

Defence & Security Procurement

Contributing editor
Matthew L Haws



2018

GETTING THE
DEAL THROUGH 

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Matthew L Haws
Jenner & Block LLP

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This article was first published in March 2018
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Published by
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London, W11 1QQ, UK
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First published 2017
Second edition
ISBN 978-1-78915-012-4

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Preface

Defence & Security Procurement 2018

Second edition

Getting the Deal Through is delighted to publish the second edition of *Defence & Security Procurement*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Canada.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Matthew L Haws of Jenner & Block LLP, the contributing editor, for his assistance in devising and editing this volume.

GETTING THE
DEAL THROUGH 

London
February 2018

Italy

Anna Masutti

LS LexJus Sinacta – Avvocati e Commercialisti

Legal framework

1 What statutes or regulations govern procurement of defence and security articles?

The Italian Public Contract Code (Legislative Decree No. 50/2016) is the principal legal reference concerning public procurements, which are specifically regulated by articles 159 and 160. However, the provisions of the above-mentioned Code also apply to procurement of defence and security, except those that fall within the scope of Decree No. 208 of 15 November 2011 (article 1, paragraph 6a of the 2016 Italian Public Contract Code). Defence and security procurements were at first governed predominately by general rules enunciated in the Italian Public Contract Code of 2006 (Decree No. 163, 04/12/2006). The Code provided fundamental rules concerning public procurements, with particular attention to defence and security requirements. Regarding this field, specific reference has been made to a separate regulation that must be implemented in the area of defence and security. In fact, in 2012, the legal framework was enforced with the transposition of Directive 2009/81/EC into the Italian legal system through Decree No. 208 of 15 November 2011, which entered into force on 15 January 2012.

There is currently a trend towards complex and expensive systems, and consortiums and agencies have been developed as a result of such systems. Therefore, the acquisition process is no longer fully supervised and controlled by the Italian nation – various defence goods are dealt with by NATO, the Organisation for Joint Armament Cooperation and project management offices.

2 How are defence and security procurements identified as such and are they treated differently from civil procurements?

In accordance with EU guidelines, public procurements are identified as contracts for financial interest concluded in writing between one or more contractors, suppliers or service providers. More specifically, defence and security procurement contracts present, as the principal object, elements related to sensitive work, equipment and services for security purposes, or even military equipment that is specifically designed or adapted for military purposes and that is intended to be used as arms, munitions or war material. Further, in order to follow the general regulations concerning public procurement when dealing with the acquisition of defence and security assets, there should be specific assumptions regarding those regulations, unless such assets, which are generally defined by specific decrees, are provided for by the Treaty of Rome (1957). Whether defence and security procurement is treated differently from civil procurement depends on the suitability of the field in question, and defence and security procurements are generally treated differently because they require the application of particular protection measures.

3 How are defence and security procurements typically conducted?

Defence and security procurements are typically conducted following the rules (which are also taken into account by the national Public Contract Code of 2016) provided by Legislative Decree No. 208 of 15 November 2011. Furthermore, management of defence and security aspects follows the Directorates of the Ministry of Defence, which acts under the applicable law. The Directorate of Works and State Propriety handles public works (in accordance with the principle of transparency

of administrative measures), as the activities concern procurement award and contract executions. Moreover, the institution realises and performs projects related to the construction and maintenance of national or NATO civil constructions, and also coordinates structural interventions.

Concerning the rules of conduct of defence and security procurement, the recent legal framework is also in accordance with TFEU article 346. This article provides a derogation to the European Community principle of public evidence for the awarding of public procurements of defence and security goods. The Decree establishes that, in order to identify the economic operators who can present the offer for the procurement of a contract, the contracting authority can use the restricted procedure or the negotiated procedure with the publication of a contract notice. Eventually, in the case of particularly complex contracts, the contracting authorities can proceed with the competitive dialogue. In other predetermined cases, the contracting authorities can use the above-mentioned negotiated procedure without publishing the contract notice. Recourse to these particular procedures is subject to the peculiarity of the contract.

4 Are there significant proposals pending to change the defence and security procurement process?

In Italy, there is currently no particular legal updating process concerning defence and security procurement. A significant proposal concerning a change of the defence and security procurement process might arise from European and international levels. Nevertheless, potential changes in the sector might also come from the integration of the European defence market, which was made by the transportation of Directive 2009/81/EC, into the Italian legal system by Decree No. 208 of 15 November 2011. However, if the European nations' departments of defence were unified, the acquisition process could be managed by simply using European directives.

5 Are there different or additional procurement rules for information technology versus non-IT goods and services?

The national legal framework does not provide for different or additional procurement rules between information technology and non-IT goods and services. The main distinction is provided in relation to defence and security matters as a whole. Particular rules and provisions concerning information technology goods and services, or non-IT goods and services, can be included in the procurement contract clauses section, which must be in accordance with the competent national legislation.

6 Are most defence and security procurements conducted in accordance with the GPA or other treaty-based procurement rules, or does this jurisdiction commonly use the national security exemption to procure them?

As mentioned above, the Italian regulations concerning procurement of defence and security are compliant with the European principles established in that field. The ongoing development of the war industry in the European context, as well as the view of a European Community integration process, takes into consideration the necessity to adapt national legislation concerning procurement of defence and security to European guidelines. In fact, recent Italian legislation and regulation enforcement, such as the implementation of Directive 2009/81/EC, is

also due to the implementation of EC directives. However, defence and security procurements are excluded from the scope of GPA application. This means that member states retain the right to decide whether the contract authorities can allow a third-party economic operator to participate in the awarding of a defence and security procurement.

Disputes and risk allocation

7 How are disputes between the government and defence contractor resolved?

Disputes between the government and defence contractors are dealt with according to the general regulations concerning settlements between contract authorities and economic operators. Part VI of the Italian Public Contract Code of 2016 defines the forms of dispute resolution in a unitary way (article 204 et seq of the Code). This kind of approach is frequently subjected to legislative interventions and amendments, however, the means of dispute resolution provided for in the Code consist of the typical judicial remedy and of ADR systems. A typical judicial remedy is provided for in article 204 of the Code, which, in turn, refers to article 120 of the Code of Administrative Procedure. If alternative means are required, they are provided for in Chapter II of the Code, which establishes three other modalities in order to solve disputes:

- the friendly agreement procedure (article 205);
- settlement by compromise (article 208); and
- arbitration procedure (disposed by article 209 of the Code).

However, the states usually conclude bilateral agreements in order to deal with particular sets of problems.

8 To what extent is alternative dispute resolution used to resolve conflicts? What is typical for this jurisdiction?

Alternative dispute resolution is the instrument that is most frequently used to solve conflicts in public procurement, as well as in the defence and security field. In fact, the friendly agreement procedure, arbitration procedure and settlement by compromise are characterised by their procedural rapidity. Moreover, these alternative dispute resolutions can also be less expensive than the judicial remedy (article 204 of the Italian Public Contract Code of 2016) or the pre-litigation procedure established by the National Anti-Corruption Authority (ANAC). For a jurisdiction related to defence and security procurement, the arbitration procedure is typically used by economic operators for the above-mentioned reasons; in fact, these procedures speed up procedure time and reduce costs.

9 What limits exist on the government's ability to indemnify the contractor in this jurisdiction and must the contractor indemnify the government in a defence procurement?

The government administration's liability obligation is not limited by specific elements. The administrative court has the competence to define the value of the contractor's compensation and the relative government obligations in accordance with the rules concerning administrative proceedings provided by Law No. 241 of 1990.

If an economic operator fails to comply with his or her obligations, as established in the defence procurement contract, the contractor authority may request him or her to provide reasons. These reasons should be presented in 20 days, and when the administration evaluates the extent of the default, it can decide to keep the guarantee deposit or to apply the penalties given by the procurement framework.

10 Can the government agree to limit the contractor's liability under the contract? Are there limits to the contractor's potential recovery against the government for breach?

There are no particular limits. When the government takes part in a public contract procurement, it is subject to contract obligations. This means that contract parties are in an equal position concerning liability and any other contract element.

11 Is there risk of non-payment when the government enters into a contract but does not ensure there are adequate funds to meet the contractual obligations?

In the field of defence and security procurement, there is no particular risk of non-payment by the government or of failure to ensure adequate

funds to meet contractual obligations. This kind of field deals with services that are particularly sensitive and, for this reason, in Italy every public procurement process can start only if an 'economic hedge' is assured. In other words, the contract may only be concluded if financial security is provided for the specific established amount. This condition also applies to long-term activities and for NATO agencies. All this means that an accurate and adequate evaluation of economic and financial conditions must be conducted before the Defence Administration decides to issue a call for tender concerning defence and security sectors. Furthermore, there should be reference to the European Defence Agency. The Agency presents projects concerning activity and research developments in the defence and security scope to member states. Even if reference is made to the Agency, or to other agencies or programme offices, the other cautions given above should still be adopted.

12 Under what circumstances must a contractor provide a parent guarantee?

Each contract requires a bank guarantee, a provision of guarantee or another form of guarantee for an amount equal to 10 per cent of the contract. Such guarantees are required as an assurance for the procurement contract and, more specifically, as a guarantee for the part that corresponds to the company profit. This part of the profit is reduced by 50 per cent when the economic operator shows that he or she has adopted certificated quality systems in accordance with European standards (eg, ISO 9000, AQAP, etc).

Defence procurement law fundamentals

13 Are there mandatory procurement clauses that must be included in a defence procurement contract or that will be read into the contract regardless of their actual inclusion?

In the Italian legal framework, there are no specific clauses regarding procurement of defence and security, except those regarding aspects of defence. Concerning the clauses that have to be included in a defence procurement contract, as with other contract types, it is important that the first clause provides for the contract object, which in this specific and highly sensitive case concerns activities or services finalised for defence and security purposes. This clause should be added to the other clauses concerning the economic operator's obligations, the value of the contract, terms and modality of the execution, checks and inspections, the duration, the unilateral termination of the contract, compensations and payments procedures.

However, two more clauses deserve particular attention. The first clause regards the traceability of financial flows. Such clause is governed by the regulation framework composed by articles 3 and 6 of Law No. 136/2010 and article 6 of Law No. 217/2010. Other operative indications were provided in Determination No. 4 7/07/2010 by the Authority of the Supervision of Public Contracts for Works, now replaced by the ANAC, which defines guidelines concerning the traceability of financial flows. These provisions aim to hinder organised crime and infiltration in public procurements and also to control transparent public administration financial flows ex post. The second important clause is the social clause, which has raised an ongoing debate concerning workers' protection, foreseen in article 50 of the Italian Public Contract Code. The purpose of the social clause is to ensure and guarantee the safeguard and protection of workers during the defence procurement contract execution.

14 How are costs allocated between the contractor and government within a contract?

Costs regarding the defence procurement contract are allocated between the contractor and the government. Costs concerning the contractual documentation shall be carried by the economic operator (in accordance with Law No. 790/1975). However, all expenditure related to contract notice (see article 66 co. 7-bis of Legislative Decree No. 163/2006 72 of Legislative Decree No. 50/2016) shall be reimbursed by the government as a contract party to the economic operator within a 60-day period from the award.

15 What disclosures must the contractor make regarding its cost and pricing?

A disclosure should be inserted that provides indications concerning the contract value. These indications remain approximately in relation

to the effective necessity of the contract authority and the contract performers, and also in relation to the eventual decreases caused by incisive budgetary manoeuvres that could not be known in advance.

16 How are audits of defence and security procurements conducted in this jurisdiction?

For audits of defence and security procurements, the Italian legal framework provides for a preventive examination by the Court of Auditors. Another control done by the contract authority administration concerns the actual existence of general requirements and the professional competence of economic operators. The administration verifies that economic operators are qualified to perform public work, and verifies the technical, professional, economic and financial capacities of services provided. These types of audits allow the contract authority to ascertain if the defence and security purposes can be reached by the economic operators. Furthermore, the defence procurement contract contains a clause concerning controls and inspections: this clause envisages that the economic operator will undertake to comply with all of the contractor authority's controls or inspections in order to verify the positive contract performance.

Concerning economic audits, generally every procurement contract is a 'fixed-price contract'. Only when the contract provides for assets acquisition specifically made for defence and security, and when the acquisition period exceeds a certain number of years, may some formulae concerning the escalation of prices be adopted (prices and formulae are negotiated before the contract signature).

17 Who gets the ownership rights to intellectual property created during performance of the contract? What licences are typically given and how?

For contracts regulated by the Public Contract Code (except for pre-commercial procurements), during the performance of a defence procurement contract, the contract authority holds all commercial exploitation rights resulting from the research, including intellectual propriety rights. The contract authority also provides for the protection costs. However, the European Commission aims to incentivise economic research so that economic operators own rights to intellectual property.

Typically, licences are given for patents, trademarks and copyrights in order to protect intellectual propriety rights.

18 Are there economic zones or other special programmes in this jurisdiction commonly utilised by foreign defence and security contractors for financial or other procurement related benefits?

In Italy, there are no specific economic zones or special programmes that are reserved for foreign economic operators. Given that the Italian legal framework concerning defence and security procurement is mostly based on European orientations, this has made the treatment between contractors more equal. However, article 159, paragraph 5 of the 2016 Italian Public Contract provides that advances may be awarded to the administration's purchases made in foreign countries and involving foreign economic operators. Advances should be up to a third of the full amount of the contract if appropriate certainty is provided.

19 Describe the process for forming legal entities, including joint ventures, in this jurisdiction.

Italian company law presents two main types of incorporated entities:

- the company limited by shares, or public limited company (SPA); and
- the company limited by quotas, or limited liability company (SRL).

The SPA-forming process starts with a notary who identifies the necessary steps by referring to the requirements of the Civil Code. After the reform of Italian Company Law, an SPA can also be formed with a single partner (member) that will have unlimited liability for company obligations, unless proper information has not been provided to the company register or if there has been a breach of duty with regard to the rules on contributions. The recognition of a company's legal personality with regard to formal registration in a special company registry is the last phase of the forming process. This registration confirms the company's legal existence to third parties.

The SRL-forming process starts with the deed of incorporation that has to be in the form of a public act and that must comply with the requirements provided for in article 2463 of the Italian Civil Code.

An SRL can also be formed with a single partner or become a single partner company at any time. Again, the single partner will have unlimited liability for the company obligations, unless proper information has not been provided to the company register or if there has been a breach of duty with regard to the rules on contributions.

For joint ventures, there is no express regulation of such contracts under Italian law. However, parties have the discretion to form contractual or corporate joint ventures in accordance with the principle of contractual freedom given in article 1322 of the Italian Civil Code. A joint venture agreement must be registered with the Italian Revenue Agency, and this is required for both corporate and contractual joint ventures. It does not require a public notary except in cases when a corporate joint venture is incorporated and when parties agree to transfer rights for which the involvement of a public notary is mandatory.

Moreover, no formal requirements are needed in order to validate the constitution of the joint venture. Nevertheless, the anti-trust law may apply when parties decide to establish a fully functional corporate joint venture, and in this case a notification is required. Furthermore, companies should form a Temporary Grouping of Companies in order to realise joint venture projects.

20 Are there statutes or regulations enabling access to copies of government records? How does it work? Can one obtain versions of previous contracts?

The general goal is to provide everyone who has a legitimate interest with the possibility of access to the copies and documents related to the procedure. In the Italian Public Contract Code, access to procedure documentation is governed by article 53. The 'right of access' ensures the principle of transparency of administrative proceedings. This is one of the most important principles provided by the national legislation. An exception to this principle concerns cases characterised by the presence of technical or commercial data that should be protected, such as defence procurement contracts whose performance could require special security measures. Moreover, when the protection of certain technical data secrecy is needed, the judge may prevent certain parties from accessing required documentations (during the offer stage), as stated in pre-litigation opinion No. 6 issued by the ANAC, dated 6 February 2013. In fact, in various defence contract procurements, a clause concerning the military secret could be inserted and this means that information related to the contract should be barred from being obtained afterwards.

21 What are the rules regarding eligible suppliers and supply chain management and anti-counterfeit parts for defence and security procurements?

The rules governing eligible suppliers and supply chain management are provided for in article 83 of the Public Contract Code. This issue also falls within the competence of the ANAC. The legal framework establishes an official list of suppliers, instituted by the law and geared by the administration. In addition, counterfeit of supplies could include intellectual propriety and material elements. Anti-counterfeit is governed by national rules such as articles 473 et seq of the Italian Penal Code, and by article 127 of Legislative Decree No. 30/2005.

International trade rules

22 What export controls limit international trade in defence and security articles? Who administers them?

The limitation of international trade in defence and security is due to intense and strict controls. Export is subject to various layers of national control performed by different authorities, such as the Foreign Ministry, the Defence Ministry, the Ministry of the Interior, the Ministry of Economy and Finance and also by the customs authority. The Italian legal framework also presents a regulation concerning the export and import process for defence and security assets: Law No. 185/1990 regards conditions governing goods transfer related to the defence field. Moreover, other elements, such as the slow decision-making process in issues concerning defence and security in the international or European market, create limitations to international trade in this field.

23 What domestic preferences are applied to defence and security procurements? Can a foreign contractor bid on a procurement directly?

Domestic rules that apply to defence and security procurements contracts are:

- Legislative Decree No. 50/2016 concerning public procurements, which implements European Directive 2014/23/UE, 2014/24/UE and Directive 2014/25/UE;
- Regulation No. 49 of 13/03/2013, which governs Defence Ministry activities related to defence and security works, services and supplies; and
- Legislative Decree No. 208/2011, which provides defence and security contracts procurements and which implements Directive 2009/81/EC.

Such rules also apply to foreign companies that have commercial relations with Italy. A foreign contractor can bid directly for a procurement and there is no limit to negotiating or subscribing a procurement contract under Italian law.

24 Are certain treaty partners treated more favourably?

According to the general principles governing administrative proceedings such as transparency, neutrality and non-discrimination, a potential treaty partner shall not be treated more favourably.

25 Are there any boycotts, embargoes or other trade sanctions between this jurisdiction and others?

Existing trade sanctions between jurisdictions are those provided by international trade and commercial law. Sanctions are mainly divided into two categories: diplomatic sanctions (measures of withdrawal of diplomatic relations with the state concerned) and the recall of diplomatic representatives of the state. Other sanctions are arms embargoes, restrictions on the admission of 'state concerned' persons (listed in specific lists), the freezing of assets and economic sanctions.

26 Are defence trade offsets part of this country's defence and security procurement regime? How are they administered?

Defence trade offsets are part of defence and security procurement regime and are administered by the Secretary-General or by the National Manager of Armaments delegated by Ministry of Defence, by the Directors of the General Secretariat of National Defence and the National Industry of Defence. Italy also adopted its own coordination policy concerning offsets in defence and security procurement. However, this policy was modified in order to be compliant with European orientations. The 2002 and 2012 Directives made the trade offsets slightly more flexible and understandable. The first Directive sets out a clear and detailed list of the involved figures and their functions, and also establishes the methodical procedure that parties should follow. In fact, the 2002 Directive concerns the binding side agreements and provides for continuous coordination between the directorate and General Secretariat of National Defence, both in the pre-contractual and contractual stages. The 2012 Directive only refers to the competent directorate, subject to negotiations.

Ethics and anti-corruption

27 When and how may former government employees take up appointments in the private sector and vice versa?

Public appointments are generally incompatible with positions dealing in private sectors, especially where such private sector is overseen by the public. The management of public functions and collaborations with the private sector should be maintained separately in order to guarantee the exclusive pursuit of the public interest without negative interference caused by private interests.

The legal framework permits former government employees to take up appointments in the private sector on the condition that they will renounce their public function with a set deadline of 15 days after the proposal.

28 How is domestic and foreign corruption addressed and what requirements are placed on contractors?

Even defence and security procurement fields are subject to bribery, at both the internal and international levels. The ANAC, in accordance with anti-bribery regulations, plays a central role in combating this negative aspect: it monitors the contract qualification system and the modality used to perform the contract, and the traceability of financial flows (as given in Determination No. 47/07/2010). Economic operators are required to commit themselves to transparency standards during the execution of activities related to defence and security procurement contracts, given that a lack of transparency constitutes a development of the 'dirty market' in which corruption is typically present.

29 What are the registration requirements for lobbyists or commercial agents?

To register as a lobbyist or commercial agent, a person must be resident in Italy, or have Italian nationality, or even be a national of a member state. Commercial agents are entitled to exercise their civil rights, and must have reached the age of majority. Concerning professional requirements, the applicant should present a secondary school diploma or a degree in economics and juridical subjects, or a certificate confirming successful attendance of a professional course recognised by the region. Moreover, the applicant should have experience as a sales employee and must have worked for a company for at least two years.

30 Are there limitations on the use of agents or representatives that earn a commission on the transaction?

According to article 1748 of the Italian Civil Code, commercial agents or representatives have the right to earn a commission, determined as percentage on all transactions concluded after commercial agent intervention and the counting criteria are established by the parties. There are no limitations if earnings are issued in accordance with the competent regulation.

Aviation

31 How are aircraft converted from military to civil use, and vice versa?

Usually, there is a distinction between military use aircraft and civil-use aircraft. Military aircraft belong in a special category because of their military end-use (article 745 of the Navigation Code). However, there may be circumstances under which civil aircraft could be used as military aircraft. This conversion can only be carried out with the approval of the Italian General Directorate of Air Armaments, which is the competent authority.

In this regard, during 2017, €2.5 million was made available for the lease of a signal intelligence aircraft, probably the leasing of a King Air aircraft that was already used to fly from Italy to carry out surveillance missions off Libya and, in order to keep the lease going, it is foreseen a fund of €10.4 million for 2018 and 2019 will be needed.

32 What restrictions are there on manufacture and trade of unmanned aircraft systems or drones?

The principal restriction on manufacture and trade of unmanned aircraft systems or drones concerns the competence of the Ministry of Defence. The creation of unmanned aircraft systems or drones has military and public defence purposes and is governed by the Decree of 16 May 2016.

The use of drones is regulated by Legislative Decree No. 7 of 18 February 2015, which disposes requirements concerning drone pilotage, requirement for use, prompt intervention use and operation procedures. These rules have also been compared to the civil drone regulations given by the Italian Civil Aviation Authority. The regulation framework concerning military aircraft is provided in the Second Part of the Navigation Code. For example, article 691-bis establishes that certain military aeronautics activities are allowed by specific agreements concluded with the Italian Civil Aviation Authority.

Miscellaneous**33 Which domestic labour and employment rules apply to foreign defence contractors?**

Domestic labour and employment rules apply to foreign defence contractors who execute contract activities in Italy. The same legal framework concerning work law applies to Italian defence and security contractors. Moreover, specific clauses related to domestic labour and employment rules, such as the application of social protection of workers, are provided for foreign defence contractors. Such social protection ensures that rules concerning the security, assurance and assistance of workers shall be respected.

34 Are there any specific rules that contractors, foreign or domestic, are bound by in defence contracts?

The specific rules by which contractors are bound under defence security contracts are those that show the objectives of the activity, which means that contract obligations bind economic operators during the execution of the contract proceedings. Moreover, other specific rules that bind contractors may be provided by clauses inserted in defence contract procurement, such as the military secrecy clause.

35 Do contractors avail themselves of these rules when they perform work exclusively outside of the jurisdiction?

When contractors perform work exclusively outside the country, the applicable rules shall be those agreed between the state where the contract has been constituted and the state where the activity shall be performed, as well as potential specific rules that could bind the contractor.

36 Must directors, officers or employees of the contractor provide personal information or certify that they fulfil any particular requirements to contract with a government entity?

In general, the company should provide assurances to the government with regard to personnel who will be employed in specific public work. The personnel, and therefore also the company, may be called upon to give assurances regarding security aspects that need be resolved. Other requirements that are needed in order to contract with a government entity include personal aspects such as nationality, date of birth and permanent address. If the director, officer or employee attends to a task in an institution related to the defence and security sector, he or she must prove possession of all the professional requirements, present adequate certificates and must also show that he or she is not related up to the fourth degree of kinship to the institution responsible or the institution directors.

37 What registration or licensing requirements exist to operate in the defence and security sector in the jurisdiction?

Given the various collaborations and tasks that could be proposed by the defence and security sector, it is not possible to define in one list the registrations or licensing requests of the defence administration. The more specific the task, the more licensing and requirements are prescribed. Generally, in order to operate in the defence and security sector, the applicant is required to be in possession of a degree or a master's degree in engineering, law or political sciences.

38 What environmental statutes or regulations must contractors comply with?

Environmental protection during the execution of a public procurement contract is an important issue that contractors must take into account. The Italian legal framework concerning public procurements, including defence and security procurements, provides for specific obligations concerning the protection of the environment. Through the innovations brought to the Public Contract Code by Legislative Decree No. 56/2017, ANAC becomes the entity entitled to check the implementation of minimum environmental criteria (article 213 of Legislative Decree No. 56/2017).

39 Must companies meet environmental targets? What are these initiatives and what agency determines compliance?

Environmental targets should be met by companies during the performance of the procurement contract. In fact, the national regulations concerning public procurement require certain forms of conduct in accordance with the necessity for environmental protection. For these reasons, in order to promote environmental criteria, which must be respected during the contract implementation, special measures are given (also in accordance with European orientations) in an action plan regarding environmental sustainability or the use of eco-labels.

40 Do 'green' solutions have an advantage in procurements?

Green public procurements have an advantage in procurement, given that environmental sustainability is taken into account during the process of economic operator selection. Green public procurement provides potential contractors with an incentive to present tenders that also consider environmental character and protection. By way of confirmation, even the ANAC has activated a service addressed to contract authorities by which it can constantly monitor green public procurements.

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