will become effective upon the enactment of regulations regarding transactions of a local corporation.

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jointly with other women, directly or indirectly, more than 50% of any type of means of control in the business.

"officer" – General manager, deputy general manager, assistant general manager, chief business officer and any person holding such a position in a business even if under a different title.

"business" – A company registered in Israel whose shares are not listed on a stock exchange and were not issued to the public pursuant to a prospectus, or a partnership registered in Israel.

"business controlled by a woman" – A business in which a woman holds control and whose activity she is able to guide, alone or together with other women, provided the provisions of paragraphs (1) and (2) of the definition of "certification" are fulfilled.

"relative" – Spouse, sibling, parent or child, and the spouse of a sibling, parent or child.

"affidavit" – Affidavit of a female holder of control that the business is controlled by a women.

(b) Where a tender was issued pursuant to the provisions of this Law, and following the weighting of the results two bids or more received an identical weighted result which is the highest result, and one of the bids is that of a business controlled by a women, that bid shall be chosen as the winner of the tender, provided a certification and affidavit were attached to the bid at the time of its submission.

### Exemption for a Foreign Transaction

**3.** The Minister, with the approval of the Knesset Constitution, Law and Justice Committee, shall establish in regulations provisions regarding an exemption from mandatory tendering in a transaction with someone who is not a resident of Israel, or in a transaction which is executed outside the State.

### Provisions Relating to Certain Preferences

(Amendment No. 3)  
5753-1993  
(Amendment No.7)  
5755-1994  
(Amendment No.20)  
5771-2010

**3A.** The government, with the approval of the Knesset Constitution, Law and Justice Committee, may establish in regulations provisions in the following matters:

(1) Preference for Israeli products, including products of an Area within the meaning of the Emergency Regulations (Judea and Samaria and the Gaza Strip – Jurisdiction over Offenses and Legal Assistance), 5728-1967 (in this Law – Area), and the purchase of textile products for the defense establishment and the Ministry of Public Security, where such product was manufactured by an Israeli citizen or a permanent resident of Israel or by a corporation registered in Israel.

(Amendment No. 7)  
5755-1994

(2) Preference based on an undertaking for international business cooperation or for international offset procurement, including the designation of an undertaking for international business cooperation or for international offset procurement as a condition for participation in a tender, and including the setting of such a requirement in contracts made other than by tender.

(Amendment No. 7)  
5755-1994

(3) (Expired).

(Amendment No. 17)  
5765-2005

(a1) (1) In this subsection, "national priority areas" – the areas designated in section 40D of the Encouragement of Capital Investments Law, 5719-1959 (hereinafter – the Encouragement of Capital Investment), and other areas designated by the government, from time to time, for purposes of the benefits under the Encouragement of Capital Investments Law or for purposes of this Law.

(2) A notice regarding the designation of other areas under paragraph (1) shall be published in Reshumot<sup>2</sup>.

(Amendment No. 11)  
5761-2001

(2a) For purposes of this Law the Atarot industrial area is a national priority area, and for purposes of the Mandatory Tenders Regulations (Preference for Products from National Priority areas), 5758-1998 (hereinafter – the Regulations), the following provisions shall apply:

<sup>2</sup> See [Yalkut Pirsumim No. 5501](#) of February 28, 2006, p. 2088.

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(1) The Atarot industrial area shall be deemed part of the "Confrontation Line Region."

(2) For purposes of the Atarot industrial area, the definitions of "goods from the Confrontation Line Region" and "services from the Confrontation Line Region" shall read thus: the words "reside permanently in the Confrontation Line Region" shall be followed by: "within the jurisdiction of the Jerusalem Municipality or within Area A."

(3) The Minister of Finance and the Minister of Defense, with the approval of the Knesset Constitution, Law and Justice Committee, may establish, with respect to contracts of the defense establishment, provisions relating to preference for products from national priority areas and provisions relating to the restriction of tenders to bidders from national priority areas.

(4) The government may decide that preference shall be given to products from national priority areas also with respect to contracts of other government ministries. Preference under this paragraph shall be given in accordance with regulations to be enacted by the Minister of Finance with the approval of the Knesset Constitution, Law and Justice Committee.

(b) Regulations under subsection (a), insofar as they apply to a government company and to a government subsidiary, shall be deemed as a determination of the government pursuant to section 4(a) of the Government Companies Law, 5735-1975, and the provisions of said law shall apply with respect to such determination.

(c) For purposes of this section –

(1) "preference" – Including by splitting the contract under the tender between bidders of Israeli products and bidders of non-Israeli products, or between bidders of products from national priority areas and bidders of products not from those areas, as the case may be, all upon conditions, at rates and according to rules to be established in regulations.

(2) "Israeli products," "products from national priority areas" as determined in regulations.

(Amendment No. 7)  
5755-1994

**Restriction on Contracting**  
(Amendment No. 7)  
5755-1994

**3B.** The government, with the approval of the Knesset Foreign Affairs and Defense Committee, may direct, by order, that the State or a government corporation may not enter into a contract for the execution of a transaction as stated in section 2 with a particular foreign country or with a particular foreign supplier for reasons of foreign policy. Such a provision shall be published in Reshumot, and it shall not apply to a tender that was issued prior to its publication. Where a government company or a government subsidiary was directed as stated, the provisions of section 3A(b) shall apply.

**Exemption from Tendering, Closed Tender and Ways of Holding a Tender**

**4.** (a) The Minister of Finance, with the approval of the Knesset Constitution, Law and Justice Committee, shall establish in regulations –

(1) Amounts or types of transactions and procedures for the classification of transactions, in respect of which, notwithstanding that stated in section 2 –

(a) It shall not be mandatory to hold a tender at all.

(b) It shall not be mandatory to hold a public tender, but only a closed tender, and the conditions of such a tender.

(2) Types of transactions in respect of which participation in a tender is subject to conditions to be established.

(3) Types of transactions in which it is permitted to negotiate with bidders whose bids were found suitable, and rules for the conduct of negotiations.

(4) The form of the tenders and ways of inviting and receiving price bids, and the manner of publication of the tenders in public.

(5) The manner of forming and staffing committees, and the criteria for selecting suitable bids.

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(6) Special provisions and special conditions for the different types of tenders of institutions and corporations to which this Law applies.

(7) Any other matter which he considers necessary for the proper and fair management of transactions and with a view to ensuring the receipt of bids that confer maximum advantages on the tender holder.

(Amendment No. 3)  
5753-1993

(b) Regulations pursuant to this section shall establish, *inter alia*, exemptions from mandatory tendering for a contract that is required urgently to prevent actual damage and for a contract involving special and rate circumstances that warrant making it without a tender, and conditions for granting such exemptions.

### Contracts of the Defense Establishment, a Local Corporation and an Institution of Higher Education

(Amendment No. 14)  
5763-2002

(Amendment No. 18)  
5766-2006

**5.** (a) In transactions of the defense establishment, for purposes of sections 3 and 4, the Minister of Finance shall be replaced by the Minister of Defense in consultation with the Minister of Finance.

(Amendment No. 14)  
5763-2002

(b)<sup>3</sup> In transactions with a local corporation, for purposes of sections 3 and 4, the Minister of Finance, with the approval of the Knesset Constitution, Law and Justice Committee, shall be replaced by the Minister of Education and the Minister of Finance, in consultation with the Council for Higher Education and with the approval of the Knesset Education, Culture and Sports Committee.

### Regulations

(Amendment No. 3)  
5753-1993

**5A.** (a) Regulations pursuant to this Law may be established, in general, for types of transactions or for types of contracting entities.

(b) Regulations pursuant to this Law shall apply insofar as they do not conflict with an undertaking of the State in an international treaty.

### Saving of Laws

**6.** The provisions of this Law shall not derogate from the provisions of any other law.

### Implementation

**7.** The Minister of Finance is responsible for the implementation of this Law, and he may enact regulations for its implementation.

### Effective Date

(Amendment No. 1)  
5752-1992

**8.** (a) This Law shall come into effect on May 16, 1993 (25 Iyar 5773).

(Amendment No. 2)  
5753-1992

(b) The Minister of Finance shall submit to Knesset Constitution, Law and Justice Committee for approval regulations as set forth in section 4, prior to the effective date of this Law.

### Transitional Provisions

(Amendment No. 3)  
5753-1993

**9.** (a) This Law shall not apply to a contract resulting from –

(1) A public or closed tender, an invitation to bid or the giving of an undertaking, all the above if done prior to the effective date of this Law in accordance with the rules and procedures in effect prior to the effective date.

(2) The exercise of an option included in contract that was concluded prior to the effective date of this Law.

(Amendment No. 7)  
5755-1994

(b) Up to the entry into effect of regulations pursuant to section 3A(a), paragraphs (1) or (2), or up to December 31, 1994 (28 Tevet 5755), whichever is earlier, and for purposes of regulations pursuant to section 3A(a)(3) – up to their entry into effect or up to May 15, 1995 (15 Iyar 5755), whichever is earlier, the State and any government corporation shall act, in all the matters set out in that section, as the case may be, according to the rules in effect prior to the effective date of this Law.

(Amendment No. 17)  
5765-2005

(c) (Repealed).

<sup>3</sup> This subsection shall come into effect 30 days after the entry into effect of regulations regarding transactions of a local corporation

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**SCHEDULE**  
**(Section 2A(b))**

Column A	Column B
1. Years of experience	A requirement that a bidder shall have experience of one year in the field relevant to the contract under the tender, or experience in such field equivalent to the planned duration of execution of the contract, whichever is greater. In any event, the requirement for years of experience may not exceed five years.
2. Scope of experience	A requirement that the bidder shall have executed one previous project on a financial or quantitative scope equivalent to the scope of the work in the tender, or that the bidder shall have executed up to three previous projects, each on a financial or quantitative scope equivalent to one-half of the scope of the work in the tender.
3. Financial turnover	A requirement that a bidder shall have an annual financial turnover equivalent to twice the estimated financial value of execution of the contract under the tender. Such a requirement shall relate at the most to each of the three years prior to the contract.
4. Volume of production or supply	In a contract for the execution of a transaction in goods – a requirement for a volume of production or supply not exceeding twice the annual volume required in the framework of the contract. Such a requirement shall relate at the most to each of the three years prior to the contract.

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