

Regulations on Industrial Co-operation 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 related to Defence Acquisitions from Abroad are pursuant to the Norwegian Acquisition Regulations for the Defence Sector¹ (ARF) handed down by the Ministry of Defence, and are an attachment to the ARF. These regulations do not by themselves give 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 industry in line with the procurement needs of the Armed Forces and within the defined technology and product areas.

1.3 Procurement Authorities

These regulations are established by the Norwegian Ministry of Defence (MoD) and apply to MoD and all its subordinate entities when entering into agreements on industrial co-operation.

1.4 Responsible Authority

MoD has the overall responsibility for the establishment and supervision of industrial co-operation related to acquisitions from abroad. MoD may delegate authority in accordance with the provisions of these regulations to subordinate entities.

MoD may form reference groups comprising representatives from the Norwegian Armed Forces, the industry and other relevant stakeholders, either to address general aspects of industrial co-operation or particular issues related to one or more acquisitions.

1.5 Ethical Standards

The defence sector and its suppliers are to operate in line with agreed business standards and ensure high ethical standards.

If one party is, or has been, in breach of such ethical and professional standards, regulated in example ARF 2-6, 2-7 and 4-1 w/enclosure, the MoD may decide not to approve industrial projects involving such party.

1.6 Exemptions

MoD may adopt exemptions from 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

Requirement of an industrial co-operation agreement applies to all acquisitions from foreign suppliers of materiel, in addition to goods and services that are linked to materiel and its life cycle, with certain restrictions applying, as specified in succeeding sections of Part 2.1. The regulations also apply in cases in which 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 co-operation must be signed.

Exempted from these requirements are acquisitions:

- 1) that are carried out in accordance with Regulations on Public Acquisitions (FOA).
- 2) that are carried out in accordance with Regulations on Defence and Security Acquisitions (FOSA) and the main supplier (and its major subcontractors) are located in the European Economic Area (EEA)³. In cases in which the supplier is located in the EEA, but a subcontractor is located elsewhere, and the subcontract exceeds 50 mill. NOK, such subcontractor shall sign an industrial co-operation agreement.
- 3) where the contract amounts to less than 50 mill. NOK, ref. Section 2.1.5. In cases in which a supplier (a) enters into a contract amounting to less than 50 mill. NOK, with the possibility of execution of options or additional acquisitions, or (b) over a period of five years, may expect to enter into additional contracts amounting to less than 50 mill. NOK, the supplier shall enter into a conditional industrial co-operation agreement in accordance with Section 2.4.2.3.

2.1.2 Multinational Co-operation Projects

In multinational projects industrial co-operation will normally be regulated by separate agreements within the framework of the project itself. In particular cases industrial co-operation agreements between the MoD and the foreign company/-ies involved may be required.

2.1.3 Additional Procurements and Options

If an industrial co-operation agreement is already entered into with a supplier, and an additional acquisition consists of the same or similar type of materiel, the previously entered into agreement shall be increased with a value equal to the additional acquisition, irrespective of its value. The same applies to cases in which options linked to a previously signed acquisition have been executed.

2.1.4 Life Cycle Clause

In connection with acquisition of materiel to which upgrades, updates, maintenance etc. are to be expected, the supplier is to commit itself to future industrial co-operation already

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

³ The European Economic Area (EEA) includes the European Union (EU), Iceland, Liechtenstein and Norway.

when entering into the main contract of the acquisition. This is done by establishing a life cycle industrial co-operation agreement when entering into the main contract.

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

The requirement of Life Cycle Industrial Co-operation may apply to both a main contractor and a sub-contractor.

2.1.5 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.

2.2 Procedural Requirements for Entering into Industrial Co-operation Agreements

2.2.1 Requirements for the Supplier's Offer

A supplier cannot request an exemption from the requirement of an industrial co-operation agreement, deliver an alternative offer without an industrial co-operation agreement, or exclude himself from parts of these regulations or articles in the standard agreements drafted in accordance with Section 2.4. Such insufficient offers will be rejected.

In his offer a supplier is to provide a draft industry plan. This is to be approved by MoD before the acquisition contract can be signed. In this context MoD will also emphasize the supplier's past performance related to ongoing and completed industrial co-operation agreements. Such an evaluation will also apply to other entities/business units in the same corporation, even if these are located in other countries than the main supplier in question.

In his offer the supplier is to provide a binding declaration accepting these regulations and all articles in the standard industrial co-operation agreements. A supplier based in the EEA shall in such a declaration also commit any sub-supplier belonging outside the EEA, ref. Section 2.1.1, last paragraph, sub-section 2.

2.2.2 Plan for Industrial Co-operation

Acquisitions valued at 500 mill. NOK or more will be subject to an industrial co-operation plan prepared by the MoD in collaboration with the Armed Forces and other stakeholders. 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 may also apply to acquisitions valued at less than 500 mill. NOK.

Facilitation of strategic co-operation between Norwegian industry and the foreign supplier will be emphasized in order to secure that the acquisition will contribute to maintaining and developing national capabilities within the technology areas based on national security considerations.

2.2.3 The Negotiation Procedure

The acquisition authority is not permitted to sign any contract with a supplier until an Industrial Co-operation Agreement between MoD and the supplier has been finally negotiated.

2.3 General Requirements Concerning Industrial Co-operation Agreements

2.3.1 Language Requirements

Industrial Co-operation Agreements shall be in the English language (UK).

2.3.2 Governing Law

Industrial Co-operation Agreements are governed by Norwegian law.

Any disputes arising from an Industrial Co-operation 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 Co-operation Agreements are exempted from public disclosure in accordance with the Public Information Act (Offentlighetsloven) § 13, Section 1 and Public Administration Act (Forvaltningsloven) § 13 1. Section 2 – *business classification due to competition*. The size of the commitment, its outstanding value 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 practical management and 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 Co-operation Agreements

2.4.1 General

Standard agreements drafted by MoD will apply during negotiations with suppliers.

These regulations and/or standard agreements may not be waived without MoD adopting exemptions from the provisions in accordance with Section 1.6.

Appropriate 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 place any demands on Norwegian authorities.

2.4.2 Categories of Agreements

2.4.2.1 Industrial Co-operation Agreement – ICA

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

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

2.4.2.2 Life-Cycle Industrial Co-operation Agreement – LC-ICA

Such agreements are entered into in accordance with Section 2.1.4. The agreement goes into effect with the main contract, or when accumulated volume exceeds the threshold determined in the agreement. This type of agreement calls for a contractual commitment to the MoD on the part of the supplier.

In each agreement the maximum amount of credit that can be accumulated within a given period of time need to be specified.

2.4.2.3 Conditional Framework Industrial Co-operation Agreement – CFICA

Conditional industrial co-operation agreements are entered into in accordance with Section 2.1.1, second paragraph, sub-section 3. This type of agreement involves a contractual commitment that goes into effect when the accumulated volume exceeds the threshold specified in the agreement.

This requirement applies to suppliers who

- (a) enter into a contract valued at less than 50 mill. NOK, but with options or possibilities for additional acquisitions, or
- (b) over a period of five years may be expected to enter into several contracts, each valued at less than 50 mill NOK, the supplier needs to sign a conditional framework industrial co-operation agreement. When a framework agreement has gone into effect, all future procurement from the same supplier, regardless of size and scope, shall be placed under the framework agreement.

2.4.2.4 Conditional Industrial Co-operation Agreement – CICA

A potential supplier who seeks to initiate industrial co-operation in connection with a planned acquisition, may enter into an agreement with MoD that enables approval of concrete industrial projects before a procurement contract has been signed. If such a potential supplier is awarded the contract, the CICA may be renegotiated or transferred into a regular industrial co-operation agreement. Every agreement needs to determine a ceiling of credit to be accepted within a given time period.

If a potential supplier is not awarded the acquisition in question, accumulated credit may not be applied for other purposes than the ones specified in the agreement.

A supplier who is not awarded a contract(s) may not make financial claims or other demands on Norwegian authorities for expenditures related to a CICA.

2.4.2.5 Banking Industrial Co-operation Agreement – BICA

A supplier may apply for a banking agreement that accumulates credit which may be utilised to fulfil a future industrial co-operation agreement. Each agreement is to determine a ceiling of credit to be accepted within a given time period.

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

PART 3 REQUIREMENTS FOR INDUSTRIAL CO-OPERATION

3.1 The Industrial Co-operation Commitment

3.1.1 Scope

The supplier must enter into industrial co-operation to a minimum of 100 per cent of the value of the basis of calculation, as described in Section 2.1.5 (hereafter «the commitment»).

For all acquisitions, a substantial part of the commitment must be covered by binding contracts with Norwegian industry before the Norwegian Armed Forces enter into a 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 must be fulfilled 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 need approval by the MoD before initiation. Upon approval, category, type of project, estimated value and multiplier will be determined. MoD determines a standard operational procedure for such approval.

3.3.2 Requirement of Technological Content, Areas of Priority

The projects should employ an equal or higher technological level than the products procured by the Armed Forces. Acquisition of Norwegian raw materials or low-tech products will not be approved.

Seven areas of technological competence of particular importance to the Armed Forces have been identified:

- Command, control and information, decision support and combat systems (incl. radar systems)
- System integration
- Autonomous systems
- Missile technology
- Underwater technology
- Ammunition, aiming devices, remotely controlled weapon stations, and military explosives
- Material technology specially developed and/or adapted for military use

- Life cycle support for military land, sea and air systems

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

Projects that contribute to the maintenance, development or creation of system competences of importance to the Norwegian Armed Forces are given priority.

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: Security related projects

Strategic projects are considered to be of strategic importance to the Armed Forces or the national security of Norway. These are primarily projects that contribute to the development and enhancement of national competence within one or more of the technology areas.

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 applicable in the 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 be from industry or research and development communities located in Norway. In cases important to maintaining or establishing 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

Approval of industrial projects is based on already existing industrial co-operation agreement.

An industrial co-operation agreement cannot be entered into ending up as export of Norwegian defence materiel, technology or competence, in breach with the existing export control regulations.

Extensions 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 comprises additional activities or further development of technology and/or production capacity.

The following types of industrial projects may be approved:

- a) Technology co-operation
- b) Assistance related to market development and market access
- c) Research and development co-operation

- d) Acquisition of defence materiel and other defence and security related products from industry in Norway
- e) Transfer of technology and know-how to a Norwegian partner

Technology co-operation denotes projects in which the Norwegian and foreign partner participate on an equal basis and contribute fairly evenly towards the development of the next generation of products, preferably at a system level.

In general there is no requirement for direct industrial co-operation, meaning projects that involve sub-contracts to the acquisition in question. In certain cases concrete requirements will be called for, in particular when these are considered to be of significance for the Armed Forces, in example acquisition of systemic competence that could be utilised by the Armed Forces during future maintenance or upgrading.

If the supplier introduces direct industrial projects, the following preconditions will form the basis for approval:

- Within its life cycle the projects shall not lead to increased 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 co-operation
 - The value of a Norwegian partner's export of products resulting from the technology co-operation
 - The value of the foreign partner's contribution to technology co-operation
 - The Norwegian partner's proprietary rights to technology and know-how
- b) Assistance related to market development and market access
 - The value of turnover resulting from the assistance
- c) Research and development co-operation
 - The value of contracts the foreign partner places with the Norwegian partner
 - The value of the foreign partner's partial financing of other contracts with the Norwegian partner

The Norwegian partner's own financial contribution or the foreign partner's financial contribution outside Norway is not credited
- d) Acquisition of defence materiel and other defence and security related products from industry in Norway
 - Sales value of the product in question
- e) 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

Probability that the value of the Norwegian partner's export will exceed the credited value ten times must be established.

If a project falls within different project types, it should for purpose of valuation be divided accordingly, and the value of each part of the project/particular category should be assessed. Such a division of the project may only constitute one category value.

3.4.2 Requirements for Value Added in Norway

Only the value added in Norway by an industrial project is credited according to Section 3.4.1.

When the project valuation is based on production and the Norwegian share of the value added exceeds 80 per cent, the project will receive 100 per cent credit. The Norwegian share of the value added 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 co-operation 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 co-operation	1,0 – 5,0
Assistance related to market development and market access	0,1 – 2,0
Co-operation related to research and development	1,0 – 5,0
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)⁴, a further multiplier of 1.4 or 1.5 is applied.

In cases in which a Norwegian SME is subcontractor to deliveries from larger Norwegian companies, which have been accepted as an industrial co-operation project, the same further multipliers apply to the SME part of the delivery.

3.5 Crediting

3.5.1 Time of Crediting

Apart from the exemption in Section 3.5.2, all completed project activities are credited arrears. If an approved project has been duly implemented in accordance with the documentation which formed the basis for the approval, and progress can be satisfactorily documented, the credit may not be rejected unless any of the parties is in breach of contract.

⁴ According to European Economic Area (EEA) definitions.

3.5.2 Advance Credit

If the turnover in a type a) or e) (as indicated in Section 3.4.1) project is realised well into the future, a minor part of the expected project value may be subject to advance credit. Such a part may not exceed 10 per cent of expected project value. Advance credit will be deducted from the credit approved arrears in accordance with Section 3.5.1.

3.5.3 Approval of Credit in Category II and III

When accumulated credit within category II or III reaches the stipulated ceiling (ref. Section 3.1.2), either separately or combined, no more credit will be approved in that category. Excess credit will be recorded, however, in case of a future increase in the commitment. Such records do not confer any rights on the part of the supplier for the conclusion of future banking agreements, as described in Section 2.4.2.5.

3.6 Fulfilment Period, Milestones

The Industrial Co-operation 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.

The agreements terminate when the commitment is fulfilled.

3.7 Penalty Clause

If the supplier fails to meet the commitment by the end of the fulfilment period, including strategic content requirements, he is obliged to pay final compensation. The amount of the final compensation is to be stated in the Industrial Co-operation Agreement, but shall constitute no less than 10 per cent of the outstanding value.

Suppliers that fail to meet the milestones are obliged to pay compensation as stated in the agreement. This compensation shall be no less than 10 per cent of the outstanding value, as according to the milestone schedule. If stated in the agreement, the final or milestone compensation may be postponed, provided that a bank guarantee of an equivalent amount is issued. Such a bank guarantee may not be cancelled before the final or milestone requirement has been fulfilled, even if the agreement period has expired.

If the supplier is in breach of the regulations in the bank guarantee, the MoD may deduct the milestone compensation from the bank guarantee.

Payment of milestone or final compensation does not exempt the supplier from the commitment, and the agreement will remain in force 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 2.4.2.5.

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 2.4.2.5.

4.2 Transfer of Credit in Banking Agreement

Suppliers that have entered into banking agreements in accordance with Section 2.4.2.5 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 co-operation agreements.

In particular cases the MoD may approve a transfer to a third party.

Credit transferred from a banking agreement in accordance with this Section, cannot constitute more than 40 per cent of the commitment of the agreement to which the credit is transferred.

4.3 Swapping Arrangements

MoD may in special circumstances approve an application for swapping of industrial co-operation commitment, i.e. an exchange between several parties.

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 to be credited. 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 the MoD. The MoD 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 MoD access to all project documentation and other information related to individual projects, whenever MoD requires and to the extent it deems necessary. The parties are not permitted to conclude any agreements with each other, or with third parties, that restrict MoD'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 MoD. 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 authority, i.e. to support the supplier's demands regarding valuation, categorization, use of multipliers etc.

5.4 Obligation of Norwegian Partners

A Norwegian partner in industrial projects is without undue delay obliged to answer all MoD requests related to annual supplier reporting or other demands for information. Upon completion of the Industrial Co-operation Agreement, MoD may request that the Norwegian partner submits a report describing the benefits and value of the project.

PART 6 BREACH OF CONTRACT

6.1 Consequences of Supplier's Breach of Contract

Breach of commitments under an Industrial Co-operation 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 fulfil the obligations of an industrial co-operation agreement by its expiration or by the milestones defined in accordance with Section 3.6, or to a bank guarantee established in line with Section 3.7, will be considered breach of commitment, and lead to exclusion from competition for future deliveries to the Norwegian Armed Forces, until the commitment has been fulfilled.

In the event of breach of commitment related to a specific industrial project, the MoD may re-evaluate the approval of the project, as well as consider revocation of already approved credit.