

OBTAINING “DOMESTIC GOODS CERTIFICATES” THAT PROVIDE A 15% PRICE ADVANTAGE FOR TENDERS IN TURKEY

Every year, public institutions in Turkey procure goods worth approximately 30 billion TRY (14 billion USD) in total, which is undertaken through tenders. Recently, the legislation was amended so as to provide a 15% price advantage to suppliers having obtained a “Domestic Goods Certificate” for their offered products.

In line with this amendment, should a product of foreign origin at a price of 100 TRY compete with a product holding a “Domestic Goods Certificate” at a price of 114 TRY, the contract will be awarded to the latter.

- **What do the new regulations entail?**

The new regulations took effect on 01.01.2015. The main rules relevant to suppliers can be summarized as follows:

- The medium–high technology goods eligible for a price advantage were announced.
- Whether the product offered by tenderers is of domestic origin must be certified with a Domestic Goods Certificate.
- A Domestic Goods Certificate will only be issued in case the supplier has produced at least 51% of the product in Turkey.
- The new law stipulates that for joint ventures to be deemed a domestic tenderer, all partners in the joint venture must be domestic tenderers.
- The precise issuance methods of Domestic Goods Certificates are specified and regulated by the Ministry of Industry and Technology.
- Foreign–produced goods cannot be considered a domestic product nor be awarded a Domestic Goods Certificate. In addition, goods imported in pieces and manufactured through simple reassembling of the pieces fall into the same category and will not be deemed domestic products.
- For products to be deemed domestic, they must be manufactured by industrial enterprises holding an “Industrial Registry Certificate” issued by the Ministry of

Industry and Technology and must be within the scope of the “Subject of Production” stated in the certificate. Further, it was decided that in addition to products entirely manufactured in Turkey, goods whose substantial production phases as well as economically essential final labour and performance took place in Turkey and the domestic participation rate in the production amounts to at least 51% are deemed “domestic goods”.

- In addition to the conditions above, for industrial goods to be classified as domestic goods they must be manufactured by industrial enterprises holding a “Industrial Registry Certificate” issued by the Ministry of Science, Industry and Technology and must be within the “Subject of Production” stated in the certificate or their domestic participation rate must at least amount to 51%.
- For food and agricultural products to be classified domestic products they have to be produced by enterprises holding a “Business Registration and Approval Certificate” issued by the Ministry of Food, Agriculture and Livestock. Goods must be produced with ingredients either entirely produced or cultivated in Turkey or their essential production phase or economically significant final labour or performance stage must be undertaken in Turkey.
- For agricultural products to be classified domestic they have to be produced by an enterprise holding a “National Registry of Farmers Certificate” or a relevant “Registry Certificate” of the Ministry of Food, Agriculture and Livestock.
- Plant products collected in Turkey, animals born and bred in Turkey as well as products obtained therefrom or fisheries bred and hunted in Turkey are deemed domestic products. For all other products to be classified domestic products they must either be entirely produced in Turkey or substantial phases of their production or economically significant final labour and performance must take place in Turkey.
- For those food and agricultural goods considered industrial products to be classified domestic products they shall additionally be produced by enterprises holding a Industrial Registry Certificate issued by the Ministry and fall within the “Subject of Production” stated in the Certificate or the product’s domestic labour participation rate must amount to at least 51%.
- The amendment extends also to those goods produced by enterprises, which operate in a free trade area provided they fulfill the conditions set forth above.
- **How will tenderers obtain the Domestic Goods Certificate?**

In order to determine the status of partially or fully foreign produced goods outside the scope of the abovementioned conditions one must first check whether at least 51% of the participation rate is domestic or not. Accordingly;

- The producer calculates the rate using following formula: $[\text{Domestic Participation Rate} = \text{Price of Final Product Cost} - (\text{Price of Foreign Input Cost in the Final Product} / \text{Price of Final Product Cost}) \times 100]^2$.
- The document containing the calculation of the domestic participation rate has to be written by an “expert” (a person identified by the chamber/commodity exchange, having expertise in its field or who is an expert from a university’s relevant department).
- This document will be examined by an independent accountant, financial advisor or sworn financial advisor. The accuracy of the calculation and its conformity with official records will be affirmed and signed by the person examining.
- The signed document containing the calculation of the domestic participation rate shall be submitted to the relevant trade association or commodity exchange responsible for issuing a Domestic Goods Certificate attached to a letter of undertaking signed by the supplier or a person authorized to represent and bind the supplier. This letter of undertaking contains a statement providing that those concerned “accept any administrative, legal or criminal penalty in case of any finding contrary to what has been declared in the document”.
- For products whose domestic participation rate is above 51%, the chamber or commodity exchange, member to the Turkish Union of Chambers and Commodity Exchange (TOBB) or to the Confederation of Turkish Tradesmen and Craftsmen (TESK) where the supplier is registered examines and approves the domestic participation rate in the form of a standardized document and will issue a Domestic Goods Certificate.
- It is possible to issue a Domestic Goods Certificate for a foreign supplier’s product that was produced by another entity domestically on its behalf and under its brand. For instance enterprises producing products under brands such as Sony, BMW or Siemens that are produced in Turkey can equally obtain a Domestic Goods Certificate.
- Previously obtained domestic goods certificates from chambers or commodity exchanges member to the Turkish Union of Chambers and Commodity Exchange (TOBB) or the Confederation of Turkish Tradesmen and Craftsmen (TESK) remain applicable until the end of the validity period stated on the

document.

The Domestic Goods Certificate is valid one year after the date of issuance. Enterprises obtaining the document following the procedures described above must undergo the same procedures each year.

- **What advantages will tenderers producing medium–high technology goods receive for tenders in Turkey?**

Tenderers taking part in a bid for tender for the supply of medium–high technology goods that have obtained a Domestic Goods Certificate benefit from a 15% price advantage compared to tenderers entering the tender with products of foreign origin.

Since it is possible for Domestic Goods Certificates to be issued to products that were produced on behalf of an entity domestically under its brand, it is rendered possible for such documents to be used for products offered in tenders. For this, the supplier must present true copies of the Domestic Goods Certificate alongside the offered product during the tender.

As a result, in order to obtain a price advantage up to 15 %, suppliers must present an Experience Certificate for Technological Products or a Domestic Goods Certificate issued in its name or commercial title in accordance to the procedures and principles regulated by the Ministry when entering a tender.

- **Conclusion**

The most important issue for industrial enterprises is marketing. In order to guarantee sufficient share in Turkey's yearly procurement reaching to 30 billion TRY, following is of vital importance:

- Keeping regular track of legislation that enters into force,
- Investment planning in line with legislation,
- Working in cooperation with law firms with extensive sector experience and

knowledge of its legislation.

KILIC LAW FIRM with its qualified staff of experts offers competent technical and legal assistance in relation to the issues outlined above.