



State Comptroller of Israel | Local Government Audit | 2022

Follow-up Audit

Local Authorities' Engagements in Tender- Exempt Processes



Local Authorities' Engagements in Tender-Exempt Processes

Background

The local authority serves as a public trustee in its activities, and its resources should be distributed in an orderly and transparent procedure to prevent their unequal allocation. To ensure the fulfillment of this obligation by local authorities, the legislature established, among other things, arrangements for the operation of the local authority to distribute its resources. Thus, the legislature determined that, as a rule, a local authority's engagement in a contract for the transfer of a real estate or goods, for the ordering of goods, or for the performance of work will be through a public tender. The need to create mechanisms to improve the ability of local authorities to operate efficiently and effectively and allow the local authority operational and functional flexibility has led to the legislation that allows the local authority to be exempted from the need to hold a public tender, when the conditions set out therein are met. Including, an engagement in a lower amount than the one determined by the legislature to hold a tender (exemption cap); engagements for urgent work; engagements with a single supplier or a single expert in the country; engagements to perform professional work that requires special knowledge or expertise or a special relationship of trust; engagements with the state; engagements with government corporations; and engagements with non-profit organizations.



Key figures

about 200

number of engagements with suppliers in various fields in the five local authorities audited in 2018–2020

about 50%

the rate of engagements through a tender-exempt process out of all the new engagements of the audited local authorities in 2018–2020

about 33%

the rate of engagements through a public tender out of all the new engagements of the audited local authorities in 2018–2020

about 11%

the rate of engagements through a minor tender out of all the new engagements of the audited local authorities in 2018–2020

about NIS 143,000

the tender exemption cap (excluding VAT) for a municipality or regional or local council with more than 20,000 residents as of June 2021

about NIS 71,000

the tender exemption cap (excluding VAT) for a regional or local council with less than 20,000 residents as of June 2021

about NIS 400 million

the average annual financial scope of engagements with suppliers in 2018–2020 in Kiryat Gat (the most significant scope examined)

about NIS 23 million

the average annual financial scope of engagements with suppliers in 2018–2020 in Rekhasim Local Council (the smallest scope examined)

Audit actions



From June to October 2021, the State Comptroller's Office examined the engagements of local authorities in tender-exempt processes with suppliers¹ in 2018–2021. The audit examined whether they followed the provisions of the legislation fairly and equitably, including the regulation of the engagements in tender-exempt processes, their preparations for the engagements, and their engagements under the various exemption arrangements. The audit was conducted in five local authorities: Hod Hasharon, Ma'alot-Tarshiha, and Kiryat Gat municipalities, in Gilboa Regional Council and Rekhasim local council (the audited local authorities).

¹ In the course of the audit, data were collected regarding the manner in which local authorities engaged with suppliers and service providers in 2018–2021 in excess amount of NIS 50,000 per annum, and selected areas in which engagements in tender-exempt processes were entered into were examined.



Key findings



Regulating the engagement in tender-exempt processes – in three of the audited local authorities (**Hod Hasharon, Ma'alot-Tarshiha and Gilboa Regional Council**), the most common way of engagement was through a tender-exempt process. This is especially noticeable in the distribution of engagements of **Hod Hasharon** and **Gilboa Regional Council** – approximately 53% and about 51% (respectively) of their engagements during the period audited were through a tender-exempt process. It was found that there are differences in the arrangements for engagements in tender-exempt processes between the central and local governments. For example, the obligation to observe the tender principles, even in an engagement through a tender-exempt process, determining an annual cumulative exemption cap for contracting with a supplier, and the obligation to publish the intent to engage with a single supplier.



Promotion of social arrangements in engagements with suppliers – as of November 2021, in the Municipalities Regulations (Tenders), 1987 (the Tenders Regulations), in the Fourth Schedule to the Local Councils Order, 1950 (the Fourth Schedule), and in the Second Schedule to the Local Councils Order (Regional Councils, 1958 (Second Schedule)), an obligation of the local authority to prioritize women-controlled businesses in tender-exempt engagements or small businesses in tender-based or tender-exempt engagements was not stipulated. Accordingly, in **all the audited local authorities (Hod Hasharon, Ma'alot-Tarshiha and Kiryat Gat municipalities, Gilboa Regional Council and Rekhasim Local Council)**, no priority was given to women-controlled businesses in tender-exempt engagements, nor to small businesses; and they do not collaborate with organizations for incentivizing small business to integrate small businesses in tender-exempt engagements.



Preparations of the audited local authorities for engagements in tender-exempt processes – internal procedures – there is no uniformity in the regulation procedures of the audited local authorities' engagements through tender-exempt processes. Some have regulated parts of the process, such as, making an estimate, contacting suppliers and the number of suppliers reached depending on the financial scope of the requested engagement. **The manner of contacting suppliers:** there is no uniformity in the way the audited local authorities turn to suppliers for quotations to engage in tender-exempt processes; in all the audited local authorities it was found that the suppliers' lists were outdated; they are not published, nor used when the local authorities engage in tender-exempt processes. **Management of accumulated experience with suppliers:** in all the audited local authorities, no orderly procedure was done, backed by relevant documents and procedures, for reciprocal updates



between local authority departments and their procurement departments, on the experience garnered with their suppliers and the quality of service provided to them.



Transparency and publicity – Ma'alot-Tarshiha Municipality, Gilboa Regional Council, and Rekhasim Local Council do not meet their publish obligation regarding the transparency of their activities by making information accessible to the public as required by the Tenders Regulations and the Ministry of Interior Circular 8/2016, and they do not publish their contracts Committee decisions as required. **Kiryat Gat Municipality, Gilboa Regional Council, and Rekhasim Local Council** do not comply with the directives of the Ministry of Interior's Director General's Circular 8/2016 nor publish updated lists of bidders on their websites. **Gilboa Regional Council and Rekhasim Local Council** also do not publish an annual report of the bidders with whom they engaged, including the type of work and the financial scope of each engagement.



Using online tools to manage engagement – the audited local authorities did not use online tools to manage engagements in tender-exempt processes with suppliers (except for responding and submitting bids by e-mail), such as the option to submit forms through an online system. It was found that all the audited local authorities did not have a structured online bidding form that could contribute to their ability to compare bids.




Deficiencies in the local authorities' engagements according to the various exemption arrangements – tender exemption cap amounts – in the audited years, the Ministry of the Interior's publications of the updated monthly amounts had no uniformity concerning VAT rate addition to the amounts displayed. There is no reference to VAT in all the monthly publications from 2021 until the audit end; **Hod Hasharon, Ma'alot-Tarshiha, Kiryat Gat, and Rekhasim Local Council** engaged with the same suppliers in tender-exempt processes in nine engagements (out of about 160 engagements examined) for over a year. For example **Hod Hasharon municipality** engaged in 2018–2021 with a sound and lighting equipment supplier for events and paid it in 2018 about NIS 178,000 and in 2019 about NIS 85,000, and it also engaged with a communications services provider and paid it in 2018–2021 about NIS 1 million. **Ma'alot-Tarshiha municipality** engaged in 2019 with an advertising and graphics services provider in 2019–2020 and paid in 2020 approximately NIS 187,000. **Kiryat Gat municipality** engaged in 2018 with a supplier to purchase gift coupons and paid it about NIS 438,000. **Rekhasim Local Council** engaged in 2020–2021 with an earthworks supplier and paid it about NIS 229,000 in 2020.




Estimates before deciding to engage in tender-exempt processes – in **Hod Hasharon, Ma'alot-Tarshiha, and Kiryat Gat**, three engagements were found from the selected ones (one in each of the said local authorities), where an estimate absence led to engaging in a tender-exempt process, not according to the Tender Regulations. The same was with **Hod Hasharon's** engagement in 2020 with a geodesic services



provider, **Ma'alot-Tarshiha** engagement in 2018 with a supplier for felling trees, and the **Kiryat Gat** engagement in 2018 with a supplier for the purchase of gift coupons. In **Rekhasim Local Council**, in 14 engagements out of 18 examined, the council did not prepare an estimate before it engaged with suppliers in tender-exempt processes, nor complied with its procedures.

 **Increasing the scope of engagements with suppliers – Ma'alot-Tarshiha municipality**, in one engagement, and **Gilboa Regional Council**, in six engagements with one supplier, expanded the scope of the engagement without a tender at rates higher than those permitted by the Regulations and Council Orders; In three engagements of **Rekhasim Local Council**, the scope of the engagements was increased without obtaining the necessary approvals.

 **Engagements for the performance of professional work that requires special knowledge and expertise – Ma'alot-Tarshiha municipality and Rekhasim Local Council** contracted with consultants in tender-exempt processes under Section 3(8), but not according to the directives of the Director General' Circular 8/2016. Thus, in **Rekhasim Local Council**, the Contracts Committee decided on the execution of seven engagements with project management companies without obtaining the Legal Advisor's opinion and without the Contracts Committee examining whether it was justified and reasonable to execute the requested engagements without a tender.







 **Consolidation of contracts and procurement procedures – Kiryat Gat Municipality, Gilboa Regional Council, and Rekhasim Local Council** engaged with seven suppliers in tender-exempt processes in several contracts to perform work. However, there was room to consider them as one job. For example, **Kiryat Gat Municipality** – an engagement in 2018 for sealing work at NIS 171,000; **Gilboa Regional Council** – an engagement in 2018 for the supply of security gates to the local authorities at NIS 315,000; And **Rekhasim Local Council** – an engagement in 2019 with renovations service provider for accessibility works in kindergartens at NIS 94,000. Although the financial scope of each contract was lower than the exemption cap in the said engagements, the total scope of the contracts attributable to the same work exceeded the exemption cap.



Determination of internal procedures – the audited local authorities contended with situations where no regulation was determined, among other things, by adopting procurement procedures and determining internal procedures. This includes determining preconditions for contacting suppliers in an engagement process, determining the hierarchy of internal authority approvals, and adopting internal labeling lists for tracking their engagements. Thus, they provided a complementary framework for increasing the fairness and transparency of the tender-exempt engagement process, streamlining work processes, and improving engagement results with suppliers and service providers.



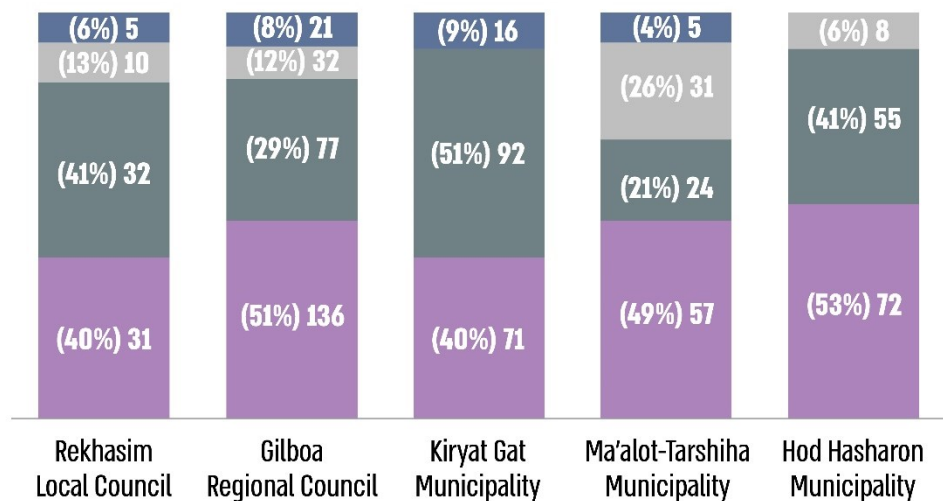
Key recommendations

-  It is recommended that the Ministry of Interior consider regulating the engagement manner of local authorities in tender-exempt processes, similar to the Mandatory Tenders Regulations regarding similar engagements carried out by government ministries.
-  It is recommended that the Ministry of Interior consider adding rules in collaboration with local authorities to prioritize encouraging small businesses and domestic produce in local authority engagements with suppliers in tender-exempt processes. It is further recommended that the audited local authorities consider implementing social arrangements in all their engagements to encourage women-controlled businesses and small businesses, including in tender-exempt processes engagements. It is recommended that the Ministry of Interior consider prioritizing women-controlled businesses and engagements in tender-exempt processes conducted by local authorities.
-  Given the differences in the manner local authorities contact suppliers in tender-exempt processes engagements, it is recommended that after consulting with the local authorities, the Ministry of Interior consider regulating the tender exemption procedure from its onset, as the local authorities ask for quotations from suppliers. As it had regulated in the Director General's Circular 8/2016 the engagements in tender-exempt processes under Regulation 3(8).
-  It is recommended that Hod Hasharon, Ma'alot-Tarshiha, and Rekhasim Local Council consider forming a procedure documenting their accumulated experience with suppliers and incorporating it into their procurement procedures. It is further recommended that these local authorities create reciprocal updates procedures between the local authority departments regarding the quality of service received from their suppliers and the possibility of removing them from the suppliers' lists due to unsatisfactory service.
-  The audited local authorities should act according to the provisions set forth in the Tenders Regulations and the Ministry of Interior's Director General's Circular 8/2016 and upload information to their websites as required. Ma'alot-Tarshiha, Kiryat Gat, Gilboa Regional Council, and Rekhasim Local Council should publish on their websites the decisions of the Contracts Committee within 15 days. Kiryat Gat Municipality, Gilboa Regional Council, and Rekhasim Local Council should upload their websites updated lists of bidders. Gilboa Regional Council and Rekhasim Local Council should publish on their websites an annual report of the bidders with whom they engaged, including the work and the financial scope of each engagement.
-  It is recommended that Hod Hasharon, Ma'alot-Tarshiha, Kiryat Gat, and Rekhasim Local Council engage through tenders when they order for years from suppliers a cumulative annual service that exceeds the exemption cap.



Given the increased use of online means – both as a tool to reinforce contact with residents and as a tool to increase the efficiency of local authority operations, and even more so since the outbreak of the Covid-19 pandemic, it is recommended to expand local authorities' use of online tools in general and in particular use tools for managing engagement processes.

Distribution of engagements in the audited* local authorities, by engagement type, 2018–2020 (in percentages)



■ Engagements through tender exempt (Total)
 ■ Engagements through public tenders (Total)
■ Engagements through minor tenders (Total)
 ■ Engagements through Mashcal (Total)

According to data from local authorities audited and processed by the State Comptroller's Office.

* The number in each box indicates the number of such engagements for the period.

Summary

The primary purpose of the public tender is to enable the administrative authority to obtain the best bid in terms of quality and price while maintaining the rules of fair competition and providing equal opportunity for all. The legislature balanced the obligation of the public tender – the main route for the local authorities' engagement with suppliers – with the need to give



the local authorities functional and operational flexibility when they contract suppliers. Accordingly, arrangements have been established in the legislation that allows local authorities to engage through a tender-exempt process with suppliers without holding a public tender.

The audit raised deficiencies in the audited local authority engagements. Among other things, they did not comply with their procedures for an engagement through a tender-exempt process; they had no lists of suppliers to contact them equally; and they contracted suppliers through a tender-exempt process even when the engagement deviated from the permissible exemption cap. Furthermore, engagements with suppliers were unlawfully increased without tender, and works that could be considered one job were split into several engagements and not performed as part of a public tender. The local authorities contending, in various ways, with the situations for which regulation was not determined is commended. Among other things, by forming internal procedures for regulating their engagement with suppliers in tender-exempt processes. The local authorities should rectify the deficiencies and examine the recommendations made in the audit.