

PANORAMIC

DEFENCE & SECURITY PROCUREMENT

Greece



LEXOLOGY

Defence & Security Procurement

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LEGAL FRAMEWORK

Relevant legislation

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

Defence and security procurement in Greece is regulated by the following legal instruments:

- article 346 of the Treaty on the Functioning of the European Union (TFEU);
- Greek Law No. 3978/2011, transposing into the Greek legal order Directive 2009/81/EC on the coordination of procedures for the award of certain work contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security (the Defence Procurement Law);
- Greek Law No. 3433/2006, on Defence Procurement of the Armed Forces; and
- Greek Law No. 4412/2016 (the Civil Procurement Law) transposing EU Directives 2014/24 and 2014/25, insofar as the required military supplies and services do not fall, as per the assessment of the contracting authority, under the ambit of the aforementioned laws.

Law stated - 21 November 2023

Identification

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

Whether a procurement will qualify as defence or civil depends on the nature of the equipment or service under procurement. For the set of rules related to defence procurement to apply the procurement under considerations will have to qualify as military. Under the provisions of article 16 of the Defence Procurement Law, defence and security procurement covers:

1. the supply of military equipment, including any parts, components or subassemblies thereof;
2. the supply of sensitive equipment, including any parts, components or subassemblies thereof;
3. works, supplies and services directly related to the equipment referred to in points (1) and (2) for any and all elements of its life cycle; and
4. works and services for specifically military purposes or sensitive works and sensitive services. It also covers the procurements in the sector of public and state security.

The main difference between defence and security procurement and civil procurement is the applicable legislation that provides for different rules in each procurement process. Some of the key differences of defence procurement vis-à-vis civil procurement are the following:

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The subcontracting agreements are treated differently in defence procurement since the contracting authority may impose to the contractor to subcontract part of the agreement through tender process.

- Defence procurement is subject to the mandatory inclusion of the integrity clause and the relevant statements undertaken by the contractor against possible bribery in the defence and security contracts to ensure the transparency of the process.
- The inclusion of requirements for the security of classified information and the security of supply of goods.
- Contractors in defence procurement are required to notify the contracting authority on any changes occurred to their ownership status following the conclusion of the contract. The contracting authority is entitled to terminate the contract if it finds that the change occurred is prejudicial to the national security or public interest.
- Contracting authorities in defence procurement are entitled to recourse to article 346 TFEU having the right to exempt defence procurements for the protection of national security interests.

Defence procurement is also subject to a different set of rules in terms of judicial protection.

Law stated - 21 November 2023

Conduct

How are defence and security procurements typically conducted?

In Greece, the purchase of major defence equipment (aircraft, warships, tanks, etc) is typically ensured through international government-to-government agreements that are ultimately ratified by the Greek Parliament. As regards more standardised contracts between private legal entities and public contracting authorities, it is up to the discretion of the contracting authority to assess which of the award and conclusion procedures, prescribed by the applicable law, fits most its needs. The latter procedure is in principle initiated with the publication of a tender notice in the Official Journal of the EU and the Greek Government Gazette, which may solely be omitted under specific conditions prescribed in the law in an exhaustive manner. The contracting authority may afterwards either select to proceed with the bidders qualifying as eligible to submit their offer, in view of the latter to be assessed or adapted upon a relevant request or, alternatively, it may launch a competitive dialogue to further specify its need. Ultimately, the contract is concluded with the bidder that fulfils the award criterion (ie, the lowest price or the most economically advantageous offer), while an announcement of the award of the contract is made in the Official Journal of the EU. The principles of transparency and equal treatment shall be respected throughout the entire award and conclusion procedure.

Law stated - 21 November 2023

Proposed changes

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

The last significant reform of the defence and security procurement process was enacted on 4 March 2021, by virtue of Law No. 4782/2021, which introduced, inter alia, amendments to the existing legal framework on procurement in the defence and security sectors. The adopted provisions provide, among others, for:

- the redetermination of the applicable transparency and anti-corruption rules imposed on the economic operators;
- the possibility to use the European Single Procurement Document as preliminary evidence that the economic operators do not meet the disqualification grounds within the context of defence procurement;
- the contractors' obligation to notify the contracting authority of changes in their ownership status;
- the possibility of the contracting authority to recourse to article 346 TFEU; and
- the direct award procedure carried out for contracts the value of which is lower than or equal to €30,000.

There are currently no other significant proposals pending to further change the procurement regime.

Law stated - 21 November 2023

Information technology

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

No particular rules are set forth by the Greek legislation for defence procurement of information technology goods and services, compared to the standardised procurement regime of non-IT goods and services. However, given that IT goods also include computer software, protected by virtue of Greek Law No. 2121/1993 as intellectual creation, bidders that intend to submit an offer for procurement of such goods shall describe, in view of evidencing their technical capacity, all measures undertaken to ensure compliance with intellectual property rules.

Law stated - 21 November 2023

Relevant treaties

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?

The majority of defence and security procurements are conducted in accordance with EU Directives 2009/81/EC, 2014/24 and 2014/25, as transposed into the Greek legal order by

the Defence Procurement Law and Civil Procurement Law. The national security exemption of article 346 TFEU that was introduced into Greek law by virtue of article 18A of Law No. 3978/2011 may solely take place after a duly justified decision of the Government National Security Council following approval of a relevant committee of the Greek Parliament.

Law stated - 21 November 2023

DISPUTES AND RISK ALLOCATION

Dispute resolution

How are disputes between the government and defence contractor resolved?

Disputes between the defence contractor and the government are resolved in diverse manners, depending on the stage of the procurement procedure and the nature of the dispute as precontractual or pertaining to the contract performance.

As far as the precontractual stage is concerned, parties with an interest in being awarded a specific contract that have suffered or are likely to suffer damage as a result of a breach of the applicable rules are entitled to seek:

- annulment of the unlawful act of the contracting authority, by filing before the latter a precontractual appeal;
- interim judicial protection against the act of rejection of the precontractual appeal;
- annulment of the executed contract; and
- a compensation equal to the amount of damages incurred, provided that the unlawful act of the contracting authority has been annulled.

The Council of State is competent for reviewing matters arising through the precontractual stage of award procedures.

Following execution of the contract and during the lifetime thereof, the contractor disposes of the following remedies:

- interim judicial protection, by means of an application for suspension of contracting authority's harmful act;
- permanent judicial protection, by means of a recourse for annulment or amendment of contracting authority's harmful act; and
- action for compensation.

The Administrative Court of Appeal is also competent for disputes arising from contracts, whose value is lower than €400,000, while the Council of State is competent for reviewing disputes arising from contracts of a higher amount.

Law stated - 21 November 2023

Dispute resolution

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

Alternative dispute resolution is predominantly used for disputes arising from contracts of major economic value. Arbitration clauses may be included in the contractual documents, while an opinion by the plenary of the Legal Council of State and a joint decision of Ministers of Economics and National Defence are also required for a dispute to be conferred to arbitration procedure. As regards disputes between the prime contractor and its subcontractors, it is up to their discretion to include alternative dispute resolution clauses in their contract, insofar as this is permissible by the prime contract (ie, between the contracting authority and the prime contractor).

Law stated - 21 November 2023

Indemnification

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?

Contractors in the field of defence and security procurement are entitled to seek compensation from the contracting authority to the extent that they are able to evidence damages pertaining either to the award or the performance of the contract. Specifically, should an interested party provide sufficient evidence that it would have been awarded a contract, if the contracting authority was not in breach of the applicable rules, then it is entitled to seek compensation for damages; such claim cannot be limited, nor excluded by any legal provision and remains subject to previous judicial annulment of the contracting authority's unlawful act. In addition, contractors are entitled to seek compensation in the event of infringement, by the contracting authority, of any clause of the contract during its performance. In this respect, it is up to the contracting authority's discretion to include in the contract clauses as to the limitation of its liability. In practical terms, it is not common for the contracting authorities to seek compensation from contractors who breach their contractual obligations, and what usually happens in these cases is the imposition of penalties and the forfeiture of the good performance bonds.

Law stated - 21 November 2023

Limits on liability

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?

The government is generally free to set any limitations on the contractual liability of either the contracting authority or the contractor in the terms and conditions of the contract unless such limitation is not permitted by mandatory laws. More specifically, no limitation can be set for damages caused due to willful misconduct or gross negligence. In practice, the government usually sets an uncapped liability clause for the contractor not only for direct

but also for indirect damages suffered. There is also no statutory or regulatory limitation on the contractor's right to be compensated for the government's breach, though most of the time the contracts do not explicitly provide for the contractor's recovery.

Law stated - 21 November 2023

Risk of non-payment

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?

Although there can be delays in contractors' payment the risk of non-payment is rather remote as defence and security procurements of the Armed Forces are approved by the competent authorities, budgeted and included in an annual procurement plan, that forms part of the special expenditure budget of the Ministry of National Defence.

Law stated - 21 November 2023

Parent guarantee

Under what circumstances must a contractor provide a parent guarantee?

There is no requirement for contractors to provide parent guarantees. Instead, the contractors are required to submit a participation letter of guarantee at the stage of submission of their offer that amounts to 2 per cent of the contract value (excluding VAT), as well as a good performance letter of guarantee before or at the execution of the contract amounting to no more than 5 per cent of the contract value (excluding VAT). The contractors may also submit an advance payment letter of guarantee in the case of an advance payment or a good operation guarantee if it is specified in the contract documents. The above letters of guarantee can be issued by banks that are considered eligible under the pertinent legislation and the respective Tender Notice or the Loans and Consignments Fund.

Law stated - 21 November 2023

DEFENCE PROCUREMENT LAW FUNDAMENTALS

Mandatory procurement clauses

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?

Defence procurement contracts mandatorily include a special integrity clause, based on which economic operators or their legal representatives, who participate in the procurement process warranty that throughout all stages preceding the contract award they did not act in an unfair, illegal and abusive way, while they also commit to not act as such during the execution stage of the contract as well as after its termination. To this end, economic operators are obliged to confirm through statements addressed to the contracting

authority that they have not been given access to inside information, nor have they distorted competition, nor have they proceeded to any illegal payments with a view to facilitating their position in the process including bribery. The contracting authority shall also state in the contract documents the body, or bodies, from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, environmental protection, employment protection provisions and working conditions that are in force in Greece, or the region or third country in which the works are to be carried out or services are to be provided.

Other than the above, it is at the contracting authority's discretion to include additional special clauses related to subcontracting, security of classified information, security of supply of goods, etc.

Law stated - 21 November 2023

Cost allocation

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

Cost allocation is in practice specified in the contract documents. It is common that each party bears its own costs meaning that the government bears the costs for the preparation and publication of the tender process documents while the contractor shall bear the costs for the submission of its offer and the execution of the contract, which include administrative costs, any deductions in favour of the state, bank expenses for the issuance of the required guarantees, and delivery costs while performing its contractual obligations. Such costs shall be taken into consideration by the contractor while preparing its financial offer for the determination of the price. The most common pricing method determined in the contracts is the fixed price and option rights may also be included.

Law stated - 21 November 2023

Disclosures

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

In principle, there are no rules prescribing the contractor's obligation to disclose specific details of their offers as regards costs and pricing of defence and security materials, unless such requirement is set by the contracting authority in the contractual documents. The contracting authority is also entitled to seek clarifications with regard to the offer's formulation in the event that the offer appears to be abnormally low.

Law stated - 21 November 2023

Audits

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

Contracts concluded in the defence sector with a value exceeding €1.7 million are subject to review and approval by the Court of Auditors prior to their examination. Pursuant to the provisions of Law No. 3978/2011, specific contracts are exempt from the aforementioned audit procedure. Such include, contracts governed by special procedural rules by virtue of an international agreement or settlement concluded between one or more member states and one or more third countries, contracts related to the stationing of troops and concerning operations of member states or third countries, contracts awarded within the framework of a research and development cooperation programme executed jointly by two member states, contracts awarded by one government to another in relation to the supply of military or sensitive equipment, etc.

In addition, during the contract execution stage, certain committees set up by the contracting authority monitor the execution of the contractual terms and obligations of both contractor and the authority and propose measures to be taken due to non-compliance with the contractual terms. Those committees also carry out the appropriate controls and assessments of the equipment delivered and draw up the acceptance or rejection protocols.

Law stated - 21 November 2023

IP rights

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

It is up to the discretion of the contracting authority to set within the contract the terms of the ownership rights to intellectual property produced by the contractor in the context of contract performance. Defence procurement contracts typically include clauses granting to the contracting authority all intellectual property rights originally created by the contractor, which practically equals a licence to fully exploit such rights, with no additional fees being due to the contractor.

Law stated - 21 November 2023

Economic zones

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?

We are not aware of any such economic zones or programmes in Greece.

Law stated - 21 November 2023

Forming legal entities

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

The process for forming the main types of companies includes the following steps:

- acquisition of Greek tax registration number for the shareholders and the directors of the company;
- online incorporation process by the use of template private articles of association (AoA) document, subject to exceptions where a notarial AoA is required, in which case incorporation takes place before a Notary Public, by virtue of a notarial deed; and
- company's registration with the General Commercial Registry.

For sociétés anonymes (SAs), a minimum share capital amounting to €25,000, fully paid upon establishment of the company, is also required. As for joint ventures, the incorporation agreement shall be submitted to the competent tax authority following the completion of the steps described above.

Law stated - 21 November 2023

Access to government records

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

Under Greek law, access to public documents including government records is permitted, unless the relevant documents relate to private or family life of any third party, or violate privacy pursuant to special provisions. In view of this, interested parties could, in principle, obtain access to government records upon request, provided that such records do not contain classified or confidential information.

In the case of contracts in defence and security, the contract award notice is published in the Official Journal of the European Union. Certain information regarding the conclusion of the contract may not be published in case the disclosure of such information could prevent the application of laws, be contrary to the public interest, and in particular the interests of defence or security, or harm the legitimate commercial interests of public or private economic entities or the conditions of fair competition between them.

Law stated - 21 November 2023

Supply chain management

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

For a business to be considered eligible in terms of supply chain management, it must comply with specific requirements set within the contractual documents. To this end, the contracting authority may require that the tenderer includes in its offer, inter alia:

- evidence of the ability to meet obligations regarding the export, transport and transit of the goods covered by the contract;
-

evidence that the organisation and geographical location of the tenderer's supply chain will enable it to comply with the contracting authority's security of supply requirements specified and a commitment that it will ensure that possible changes in the supply chain during performance of the contract will not adversely affect compliance with those requirements; and

- a commitment by the tenderer to ensure the maintenance, modernisation or adaptation of the supplies covered by the contract.

In the event that the tenderer does not itself manufacture the material to be procured, the contracting authority may also require a commitment of the manufacturer that it accepts to execute the procurement upon award of the contract.

As to the anti-counterfeit parts of the procurements, upon delivery of the products by the contractor, the contracting authority conducts quality control procedures provided for within the contract, such as macroscopic and laboratory examinations or practical tests. In addition, the quality control of imported materials is conducted by the competent state body or by an international inspection agency, that issues a relevant certificate, while a quality assurance certificate from the competent state agency of the country of origin is also required.

Law stated - 21 November 2023

INTERNATIONAL TRADE RULES

Export controls

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

The export control regime is set forth by the EU legislation, namely by the Council Regulation (EC) No. 428/2009, and by Ministerial Decision No. 121837/E3/21837 of 2 October 2009, which provide for various types of authorisations for the export of dual-use items both for civil and military purposes in third countries, namely the individual export authorisation, the community general export authorisation, the global export authorisation and national general export authorisation. Such authorisations shall be granted by the Directorate of Trade Regimes and Defence Measures of the Ministry of Development. In addition, Law No. 2168/1993, as currently in force, provides for the export or re-export for any legal reason of any kind of material with a military purpose, of domestic or foreign origin. Such export is authorised by the Minister of Development, after the consent of the Ministers of Foreign Affairs and National Defence. Relevant ministerial decisions also provide for the process that shall be followed for the granting of the above authorisation.

Law stated - 21 November 2023

Domestic preferences

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

In view of the contracting authority's obligation to treat economic operators equally and without discrimination, defence and security procurement in Greece is not conducted on the basis of nationality and, therefore, foreign bidders are eligible to directly participate in public tenders for the procurement of defence and security materials. By way of exception, the Defence Procurement Law provides that businesses originating from non-EU countries are entitled to participate in tender procedures, provided that such right is prescribed within the contractual documents. Contracting authorities may deviate from typical procurement procedures and from the aforementioned principles on the basis of article 346 TFEU, in the purpose of protecting the country's substantial security interests. In this context, it cannot be excluded that bidders originating from specific countries are either preferred or excluded from certain tender procedures for the procurement of defence and security materials.

Law stated - 21 November 2023

Favourable treatment

Are certain treaty partners treated more favourably?

Contracting authorities shall treat economic operators equally and in a non-discriminatory manner and shall act in a transparent way. However, only EU member states are permitted to participate in defence and security procurements, and it is at the contracting authority's discretion to allow the participation in said procurements of economic operators from third countries by including a specific reference in the contract documents.

Law stated - 21 November 2023

Sanctions

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

Greece, as a member state of the EU, implements all sanctions adopted by the latter autonomously, as well as those of the United States Security Council. At present, extended trade sanctions are in place against Russia, in response to the Russian invasion in Ukraine on 24 February 2022 and annexation of Ukrainian regions. Such sanctions include the prohibition of importing and exporting diverse goods and services from and to Russia.

Law stated - 21 November 2023

Trade offsets

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

Defence trade offsets have been part of Greece's defence and security procurement regime for a long time with a positive impact on the Greek defence industry but with a negative connotation in terms of corruption. After the transposition into Greek legislation of Directive 2009/81/EC by the Defence Procurement Law, this practice has been abolished being considered a restrictive measure, which goes against the basic principles of the TFEU,

since trade offsets discriminate against economic operators, goods and services from other member states and impede the free movement of goods and services.

Having said this there are currently many outstanding issues stemming from offsets linked to past defence contracts. In this regard, Greek Law No. 4376/2016 allows for existing agreements on trade offsets that have expired but include unfulfilled obligations for which claims of the Greek State are pending, to be regulated following a specific procedure under the supervision of the General Directorate for Defence Investments and Armaments.

Law stated - 21 November 2023

ETHICS AND ANTI-CORRUPTION

Private sector appointments

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

A former government employee (ie, a former public, administrative or political servant) is not bound by any limitations as to the appointment in private sector positions, provided that they do not retain anymore the capacity of government employee for any reason whatsoever (eg, resignation, termination of contract). Respectively, a former private employee who no longer possesses the capacity of a private employee is entitled to be appointed as a public, administrative or political servant, provided that they are awarded with such an appointment following a public competition.

Law stated - 21 November 2023

Addressing corruption

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

The Defence Procurement Law as recently amended, sets forth various transparency and anti-corruption rules. More specifically, the contracting authority must include in the contract documents a special clause, based on which economic operators or their legal representatives, who participate in the procurement process undertake that throughout all stages preceding the contract award did not act in an unfair, illegal and abusive way, nor will they act as such during the execution stage of the contract as well as after its termination. For this purpose, economic operators are required to submit binding declarations, confirming that:

- they did not have access to inside information, beyond the information they received lawfully during the procurement process;
- they did not distort competition through manipulation of offers either individually or in collaboration with third parties;
- they did not proceed to any illegal payments with a view to facilitating their position in the process nor will they proceed to such actions during or after the end of the contract;

- they did not offer or intend to offer before, during or after the termination of the contract, directly or indirectly, any material favour, gift or consideration to employees or members of the contracting authority or their families either themselves or through third parties; and
- they did not offer, nor will they offer during or after the termination of the contract, directly or indirectly, gifts, donations, charitable benefits, sponsorships or sums of money and grants in any form or reason, to political parties and their representatives either themselves or through third parties.

Law stated - 21 November 2023

Lobbyists

What are the registration requirements for lobbyists or commercial agents?

Contractors operating in the field of defence and security procurement are, in principle, prohibited from using agents or intermediaries during the award procedure or the performance of the contract. By way of exception, contractors are allowed to use commercial representatives, within the meaning of Presidential Decree 219/1991 (ie, persons who undertake, in their capacity as independent intermediaries, to negotiate and conduct the sale and purchase of goods on a permanent basis). Such commercial representatives shall be registered with the Commercial Registry, which is competent for their scope of operations. In this respect, commercial agents operating in defence and security procurement shall be registered with the Single Registry of Defence Businesses, as far as Greek businesses are concerned, while foreign contractors shall fulfil registration requirements, as applicable in the country of their registered seat.

Law stated - 21 November 2023

Limitations on agents

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

The economic operators or their legal representatives participating in procurement procedures in the defence sector are not allowed to use any intermediary, middleman or agent during the process of conclusion and execution of the contract. They are only allowed to use commercial agents that fall under the provisions of Presidential Decree 219/1991 (article 81) meaning an intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another person, hereinafter called the 'principal', or to negotiate and conclude such transactions on behalf of and in the name of that principal.

Law stated - 21 November 2023

AVIATION

Conversion of aircraft

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

The Greek Aviation Code (Law No. 1815/1988) regulating the function and exploitation of civil aircraft provides that, in order for an aircraft to be used for civil purposes, it shall be registered with the Greek Registry of Civil Aircraft, kept by the competent Service of the Civil Aviation Authority of the Greek Ministry of National Defence. On the contrary, as per the Chicago Convention on International Civil Aviation, ratified by Greek Law No. 211/1947, member states are bound not to use civil aircraft for purposes inconsistent with the scope of the Convention, establishing a prohibition of the use of a civil aircraft for military purposes. Provided, however, that the civil use ceases and a deletion from the abovementioned Registry takes place, then the former civil aircraft may be utilised by the Armed Forces as part of the defence equipment.

Law stated - 21 November 2023

Drones

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

The manufacture and trade of unmanned aircraft systems (UAS) are regulated by the European legislation through Regulation (EU) 2018/1139 (EASA Regulation), Commission Delegated Regulation (EU) 2019/945 and Commission Implementing Regulation (EU) 2019/947, as well as Decision No. /ΥΠΑ/21860/1422 of 30 September 2016 of the Civil Aviation Authority on the determination of the terms and conditions for the execution of flights of those systems to the extent that the provisions of this decision do not conflict with what is provided for in the EU Regulations. The UAS are divided into three types depending on the risk of their operation, therefore they may belong to the open, specific or certified category. Manufacturers are obliged to draw up the required technical documentation, to carry out the relevant conformity assessment procedure, to draw up an EU declaration of conformity and affix the CE marking on the products complying thus with the EU required specifications. The above legislation also provides for the type of licences required for the proper operation of the UAS. The above legislation does not apply to UAS used for military purposes.

Law stated - 21 November 2023

MISCELLANEOUS

Employment law

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

Foreign defence contractors are not subject to the Greek labour legislation, to the extent that they do not have a registered seat in Greece and do not employ personnel in Greece. However, pursuant to Law No. 3978/2011, economic operators participating in defence procurement procedures are required to explicitly state in their offers or expressions of interest that they have taken into account the provisions on employment protection and working conditions

in force in the place where the works are to be carried out or the services covered by the contract are to be provided.

Law stated - 21 November 2023

Defence contract rules

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

Contractors are generally bound by the general terms and conditions stipulated by each contract, which may also include provisions specified in Decision No. 249748 of 29 October 2008 of the Minister of National Defence on the general and special terms of the procurement of military equipment. Such provisions pertain to the governing law of the contract, the observance of special terms, such as the integrity clause, the security of supply and of classified information, provisions on the subcontracting, on the protection of intellectual and property rights, etc. In addition, for contracts whose value exceeds €1 million, economic operators shall ensure that no offshore company holds more than 1 per cent of their share capital, otherwise they cannot participate in defence and security procurements.

Law stated - 21 November 2023

Defence contract rules

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

In general, contractors are subject to these rules in the context of the performance of their contractual obligations (ie, the procurement of defence and security materials). Given that the latter usually takes place in Greece, contractors are not bound by the said provisions while operating abroad. However, an exception applies in the case of obligations that concern the whole scope of their operations, such as a clause of integrity.

Law stated - 21 November 2023

Personal information

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?

According to Greek legislation the contractors may be requested in the prequalification process to submit a solemn declaration that may also have the form of a European Single Procurement Document as preliminary evidence that they do not fall within certain situations that could lead to their disqualification from the procurement process. Under the above declaration, personal information for the legal representatives of the contractor, such as name, nationality, date of birth and address, will need to be disclosed. Contractors and their legal representatives should state, among others, that they have not been the subjects of conviction by final judgment for participation in a criminal organisation, corruption, fraud,

terrorist offences, money laundering and terrorist financing, and they may be asked to submit copies of their criminal records to prove the above.

Law stated - 21 November 2023

Licensing requirements

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

Businesses that operate in the defence and security sector and, specifically, in the military equipment procurement and the provision of services and construction of works pertaining thereto shall be registered with the Single Registry of Defence Businesses, such registration being a prerequisite for their participation in contract award procedures. Moreover, businesses in the sector of manufacturing of military material shall also be registered with the Registry of Manufacturers of Defence Material. Additional licence and registration requirements may apply depending on the exact field of operation of each business.

Law stated - 21 November 2023

Environmental legislation

What environmental statutes or regulations must contractors comply with?

A contracting authority is obliged to state in the contract documents the body or bodies from which a contractor may obtain the appropriate information on the obligations relating to environmental protection and shall request the contractors to indicate that they have considered, when drawing up their tender, the obligations relating to environmental protection provisions that are in force.

Furthermore, a contracting authority may require the production of certificates drawn up by independent bodies attesting to the compliance of the economic operator with certain environmental management standards, which refer to the Community Eco-Management and Audit Scheme or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. Equivalent certificates from bodies established in other member states shall also be recognised by the contracting authority.

Law stated - 21 November 2023

Environmental legislation

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

As per the provisions of Law No. 3978/2011, businesses operating in the field of defence and security procurement are not subject to the obligation to implement specific environmental management measures or reach environmental targets. However, insofar as the above-mentioned businesses also operate in the manufacturing of the security and defence materials to be procured, they are bound by the Greek legislation on the protection of the environment (ie, Law No. 4014/2011) and, thus, are required to ensure the issuance of the appropriate environmental licences, depending on the impact of their operations on the environment. The Ministry of Environment and Energy, the Directorate-General of the relevant Decentralised Administration and the Environment Agency of the relevant Prefectural Authority are the competent environmental authorities for granting the requested environmental licences.

Law stated - 21 November 2023

Environmental legislation

Do 'green' solutions have an advantage in procurements?

Green solutions do not have an advantage in procurements as such, however a contracting authority may set up certain environmental criteria that the contractor should be able to meet.

Law stated - 21 November 2023

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

No significant developments have been noted in the course of 2023 in defence and security procurement legislation and jurisprudence. A significant increase has been noted to the number of military procurement contracts concluded, while the Greek government is negotiating the acquisition of F-35 fighter jets from the United States in an effort by the Ministry of National Defence to strengthen its defence effectiveness.

Law stated - 21 November 2023