



# Government Procurement Policy

## Guiding Principles



Government Procurement Administration

2021



## Introduction

The Government Procurement Administration is a staff body at the Division of Economic Offices in the Accountant General's Division of the Ministry of Finance. The Administration is entrusted with implementation of the procurement policy as determined by the political echelon and the Accountant General, including publication of Administration directives (Takam – Regulations, Finances and Economy) which guide government ministries and auxiliary units. Furthermore, the Administration formulates opinions and recommendations regarding procurement policies with the purpose of helping policy makers shape the policy.

The field of procurement is dynamic and needs to be adapted to a changing reality. This field is characterized by many stakeholders who see government procurement as a possible tool for promoting policy. Promoting policy in the field of procurement is divided into two main categories. The first is regulation, which is determined by legislation, secondary legislation and administrative directives. Examples are anchoring the principle of equality in the Mandatory Tenders Law<sup>1</sup>, encouraging procurement from small and medium-sized enterprises<sup>2</sup>, adequate representation for persons with disabilities<sup>3</sup>, procurement in Israel<sup>4</sup> and more. The second category is promotion through complimentary tools, such as the development of technological systems, conducting training, qualifications and more.

One of the fundamental challenges when promoting procurement policy is to ensure that the policy is determined and promoted coherently. Often, one policy goal in the field of procurement may come at the expense of another. The objective of this document is to act as a compass and guiding tool for the examination and promotion of policy in the field of procurement. This document comes to assist the Government Procurement Administration in formulating opinions and recommendations regarding procurement policies, and in constructing work plans that suit the procurement policy determined by policy makers.

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<sup>1</sup> See clause 2a to the Mandatory Tenders Law, 5752-1992

<sup>2</sup> See clause 2c to the Mandatory Tenders Law, 5752-1992

<sup>3</sup> See clause 2b1 to the Transactions with Public Bodies Law, 5736-1976

<sup>4</sup> See Mandatory Tenders Regulations (Preference for Israeli Products), 5755-1995



## Guiding Principles and Policy of Government Procurement:

The government is the largest buyer in the market in most OECD countries and constitutes on average approximately 12% of the of the gross domestic product in these countries<sup>5</sup>. In Israel, government procurement stands at tens of billions of shekels a year<sup>6</sup>. This figure indicates the importance and extent of the impact of government procurement. The basic principles of the government procurement procedure are the principle of equality and the principle of efficiency<sup>7</sup>. The Mandatory Tenders Law places the principle of equality as a fundamental principle in the procurement process, and stipulates that the state and any government corporation shall not enter into a contract to perform work or purchase services, other than by a public tender that allows every person an equal opportunity to participate. The principle of equality is a key principle but not unique among the principles that regulate the procedure to ensure all is in order, and it is accompanied by principles such as sound administration, transparency and fairness<sup>8</sup>. At the same time, it is worth remembering that government procurement is first and foremost an executive tool for government work, and its efficiency directly affects the efficiency of government work and the provision of services to citizens<sup>9</sup>. From this, it can be deduced that the objective principle of the government procurement procedure, is the principle of efficiency.

Both these basic principles, the principle of equality and the principle of efficiency, can be seen as the *Primary Objectives* of the government procurement procedure, and it often seems there is built-in tension between the two.

The guiding principle we suggest for dealing with this built-in tension is divided into two parts.

In the first stage, an examination of policy measures that promote the two objectives together, and not one at the expense of the other. Examples of these policy measures are increasing the government's supply of providers, increasing transparency and promoting digitization in the procurement process.

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<sup>5</sup> OECD (2018), *SMEs in Public Procurement: Practices and Strategies for Shared Benefits*, OECD Public Governance Reviews, OECD Publishing, Paris

<sup>6</sup> Total procurement in government ministries and auxiliary units, excluding Ministry of Foreign Affairs, State Comptroller, security bodies (police, Ministry of Defense and others) and government hospitals, amounted to ILS 24 billion in 2017. Government Procurement Administration, (2018). [Government procurement data 2017](#). Accountant General, Ministry of Finance.

<sup>7</sup> Supreme Court Judgment on Appeal of an Administrative Petition 19/7230, 25.02.2020

<sup>8</sup> Clause 2(a) to the Mandatory Tenders Law, 5752-1992

<sup>9</sup> Governance Committee Report,

<https://www.oecd.org/gov/public-procurement/publications/productivity-public-procurement.pdf>



In the second stage, in cases where promoting one objective necessarily harms the other objective, an examination of the level of harm to one objective against the benefits of promoting the other objective should be conducted. An example of such policy steps can be seen in the Mandatory Tenders Regulations, such as Regulation 3(2), that determines that in events where it is necessary to prevent actual damage, and Regulation 3(1), that determines that under a certain financial volume, it is permissible to enter into engagements that are exempt from tender.

In accordance with recommendations of the OECD<sup>10</sup>, other procurement organizations around the world<sup>11</sup>, government committees<sup>12</sup> as well as government decisions and procurement reforms<sup>13</sup> in recent years, the Government Procurement Administration has formulated key objectives for advancing initial objectives under three main guidelines: Simplification and improvement of procurement procedures and work procedures, reinforcement of knowledge and professionalism among government procurement personnel and an increase of accessibility to government procurement for providers . Details of the objectives are below:

#### **Simplification and improvement of procurement processes and work procedures:**

1. **Improvement and simplification of work procedures:** Simplifying legal and administrative infrastructure, improving regulation in the field of procurement, reducing bureaucracy, accelerating processes of procurement and their approval by ministries, and releasing bottlenecks in the procurement process.
2. **Shaping efficient procurement processes:** Shaping effective procedures with an emphasis on releasing bottlenecks, standardizing documents, as well as adjusting the complexity and scope of engagements to the length of time required to perform it.
3. **Digital infrastructure:** Developing a technological infrastructure that includes digital procurement systems that are interconnected with each other and other government systems.
4. **Flexibility:** Providing tools for making adjustments at the engagement stage while striking an appropriate balance between the violation of equality, adjusting to a changing reality and providing optimal service.

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<sup>10</sup> <https://www.oecd.org/economy/reform/indicators-of-product-market-regulation>

<sup>11</sup> <https://www.doingbusiness.org/en/methodology/selling-to-the-go>

Public Procurement guidance for practitioners, European union, 2015.

[https://ec.europa.eu/regional\\_policy/en/policy/how/improving-investment/public-procurement/e-library](https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/public-procurement/e-library)

<sup>12</sup> Among them: Winchell-Lifshitz Report, 2004. Ariav Report, 2006. Civil Service Commission Circular, 2009. Governance Committee Report, 2013. Report of the Business Environment Improvement Committee, 2018

<sup>13</sup> Among them: the reform of the Mandatory Tenders Regulations, 2009. Government Resolution 972, Government Resolution 1576 and Government Resolution 2045.



### **Reinforcement of knowledge and professionalism among procurement personnel:**

5. **Knowledge base:** Formulating assimilating knowledge infrastructure that includes procurement theory and a guide, effective procurement procedures, peer learning and professional forums.
6. **Responsibility:** Appointing the Procurement Division as the procurement entity is responsible for the entire field of procurement in ministries. Defining roles and dividing responsibilities between the various parties involved in the procurement procedure in a clear manner, strengthening the procurement division's authority in the procurement procedure and transferring responsibility for this procedure from end to end.
7. **Planning and work plans:** Formulating orderly work plans in the field of procurement, in accordance with the needs of the units and expected volumes, taking into account schedules for execution, attributing procurement plans with ministries' budget plans while making a budget estimate for each project and allocating resources and inputs from the procurement division.
8. **Professionalism and specialization:** Reinforcing human capital in the field of government procurement by setting standards, and expanding training and professional forums. Concentration of procurement under the professionals in the procurement divisions.
9. **Development of tools for managing procurement:** Formulating and developing tools for conducting procurement.
10. **Assessments, measuring and control:** Measuring procurement procedures, as well as creating standardization, metrics and goals that include positive and negative incentives for meeting them.
11. **Data collection as a tool for making decisions:** Promoting research, collecting data for procurement at the ministry and government level, and building a database.
12. **Integration:** Connecting all procurement systems, procurement management as part of the work plans of ministries and the ministries' procurement divisions, and as part of the ministries' overall budget
13. **Integrity:** Developing and strengthening awareness of the risk involved in government procurement (corruption, fraud, discrimination), developing methods and tools for controlling procurement processes and increasing transparency in the supply chain.



14. **Risk management:** Creating a comprehensive procurement strategy for identifying threats and red flags as well as developing tools for risk assessment that will serve government ministries when conducting procurement.

#### **Increase of accessibility to government procurement:**

15. **Accessibility:** Creating standardization in documents and forms, optimizing and streamlining advertising channels and distributing tenders in order to increase exposure to their publication, as well as providing adequate time for submitting bids. Measures for increasing accessibility will be based on an analysis of the 'customer journey' procedures and public participation so as to give expression to the needs of providers and potential providers.
16. **Media procedure:** Providing space for dialogue and influence between the government and providers in order to receive the best products and services. In doing so, creating channels of communication and controlled dialogue before entering a tender, at the stage of writing a tender and after publication of a tender.
17. **Transparency:** Striving for as wide as possible publication of information that will meet the needs of potential providers as well as other stakeholders. These publications will focus on the procurement procedure and its results, procurement and annual planning forecasts, budgetary sources, economic models, market analyzes and more.
18. **Trust:** Reinforcing communication and transparency between the government and potential providers through focus groups, public participation, round tables, complaint mechanisms and comments on future changes.

In recent years, there has been growing discourse in the world, and in OECD countries in particular, about government procurement being a tool for advancing objectives other than the primary objectives listed above. This is based on the understanding that government procurement has extensive influence potential and therefore can be a means of advancing policy and shaping the economy. These additional objectives are commonly referred to as Secondary Objectives, and they vary from country to country and deal with issues such as encouraging small and medium-sized enterprises, increasing competitiveness in the economy, employment diversity, green procurement, corporate responsibility, purchasing locally produced products and more.



We believe that it is right to promote secondary objectives through government procurement if two cumulative conditions are met:

1. **Effectiveness:** Procurement is an effective tool for advancing objectives. There may be worthy policy objectives for which government procurement is not the right tool for their promotion, as the impact of procurement on the policy area is small or ineffective.
2. **Harm to primary objectives:** Promoting these objectives through government procurement only causes minor harm to the two primary objectives of the government procurement process, equality and efficiency.

It should be noted that the government procurement procedure is a complex procedure and therefore, promoting a secondary objective will, almost always, lead to a violation of procurement's primary objectives – efficiency and equality.

Furthermore, examination of these secondary objectives should be in accordance with the objectives set by the government, and their promotion through government procurement is included in the recommendations of selected international bodies, and implemented in other countries. We believe that in order to allow for an optimal examination of the promotion of secondary objectives, it is right to examine the process of promoting and enacting them as part of future procurement planning and a strategic vision of procurement as a whole for all its expected changes. This while planning secondary goals in advance and making an assessment of the 'prices' (financial cost, bureaucratic burden, duration of the procedure) versus the benefits, (national priorities, affirmative action, external influences).