

Regulations on Industrial Cooperation Related to Defence Acquisitions from Abroad

(Courtesy translation of authoritative Norwegian text)

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PART 1 GENERAL PRINCIPLES

1.1 Legal Basis

The Regulations on Industrial Co-operation (RIC) related to Defence Acquisitions from Abroad are established by the Ministry of Defence (MoD) and authorized by the Norwegian Acquisition Guidelines for the Defence Sector¹ (RAF), and serve as an attachment to the RAF. The RIC as such do not entitle suppliers or potential suppliers particular rights.

1.2 Objective

Industrial Co-operation related to Defence Acquisition from abroad shall contribute to maintain, further develop and innovate a competitive national defence industrial capability and competence within technology and product areas that are integral for the further development of the Armed Forces whenever this can contribute to meet the requirements of the Armed Forces.

1.3 Procurement Authorities

The regulations apply for the MoD and all its subordinate entities when concluding agreements on industrial cooperation.

1.4 Responsible Authority

MoD has the overall responsibility for the establishment and supervision of industrial cooperation related to acquisitions from abroad. In accordance with the provisions of these regulations, the MoD has delegated authority to Norwegian Defence Materiel Agency (NDMA).

1.5 Ethical Standards

The defence sector and its suppliers shall operate in line with good business practices and ensure high ethical standards.

If a party is, or previously has been, in breach of ethical and professional standards, with reference to RAF Chapter 3, the MoD may decide not to approve industrial projects involving such party.

1.6 Exemptions

MoD may waive the provisions set forth in the Regulations.

¹ Defence Sector refers to MoD with all its subordinate entities.

PART 2 KEY ASPECTS RELATED TO IMPLEMENTATION

2.1 Scope of Application

2.1.1 Acquisitions and Suppliers Subject to the Provisions of these Regulations

Industrial cooperation agreements are required for all acquisitions from foreign suppliers of materiel, as well as goods and services linked to said materiel throughout its life cycle when the Acquisition Authorities deems that the requirement of an industrial cooperation agreement can be justified by EEA Agreement article 123. Otherwise, the restrictions that follow from succeeding sections of Part 2.1. apply. The regulations also apply if the supplier is registered in Norway, but a significant part of the production is undertaken abroad².

Before signing a contract of delivery, a binding agreement on industrial cooperation must be signed.

Exempted from these requirements are acquisitions:

- 1) that are carried out in accordance with Regulations on Public Acquisitions (FOA).
- 2) where the contract amounts to less than 100 mill. NOK, ref. Section 2.1.4.
- 3) carried out by foreign procurement organisations on behalf of several nations, unless it has been decided by the cooperating nations to require industrial cooperation.

In contracts below 100 mill. NOK that includes options or additional acquisitions that may bring the cumulative contract value to exceed the threshold value within 5 years of contract signature, the supplier shall enter into an industrial cooperation agreement that will be invoked when the threshold value is exceeded, in accordance with section 2.4.2.1.

2.1.2 Additional Procurements and Options

If an industrial cooperation agreement (ICA) is already entered into with a supplier, and an additional acquisition consists of the same or similar type of materiel, the existing ICA shall be increased with a value equal to the additional acquisition, irrespective of its value. The same applies when options linked to a previously signed acquisition contract are executed.

2.1.3 Life Cycle Clause

In connection with acquisition of materiel where significant upgrades, updates, maintenance etc. are to be expected, the supplier must commit to industrial cooperation for such future contracts when entering into the main contract of the acquisition. This is done by establishing a life cycle industrial cooperation agreement when entering into the main contract.

By entering into such a life cycle agreement, the contractor accepts an industrial cooperation commitment for all future contracts, as mentioned in the life cycle agreement, irrespective of the value of such future contract.

The requirement of Life Cycle Industrial Cooperation may apply to both main contractors and sub-contractors.

2.1.4 Basis of Calculation

Taxes, customs duties and other charges imposed by Norwegian authorities shall not be included in the basis of calculation.

Administrative fees incurred when acquisitions are made under international (armaments) cooperation arrangements or other nations' public supply schemes etc. shall not be included in the basis for calculation. Administrative fees that are to be excluded from the basis of calculation must be fully documented by the supplier.

² This also applies if the main contractor and the sub-contractor belong to the same corporation.

2.2 Procedural Requirements for Entering into Industrial Cooperation Agreements

2.2.1 Bid Content Requirements

A supplier cannot request an exemption from the requirement of an industrial cooperation agreement, submit an alternative offer without an industrial cooperation agreement, or exclude himself from parts of these regulations. Such non-compliant offers will be rejected.

In their evaluation NDMA will emphasize the supplier's past performance related to ongoing and completed industrial cooperation agreements. In addition, performance of other entities/business units in the same corporation will be examined/evaluated, even if these are located in other countries than the main supplier in question.

In his offer the supplier shall provide a binding declaration accepting these regulations.

2.2.2 Plan for Industrial Cooperation

Acquisitions valued at 500 mill. NOK or more require an industrial cooperation plan. Such a plan should be drafted in an early phase and may be part of the initial offer request. Pursuant to a specific assessment this requirement may also apply to acquisitions valued at less than 500 mill. NOK.

2.2.3 The Negotiation Procedure

The acquisition authority is not permitted to sign any contract with a supplier until an Industrial Cooperation Agreement has been signed.

2.3 General Requirements Concerning Industrial Cooperation Agreements

2.3.1 Language Requirements

Industrial Cooperation Agreements shall be in the English language (UK).

2.3.2 Governing Law

Industrial Cooperation Agreements are governed by Norwegian law.

Any disputes arising from an Industrial Cooperation Agreement will exclusively be heard by Norwegian courts of general justice or courts of arbitration established according to the Norwegian Arbitration Act.

2.3.3 Public Disclosure

Industrial Cooperation Agreements are subject to the Public Information Act (Offentlighetsloven) § 13, Section 1 and Public Administration Act (Forvaltningsloven) § 13 1. Section 2 – *business classification due to competition*. The value/scope of the commitment, its remaining obligation at any time and the name of the supplier are normally subject to public disclosure.

2.3.4 Implementation Costs

The supplier must carry all his own costs related to the actual implementation of the agreements, such as, but not limited to, administration and travel expenses. Such costs may not be deducted from the supplier's commitment under the agreement.

2.4 Categories of Industrial Cooperation Agreements

2.4.1 General

Standard agreements will apply during negotiations with suppliers.

These regulations and/or standard agreements may not be waived unless the MoD grants an exemption from the provisions in accordance with Section 1.6.

When considered expedient, elements from different categories of agreements may be integrated into one agreement.

A supplier or potential supplier that has entered into agreements with banking mechanisms, but are unable to utilize its accumulated credit, may not make any claim against Norwegian authorities (cf. 2.4.2.4)

2.4.2 Categories of Agreements

2.4.2.1 Industrial Cooperation Agreement – ICA

Such agreements are entered into for single acquisitions and go into effect simultaneously with the main contract. This type of agreement entails a contractual commitment to the NDMA on the part of the supplier.

If an industrial cooperation agreement (ICA) has already been entered into with a supplier, and the current (new) acquisition concerns the same or similar type of materiel, the existing ICA shall be increased with the value of the new acquisition, irrespective of its contract value. The same applies when options linked to a previously engaged contract is executed.

In cases in which a supplier enters into a contract amounting to less than 100 mill. NOK, with the possibility of exercising options or additional acquisitions that cause the threshold value to be exceeded within five years, the supplier shall enter into an industrial cooperation agreement that enters into force when the threshold value is exceeded

2.4.2.2 Life-Cycle Industrial Cooperation Agreement – LC-ICA

Such agreements are entered into in accordance with Section 2.1.3. The agreement goes into effect simultaneously with the main contract, or when accumulated volume/value exceeds the threshold determined in the agreement. This type of agreement calls for a contractual commitment to the NDMA on the part of the supplier.

2.4.2.3 Conditional Industrial Cooperation Agreement – CICA

A potential supplier may seek pre-approval for industrial cooperation projects linked to planned acquisitions prior to contract award. This will be regulated through a CICA between the supplier and NDMA.

If such a potential supplier is awarded the contract, the CICA may be renegotiated or transferred into a regular industrial cooperation agreement. All CICAs must stipulate a ceiling for pre-approved credits within a given time period.

A supplier who is not awarded a contract(s) may not make any claim against Norwegian authorities for expenditures related to a CICA.

2.4.2.4 Banking Industrial Cooperation Agreement – BICA

A supplier may apply for a banking agreement that makes it possible to accumulate credits that can be applied to fulfil a future industrial cooperation agreement. All BICAs must stipulate a ceiling for pre-approved credits within a given time period.

Unless otherwise indicated in the agreement, the accumulated credit is valid for five years.

PART 3 REQUIREMENTS FOR INDUSTRIAL COOPERATION

3.1 The Industrial Cooperation Commitment

3.1.1 Scope

The supplier must enter into industrial cooperation amounting to a total/cumulative value of up to 100 per cent of the value of the basis of calculation, as described in Section 2.1.4 (hereafter «the commitment»).

A certain proportion of the ICA commitment should be contractually agreed with Norwegian industry before the Acquisition Authorities enter into a binding contract with the supplier.

3.1.2 Category Allocation

At least 50 per cent of the commitment must be fulfilled within Category I, and a maximum of 25 per cent of the commitment is allowed within Category III, as defined in Section 3.3.3.

3.2 Fulfilment of the Commitment

The responsibility for fulfilment of the commitment rests with the supplier. The supplier may involve his parent company, associated companies, subsidiaries or sub-contractors, provided that these are located outside Norway.

3.3 Industrial Projects

3.3.1 Approval

All industry projects must be pre-approved by the NDMA. The pre-approval will determine category, type of project, estimated value and multiplier.

3.3.2 Technology Competence Areas

A significant share of the projects shall be within the currently applicable technology competence areas.

Acquisition of Norwegian raw materials or low-tech products will not be approved.

3.3.3 Categories

Industrial projects must be within one of the three following categories:

Category I: Strategic projects

Category II: Defence related projects

Category III: Projects related to the protection of Fundamental National Functions (GNF) outside the defense sector (Security related projects)

Strategic projects are considered to be of strategic importance to the Armed Forces or the national security of Norway.

Defence related projects refer to those that comprise military materiel and services, as well as related technology, which are mainly used by the nation's armed forces.

Security related projects are those that comprise materiel, services and related technology that are employed in protection against non-military threats to the security of society, and other vital security interests.

3.3.4 Norwegian Partners in Industrial Projects

Norwegian partners in industrial projects must belong to industry or research and development communities located in Norway. In cases where it is important to maintain or establish systems- or maintenance competence within the Norwegian Armed Forces, entities within the Norwegian Defence Sector may be approved as a Norwegian partner.

3.3.5 Project Types

As a rule, approval of industrial projects shall be based on a signed industrial cooperation agreement.

Industrial projects cannot involve export of Norwegian defence materiel, technology or competence, that violate existing export control regulations.

Continuation of pre-existing business relations will normally not be accepted. An increase in activities of existing business relations, or changes to a product portfolio, may nevertheless be accepted when it entails additional activities or further development of technology and/or production capacity.

The following types of industrial projects may be approved:

- a) Technology cooperation, including research and development cooperation
- b) Assistance related to market development and market access
- c) Acquisition of defence materiel and other defence and security related products from industry in Norway
- d) Transfer of technology and know-how to a Norwegian partner

Technology cooperation denotes projects in which Norwegian and foreign partners participate on an equal basis and with a reasonable degree of equal effort, and where the purpose is to produce a next-generation product, preferably at the system level.

In general, there is no requirement for direct industrial cooperation, meaning projects that involve deliveries to the acquisition in question. In certain cases, however, concrete requirements in that respect can be made, especially when these are considered to be of significance for the Armed Forces, for example acquiring system competence relevant for the Armed Forces future maintenance or upgrading.

If the supplier proposes direct industrial projects, the following preconditions will apply for approval:

- the projects shall not lead to increased life cycle costs for the Armed Forces, i.e. not result in unnecessary duplication of production lines.
- The Norwegian company must be competitive.
- The projects shall normally include a substantially larger part of the overall production series than the acquisition of the Armed Forces as such.

3.4 Valuation

3.4.1 General Criteria

When valuating industrial projects the following elements must be assessed:

- a) Technology cooperation, including research and development cooperation
 - The value of a Norwegian partner's export of products resulting from the cooperation
 - The value of the foreign partner's contribution to the cooperation
 - The Norwegian partner's proprietary rights to technology and know-howThe Norwegian partner's self-financed efforts or the foreign partner's efforts outside Norway are not credited.
- b) Assistance related to market development and market access
 - The value of turnover resulting from the assistance
 - Extent of the foreign partner's contribution
- c) Acquisition of defence materiel and other defence and security related products from industry in Norway

- Sales value of the product in question
- d) Transfer of technology and know-how to Norwegian partner
 - The value of Norwegian partner's export of product(s) resulting from the technology transfer
 - The value of the foreign partner's concrete and measurable contribution to the technology transfer
 - Potential market value of the technology or know-how in question
 - Norwegian partner's rights to technology and know-how

It must be demonstrated that the value of the Norwegian partner's exports will at least exceed 10 times the amount credited the commitment in a 10-year perspective.

If a project falls within several of the project types, its value must be divided proportionally for valuation purposes, and a value will be determined for the part of the project that falls within each type. Such a sub-project can only be assigned a value within one type.

3.4.2 Requirements for Value Creation in Norway

Only the part of the value creation in an industrial cooperation project that takes place in Norway can be credited in accordance with Section 3.4.1.

When the project valuation is based on production and the Norwegian share of the value creation exceeds 80 per cent, the project will receive 100 per cent credit. The Norwegian share of the value creation will not be credited if it constitutes less than 20 per cent of the total project value.

3.4.3 Use of Multipliers

The value of an industrial cooperation project calculated in accordance with Section 3.4.1 and 3.4.2 may be adjusted through use of multiplication factors. In determining multipliers, the content of the project in relation to the purpose of the regulations is to be emphasized, in addition to its categorization ref. Section 3.3.3.

The following factor scale may be applied for the various types of industrial projects:

Technology cooperation,

including research and development cooperation	1,0 – 5,0
Assistance related to market development and market access	0,1 – 2,0
Acquisition of products	1,0
Transfer of technology and know-how to a Norwegian partner	1,0 – 2,5

If the Norwegian partner is classified as a small or medium sized enterprise (SME)³, a further multiplier of 1.3 or 1.5 is applied.

3.4.4 Requirement for Norwegian Partners

NDMA may require that Norwegian partners submit reports describing the results of the individual projects.

3.5 Crediting

3.5.1 Time of Crediting

With the exception of section 3.5.2, activities carried out within a project shall be credited in arrears. If an approved project has been carried out in accordance with the documentation on which the approval was based on and progress can be documented in a manner that is considered satisfactory, credit shall not be refused unless there is a breach by either party.

³ According to European Economic Area (EEA) definitions.

3.5.2 Advance Credit

If the turnover in a project of type a) or d) (as specified in section 3.4.1) will realize significant values in the future, a smaller proportion of the expected project value may be credited in advance. Such proportion shall not exceed 10% of the expected project value. Credit credited in advance shall be deducted from the subsequent credit in accordance with section 3.5.1.

3.5.3 Approval of Credit in Category II and III

When the accumulated credit category II or III, individually or in total, reaches the maximum permitted share of the commitment (as set out in clause 3.1.2), no further credit shall be credited in the relevant category. However, a record of excess credit in these categories shall be kept in the event of an increased commitment. The keeping of such a record shall not confer any rights on the supplier with regard to the future conclusion of a banking agreement as set out in clause 2.4.2.4.

3.6 Fulfilment Period, Milestones

The Industrial Cooperation Agreement must state when the commitment shall be fulfilled in its entirety. The fulfilment period is normally limited to ten years. If the period of delivery extends beyond ten years, the fulfilment period, as a minimum, must have the same duration as the delivery period.

If the fulfilment period is from three to five years, at least one milestone is mandatory. For five-to-eight-year fulfilment periods, at least two milestones are mandatory, and for eight-to-ten-year fulfilment periods, at least three. For fulfilment periods beyond ten years, minimum four milestones are mandatory.

If the commitment is fulfilled before the end of the agreement period, the agreement is usually terminated. The agreement shall not be terminated if the commitment has been fulfilled by the end of the agreement period and it is known or likely that there will be additional acquisitions of significance.

3.7 Penalty Clause

A supplier who has not fulfilled the commitment at the end of the contract period, is obliged to pay final compensation. The amount of the final compensation shall be specified in the industrial cooperation agreement, but shall not be less than 10% of the outstanding value.

Suppliers who do not meet the milestone requirements are obliged to pay milestone compensation as specified in the agreement. This may not be less than 10% of the outstanding value according to the milestone plan.

Payment of milestone or final compensation shall be deferred against the submission of a bank guarantee for the corresponding amount. Such a bank guarantee shall not be cancelled before the final commitment or the relevant milestone has been fulfilled even if the contract period has expired.

In the event of a breach of the provisions of the bank guarantee by the supplier, the NDMA has the right to deduct milestone or final compensation from the bank guarantee.

Payment of milestone or final compensation does not exempt the supplier from the commitment, and the agreement continues to run until the commitment is fulfilled.

PART 4 TRANSFER OF CREDIT

4.1 Excess Credit

If the supplier has earned excess credit at the expiration of the agreement, he may apply for excess credit in Category I and II, being transferred to a new agreement in accordance with Section 2.4.2.4.

For projects of particular strategic significance the supplier may apply for credit after fulfilling the commitment. Such credit is transferred to a banking agreement entered into in accordance with Section 2.4.2.4.

4.2 Transfer of Credit in Banking Agreement

Suppliers that have entered into banking agreements in accordance with Section 2.4.2.4 may transfer credit to other departments/business units within the group or other undertakings when the supplier owns a share of at least 50 per cent to fulfil other industrial cooperation agreements.

4.3 Swapping Arrangements

In cases where Norwegian industry has industrial cooperation commitments towards the authorities of other countries, an exchange of industrial cooperation commitments ("swap") may be considered. This means that Norwegian industry's commitment is written down against a corresponding write-down of foreign industry's commitment to Norway. Exchange of industrial cooperation commitments involving multiple parties may also be considered.

PART 5 REPORTING AND FOLLOW-UP

5.1 Annual Reporting from the Supplier

By 31 March each calendar year, the supplier must submit a report comprising a request for activities carried out the previous calendar year to be credited. All activities shall be related to preapproved industry projects, in accordance with Section 3.3.1. The supplier may not request credit for activities that are more than two years old. The report must be submitted in accordance with the format prescribed by NDMA. NDMA is to provide feedback to the supplier no later than 30 September the same year.

5.2 Access to Information

The supplier, other foreign partners and the Norwegian partners are obliged to grant NDMA access to all necessary project documentation and other information to the extent it is deemed necessary for evaluation of an industry project. The parties are not permitted to conclude any agreements with each other, or with third parties, that restrict NDMA's rights under this provision.

5.3 Requirement of Objectivity

The supplier or other foreign partners must not enter into agreements with a Norwegian partner that restricts the latter's opportunity to convey its independent and objective evaluation of a proposed project or other necessary information to NDMA. The supplier or other foreign partners are not allowed to enter into agreement with a Norwegian partner that obligates the latter to seek influencing MoD or other Norwegian authorities, i.e. to support the supplier's demands regarding valuation, categorization, use of multipliers etc.

PART 6 BREACH OF CONTRACT

6.1 Consequences of Supplier's Breach of Contract

Breach of commitments under an Industrial Cooperation Agreement is to be included in the evaluation of future offers submitted by the supplier in competition for new contracts for the Norwegian Armed Forces.

Failure to fulfill the commitment upon expiry of the industrial agreement or at milestones defined in accordance with section 3.6, as well as breach of bank guarantees established in accordance with section 3.7, will be considered a breach, and will result in the supplier being excluded from participating in competition for deliveries to the Armed Forces until the commitment has been fulfilled.

In the event of breach of conditions related to a specific industrial project, the NDMA may reassess the approval of the project, and possibly revoke any credit already granted.