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As of Next Month - Infrastructure Companies Align Themselves with a Uniform Standard in the Field of Contracts and Tenders for Transportation Infrastructure Projects

It was recently published that the Accountant General at the Ministry of Finance, the Director of the Government Companies Authority, and the Director General of the Ministry of Transport instructed the Transport Ministry's infrastructure companies to adopt binding operational guidelines for tenders.

The guidelines consist of a series of uniform standards for several key components of the contract and tender fields. For the most part, these uniform standards represent a significant improvement for the contractors operating in the field, compared with the varying standards currently employed. All Transport Ministry infrastructure companies must abide by the new standards as of 1.6.2019.

The instruction will have a broad impact upon the land-based transportation infrastructure market, which saw an annual development tab amounting to 14 billion ILS in 2018 alone, with a sharp investment increase trend expected over the next few years.

Following is a summary of the guidelines which will come into effect in June 2019:

1. **Financial and professional threshold conditions**:

   The infrastructure companies were instructed to set both financial and professional threshold conditions in their tenders. The instruction refers to the threshold methodology employed by Netivey Israel, which all companies will be required to adopt. The methodology classifies the tender's project in one of six financial scope levels, with uniform criteria for financial threshold conditions set for each level, examining the contractor's financial data (such as income, equity and cash flow), as well as professional threshold conditions that examine the financial scope of the infrastructure projects handled by the contractor over the past three years.

2. **Guarantees (tender, performance and quality)**:

   Due to the understanding that providing guarantees for the performance of a project inflicts significant financing costs upon the contractor, harming the contractor's cash flow and operational ability, thus reducing competition and increasing project costs, the infrastructure companies were instructed to reduce the amount of the required guarantees. The tender and project guarantees are limited to up to 2.5% (of the project's scope) for tender guarantees, up to 5% for performance guarantees and up to 2% for quality guarantees.

3. **Retention**:

   Contractor agreements drafted in the quantity measurement method usually include a retention (or deposit) clause, aimed at preventing overpayment to the contractor. In accordance with this mechanism, 5%-7% of the contractor's current partial, ongoing accounts are deducted, and returned to the contractor only upon the final closure of the account for the entire project.

The general recommendation to the infrastructure companies is to stop the sweeping use of this tool. Even so, the companies may employ their own judgment and deduct sums from ongoing accounts in cases in which there is a concern that it will be later impossible to offset excess payments from future payments. If this tool is employed, the guidelines set the combined total of the retention and the performance guarantee at up to 7% (for example, if the retention rate is set at 3%, the performance guarantee in the same contract may not exceed 4%).

4. **The method of selecting the winning bid**:

   The inter-ministerial team intends to work towards the establishment of a uniform supplier rating database for the Ministry of Transport's infrastructure companies. The rating will be based on real time grading of the contractors under uniform parameters, such as quality, timetable, budget and safety. Until this system is implemented, it was recommended that tender documents include an automated mechanism for disqualifying bids which are significantly below the tender bid average (similar to mechanisms already employed in a significant share of the tenders).

5. **The linkage mechanism**:

   Unlike the common standard today for contractor agreements, under which the contractor is entitled to compensation for price increases only in the event that the relevant index rises by more than 4%, it was recommended that performance contracts include a linkage mechanism which compensates the contractor for any change in the index related to the project. This instruction is based on the outlook that it is more appropriate to impose the risk of price increases on the state, since there is no relative advantage for the private sector in managing this risk.

6. **Specifications and price lists**:

   Currently with the exception of Netivey Israel and Israel Railways, most infrastructure companies do not work with predetermined unified specifications and price lists, requiring an additional investment of time and money in each new tender. Therefore, the companies were instructed to use Netivey Israel's specifications and price lists for inter-urban road projects, and Israel Railways' specifications and price lists for rail projects. Concurrently, the companies were instructed to compile specifications and price lists for urban road projects.

7. **Payment terms**:

   While it was found that the companies already operate under a unified standard in this area (as they are all subject to The Morality of Payments to Suppliers Law, 2017), the inter-ministerial team decided that further action was needed for reducing examination and approval time of contractor invoices beyond the maximum set by law. The objective is to approve and pay ongoing invoices within 45 days of their receipt.

These recommendations are the first of two phases, with the inter-ministerial team intending to act towards creating a unified urban specifications and price list, as well as a unified tender document and contract codex for all transportation infrastructure companies, by the end of 2019.

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