Norway

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Legal framework

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

The following acts and regulations govern the procurement of defence and security articles in Norway:

- Public Procurement Act No. 73 of 17 June 2016; and
- Regulation No. 974 of 12 August 2016 on Public Procurement (RPP).

The above constitute the general legislation on civil public procurement. They apply to procurement by the armed forces or the Ministry of Defence unless the category of procurement is exempt under the Regulation on Defence and Security Procurement or article 123 of the European Economic Area (EEA) Agreement.

Regulation No. 1185 of 4 October 2013 on Defence and Security Procurement (FOSA)
The FOSA is the Norwegian implementation of the EU Defence Procurement Directive and applies to procurement of specific defence and security materiel, or construction work or services in direct relation to such, unless EEA article 123 provides for a defence and security exemption.

Norwegian Defence Acquisition Regulations No. 1411 of 25 October 2013 (DAR)
Parts I and II of the DAR apply to all defence-related procurement. Part III applies to defence procurement under the Public Procurement Act and Regulation. Part IV applies to procurement under the FOSA. Part V applies to procurement that is entirely exempt from the procurement regulations under EEA article 123.

These regulations are internal instructions for the Ministry of Defence and its agencies (see DAR section 1-2). They do not provide any rights to third parties and thus a breach of the rules cannot be relied on in court by a dissatisfied contractor.

Regulation No. 753 of 1 July 2001 on Classified Procurement
This regulation applies where the procurement procedure requires a security classification.

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

Section 1-3, paragraph 1 of the FOSA defines defence and security procurements in accordance with article 2 of EU Directive 2009/81/EC.

The procedures vary according to the nature of the goods and services to be procured. If the goods are not classified, ordinary civil procurement law applies. Where the goods or services are highly sensitive and the requirements or specifications are classified, the entire procurement procedure may be exempt from ordinary procurement rules under EEA article 123. In that case, only DAR Part V applies, and the Ministry of Defence will also generally require offset agreements.

3 How are defence and security procurements typically conducted?

DAR section 7-3 requires the procuring authority to assess the nature of the procurement, and to assess which set of regulations applies.

All defence procurement must be based on a formal market study, which forms the basis for a needs assessment with realistic requirements for materiel and services (DAR section 7-1, 6-1). As a main rule, all contracts are subject to competitive bidding and published on Doffin, the Norwegian national notification database for public procurement.

The procuring authority may select the procuring procedure, with due care shown to the need for competition and national security interests. Outside the RPP and FOSA, there is no requirement for prior publication of a contract notice. Depending on certain circumstances related to EEA threshold values and the type of procurement, the procuring authority may choose to conduct the procurement without competition through single-source procurement, to engage in selective bidding, competitive dialogue or a negotiated procedure with or without prior publication of a contract notice.

Use of competitive dialogue or a negotiating procedure without prior publication of a contract notice is contingent on the fulfilment of the conditions in FOSA sections 5-2 or 5-3, respectively.

The procuring authority will evaluate offers, and then decide whether to accept an offer. Normally, the procuring authority imposes a grace period between the decision and the contract-signing to allow for any complaints concerning the procurement from competing contractors (see FOSA Chapter 14).

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

No.

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

No, but certain forms of command and control systems and components technology, including software, may be liable for offset purchases as Norway prioritises such technology under offset obligations in EEA article 123.

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?

Both the EU and Norway are members of the World Trade Organization, and are consequently parties to the Agreement on Government Procurement (GPA). Directive 2009/81/EC does not govern arms trade with third countries – this continues to be governed by the GPA.

Norway does use a national security exemption on occasion (see EEA article 123). For further clarification, see question 23.

Disputes and risk allocation

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

DAR section 9-10 prescribes that the procuring authority requires contracts in the defence and security sector to dictate Norwegian law as the governing law, with Oslo District Court as the governing venue. See question 8 on dispute resolution under the armed forces standard procurement contract.

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

Generally, disputes are resolved through negotiation, and if this is unsuccessful, through the Oslo District Court (see Armed Forces of Norway Form 5052 – General Purchase Conditions section 15). These conditions are used in small and medium-sized contracts, whereas larger contracts may require supplementary or alternative contracts and terms. Normally, larger contracts are based on the same contract principles and conditions that are used in Form 5052.

Arbitration is rarely used in Norwegian defence contracts.

Although the relationship between a prime contractor and a subcontractor is usually considered an internal matter, the procuring authority may, in certain circumstances, such as classified information disclosure, require that the prime contractor include clauses on conflict resolution equivalent or similar to those as stipulated in DAR.

DAR section 9-10 allows for deviations, such as accepting another country's jurisdiction or laws, if the contract involves international aspects and the deviation is necessary owing to the nature of the negations and the safeguarding of Norwegian interests. Whether to deviate is a matter of a case-by-case assessment and, in general, a foreign contractor ought not to rely on a requirement to apply national laws when negotiating with the Norwegian government.

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 procuring authority is entitled to compensation for direct losses caused by delay or defect (see Armed Forces of Norway Form 5052 sections 6.6 and 7.7). The contractor will also be liable for indirect losses caused by his or her negligence. In larger contracts, the procuring authority may accept a limit on the contractor's liability for direct or indirect losses.

Form 5052 section 10.1 provides that the procuring authority must indemnify the contractor from any claim owing to the use of drawings, specifications or licences provided by the procuring authority. The contractor must, in turn, indemnify the procuring authority from any claim owing to patent infringement or other immaterial rights related to the completion of the agreement.

In accordance with Armed Forces of Norway Form 5055 – General Terms for Cost Control, the following costs are considered unallowable should they incur in any contract:

- penalties;
- fines and compensatory damages; or
- costs and legal fees for legal action or preparation of such.

Further, the standard procurement contract states that, in the event of default, the armed forces shall pay interest in accordance with Act No. 100 of 17 December 1976 Relating to Interest on Overdue Payments etc. (See Armed Forces of Norway Form 5052 section 5.2.) As such, the maximum interest rate is currently set at 8.5 per cent.

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?

If the procurement is time-sensitive or otherwise warrants it, the procuring authority must contractually require the contractor to pay liquidated damages upon failure to meet any deadlines (DAR section 26-4). Liquidated damages shall incur at 0.001 per cent of the contract price per working day, related to the part of the delivery that is unusable owing to the delay. Normally, the maximum liability shall be set at 10 per cent of the price for the same part.

The procuring authority may also exempt the contractor from liquidated damages or accept an extension of time in the implementation and execution of the procurement. If the waiver exceeds 500,000 Norwegian kroner, the procuring authority must request prior approval from the Ministry of Defence (see DAR sections 5-5 and 5-9).

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?

The Norwegian government budgets future procurements through a long-term strategy plan. The plan undergoes an update on an annual basis and is valid for a seven-year period. The current plan is available at https://www.regjeringen.no/globalassets/departementene/fd/dokumenter/rapporter-og-regelverk/faf-2018-2025-english---final.pdf.

The risk of non-payment for contractual obligations, excluding contract disputes, is non-existent as the procuring authority evaluates budgetary limits before entering into a contract.

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

The contractor must have financial strength that is proportionate with the financial risks entailed by the contract in question. If the procuring entity has doubts concerning the contractor's financial ability, it may request adequate security of performance of the contract. The procuring authority calculates the need for security based on the perceived consequences for the defence sector, should the contractor incur financial problems.

In accordance with DAR section 18-6, paragraph 6, or section 36-2, such security could be in the form of a guarantee from a bank, financial institution or insurance company, or a parent guarantee. In the case of parent guarantees, the guarantee must be issued by the highest legal entity in the corporate group and reflect the contractor's obligations under the contract.

In larger contracts, the use of a performance guarantee is usually the norm and the guarantee used is often that of a parent guarantee.

The main rule in Norwegian defence procurement is payment upon delivery or the achievement of milestones. Under certain circumstances, the procuring authority may pay the contractor prior to fulfilment. In such situations, the contractor shall provide a surety for payments due before delivery (see DAR section 23-7). The surety shall cover the full amount of any outstanding payment.

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?

The procuring authority must include a number of clauses in the contract, for example, clauses on termination, damages, transparency and warranties. The exact wording and depth of such clauses fall under the discretion of the procuring authority.

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

The allocation of costs between the contractor and the government is dependent on the choice of the contract (see DAR section 26-9, paragraph 1). The procuring authority may use the following contract types concerning aspects of the delivery and costs:

- cost contracts: the contractor is only obliged to deliver the goods or services if they receive payment of the relevant costs under the contract (see DAR section 19-2, paragraph 2b); or
- price contracts: the contractor is obliged to deliver the goods or services at an agreed price, regardless of the actual costs incurred (see DAR section 19-2, paragraph 2a).

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

The procuring authority will list the contractor's completion of the Armed Forces of Norway Form 5351 – Specification of Pricing Proposal as a qualification criterion where a cost analysis is required (see question 16).

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

Normally, the procuring authority shall request the right to review the contractor's accounting in order to monitor their performance under the contract (see DAR section 27-2, paragraph 1).

Additionally, the procuring authority shall contractually require the contractor to supply specific information in a number of circumstances, for instance, where cost controls are required, where there is suspicion of economic irregularities or when the contractor is foreign. The procuring authority may also demand that the contractor include contract clauses with subcontractors belonging to the same company

group as the contractor, or in whom the contractor has a controlling interest, or vice versa, allowing the procuring authority equivalent rights to information and to audit (see DAR section 27-4).

If the procurement has uncertain price calculations, or if the procuring authority conducts the procurement without competition, the procuring authority shall perform a cost control of the contractor's offer regardless of contract type, both before work commencement and during the fulfilment of the contract.

Additionally, cost control on accrued expenses and costs is required regardless of competition for all cost contracts (incentive, fixed or no compensation for general business risks, or cost sharing) as well as price contracts with limited risk compensation or incentive.

Lastly, the procuring authority shall perform cost control on procurement from a foreign sole contractor.

The procuring authority conducts the cost control in accordance with Armed Forces of Norway Form 5055 – General Terms for Cost Control.

Upon confirming the correctness of its costs in Armed Forces of Norway Form 5351 – Specification on Pricing Proposal, the contractor shall give the procuring authority the right to audit the costs in accordance with Form 5055.

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

DAR section 24-3 obliges the procuring authority to consider the legal opportunity, wholly or partly, to acquire the intellectual property rights covered by the contract, including any right of use.

The main rule, in accordance with DAR section 24-4, is that the procuring authority shall acquire a non-exclusive licence to the intellectual property rights, if this meets the needs of the armed forces and constitutes the most economically advantageous option. A non-exclusive licence shall include interface documentation and the rights of usage.

Under DAR section 24-5, the procuring authority shall acquire the intellectual property rights or an exclusive licence if this is considered necessary or appears to be the most economically advantageous option, or there are significant security considerations. If the procuring authority is unable to acquire a wholly exclusive licence, it shall consider whether to partly acquire the rights, or enter into both exclusive and non-exclusive licence agreements (see DAR section 24-6).

If Norway has financed the research and development of a deliverable, the procuring authority is obliged to enter into a royalty agreement with the contractor, normally requiring 5 per cent of the sale price (see DAR section 24-10).

DAR section 24-7 states that the procuring authority must ensure that a contract concerning intellectual property rights contains provisions concerning, among other things:

- the possibility for the procuring authority to make available documentation related to the intellectual property rights to the entire defence sector within Norway. This possibility shall also extend to other countries' armed forces should it prove necessary; and
- a clause that if the deliverable is not fully developed, produced, industrialised or commercialised, the defence sector receives the intellectual property rights necessary to recover their costs through a resale. The clause must stipulate that the transferred intellectual property rights may be subject to completion, development, production, industrialisation or commercialisation by another contractor, or resold to cover the defence sector's share of the costs.

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?

Not applicable.

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

Limited liability company

To form a limited liability company, the shareholders must compile and sign the following documentation:

- a memorandum of association;
- articles of association;
- confirmation from a bank, financial institution, attorney or auditor that the share capital has been paid. The share capital requirement for a limited liability company is 30,000 Norwegian kroner, while public limited liability companies have a requirement of 1 million Norwegian kroner; and
- a declaration of acceptance of assignment from an auditor, or minutes of a board meeting if the company has decided against using an auditor.

Following this process, the company registers in the Register of Business Enterprises with the documents enclosed. Registration may be done electronically and takes, in general, no more than one to five business days. Registration must be completed before the company commences commercial activities, and within three months after signing the memorandum of association at the latest.

Partnerships

Norwegian law recognises three forms of partnerships: a general partnership with joint liability, general partnership with several (proportionate) liability and limited partnerships.

To form a partnership, the partners must sign and date a partnership agreement and register the partnership in the Register of Business Enterprises with the agreement enclosed, before the company commercially activates and within six months of signing the partnership agreement. The partnership's headquarters must be located within Norway, though its partners do not need to be resident there.

Joint venture

It is usual to form a joint venture by establishing a separate company. While several forms of incorporation are available, the parties generally chose a limited liability company.

Another way to establish a joint venture is through a simple cooperation or joint venture agreement between the parties.

Norwegian-registered foreign enterprises

While Norway does not consider a Norwegian-registered foreign enterprise (NUF) to be a separate legal entity, foreign companies frequently use them owing to their practical nature.

When a foreign company wants to register a branch in Norway, said branch can register as an NUF. To form an NUF, or to conduct business within Norway in general, the foreign company must register in the Register of Business Enterprises. The foreign parent company is fully responsible for the activity of its branch owing to the lack of recognition of its separate legal status.

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

Anyone seeking access to information from Norwegian ministries is entitled to request any unclassified information, including previous contracts, under Act No. 16 of 19 May 2006 on the Freedom of Information. The responsible ministry receives any requests for information and performs a case-by-case review of whether to approve the request. This review also entails the assessment of whether to approve the request with or without redactions.

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

There are no general rules concerning counterfeit parts, though the contractor must certify that the deliverables conform in all aspects to the contract requirements (see the Armed Forces Form 5357 – Certificate of Conformity).

The procuring authority often requires materiel and deliveries to be accompanied by relevant certificates of quality and specifications, such as allied quality assurance publications, which also allows the procuring authority to conduct inspections at the contractors' and subcontractors' place of production. The procuring authority may also require a certificate of origin to ensure that the deliverable is not from an embargoed country, inter alia.

International trade rules

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

Export of certain defence-related goods, technology and services, or services related to trade or assistance concerning the sale of such deliverables, or the development of another country's military capability, are conditional on acquiring a licence from the Ministry of Foreign Affairs in accordance with Regulation No. 718 of 19 June 2013 on the Export of Defence-related Products, Dual-use Items, Technology and Services, which only governs the export and import between Norway and other EEA countries.

The export of such products to the EEA is subject to general transfer licences covering specific product categories and recipients, global transfer licences covering specific defence-related product categories (and services) or recipients for a period of three years, and finally, individual transfer licences covering the export of a specific quantity or specific defence-related product to a recipient in one EEA state.

For countries other than those belonging to the EEA, the Ministry of Foreign Affairs distinguishes between the following categories:

- Group 1: the Nordic countries and members of NATO.
- Group 2: countries not belonging to Group 1 that the Ministry of Foreign Affairs have approved as recipients of arms.
- Group 3: countries not belonging to Group 1 or 2 and to which Norway does not sell weapons or ammunition, but which can receive other goods as listed in Annex I of Regulation 2009/428/EC.
- Group 4: countries that are located in an area with war, the threat of war, civil war or general political instability that warrants the deterrence of export of defence-related goods and services or that the UN, EU or Organization for Security and Co-operation in Europe sanctions. As member of the UN, Norway is a state party to the UN Arms Trade Treaty.

For export to Groups 1 to 3 (above), the Ministry of Foreign Affairs may grant the following licences in accordance with their guidelines:

- Export licence: valid for one year and for a single export of goods.
- Service licence: valid for one year and for a single export of services.
- Technology transfer licence: valid for one year and for a single export of technology.
- Global export licence: valid for a maximum of three years and for one or several exports of one or several defence-related goods to one or several specific recipients outside of the EEA, within NATO or other countries of relations.
- Project licence: valid for one or several exports of defence-related goods, services or technology to one or several collaboration partners or subcontractors in conjunction with development projects where a state within Group 1 is the final end user.

For Group 4, an export licence valid for one single export may be granted in certain situations.

As a member state of the EEA, Norway also adheres to the Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, and has transposed its criteria listed in article 2 when assessing whether to grant a licence.

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

Norwegian defence procurement is generally not conducted with domestic preference, and the possibility of making direct bids will vary with the rules governing the procurement procedure (see questions 1 to 3).

In accordance with FOSA article 3-2 and DAR's preamble, all procurement shall as far as possible be based on competition, and the procuring authority shall not discriminate against a contractor due to nationality or local affiliation. DAR section 34-2 allows the procuring authority to conduct the procurement without competition in certain specific circumstances similar to the exemptions from competition under ordinary EEA procurement law.

Further, Norway may deviate from Directive 2009/81/EC where the procurement has essential security interests and falls under EEA article 123, or warrants exception in accordance with the Regulation on Classified Procurement. Exemptions require approval from the Ministry of Defence.

The aforementioned exemptions may, under certain circumstances, result in the procuring authority allowing only Norwegian contractors to submit offers for the request of tender.

24 Are certain treaty partners treated more favourably?

Certain countries enjoy the benefit of bilateral security agreements, which eases the exchange and certification of contractors with regard to classified information related to procurements. Members of the EEA also have the advantage of a common transfer licence arrangement (see questions 22 and 37).

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

Norway enforces mandatory UN and EU arms embargoes and sanctions.

Additionally, Norway enforces the embargo on Artsakh, also known as Nagorno-Karabakh, which remains internationally recognised as being part of Azerbaijan, through its membership of the Organization for Security and Co-operation in Europe.

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

Offset agreements are required in the procurement of defence and security articles from foreign contractors. This also includes contractors based in Norway if they produce essential parts of the delivery abroad. Exceptions to this rule are procurements that are:

- conducted in accordance with the RPP;
- conducted in accordance with FOSA, where the contractor (and most of its subcontractors) are located within the EEA. However, if the contractor is domiciled in the EEA but one of its subcontractors is not and the value of the subcontract exceeds 50 million Norwegian kroner, said subcontractor shall be made party to an offset agreement with the procuring authority; and
- conducted with a contract price below 50 million kroner, provided that the contract does not include future options or additional procurement that may exceed this threshold or the procuring authority expects that the contractor will enter into several contracts below 50 million Norwegian kroner over a period of five years.

The procuring authority manages trade offsets by enclosing the provisions contained in the Regulation for Industrial Co-operation related to Defence Acquisitions from Abroad to the request for tender. The foreign contractor compiles a proposal on the offset requirement and delivers it to the Ministry of Defence or Norwegian Defence Materiel Agency. The offset agreement is a precondition for accepting the contractor's tender. Consequently, the procuring authority conducts negotiations for the procurement contract, while the Ministry of Defence or Norwegian Defence Materiel Agency conducts simultaneous negotiations concerning the offset agreement.

Ethics and anti-corruption

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

There is no mandatory waiting period for former government employees wanting to enter the private sector.

However, certain government employees have a duty to inform the Board of Quarantine, which is tasked with deciding whether the employee would have to undergo a waiting period before entering into the private sector or receive a temporary ban on their involvement in specific cases.

DAR section 2-5 prescribes that if the contractor's personnel have been employed by the Ministry of Defence or in the defence sector within the past two years, or are retired, they are prohibited from being involved in the contact between the contractor and the Norwegian defence. The contractor shall inform the procuring authority if they have hired or otherwise used such personnel (see questions 28 and 36 on the use of the ethical statement).

Private sector employees face no general restrictions on appointment to positions in the public sector.

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

Corruption within Norway is punishable by law and carries a maximum penalty of 10 years in prison (see the Norwegian Penal Code sections 387 and 388).

DAR section 3-2 dictates that in any procurement exceeding the current national threshold value at the time of the publication of the request for tender, the procuring authority must contractually require the contractor to warrant that measures or systems have been effected in order to prevent corruption or the abuse of influence. Such measures or systems may entail internal controls or ethical guidelines.

For procurements exceeding the aforementioned threshold value, DAR section 4-1 requires that the procuring authority issue to the contractor or attach to any request for tender the Ethical Statement for Suppliers to the Royal Norwegian Ministry of Defence with underlying agencies (DAR appendix 5).

The statement obliges the contractor to adhere to the ethical guidelines and not:

> *to offer any gift, benefit or advantage to any employee or anyone else who is carrying out work for the MoD or underlying agencies, if the gift, benefit or advantage may be liable to affect their service duties. This rule applies regardless of whether the gift, benefit or advantage is offered directly, or through an intermediary.*

Also, see question 36.

Failure to comply with these requirements may lead to rejection of the contractor's current and future offers to the Ministry of Defence or its underlying agencies.

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

Lobbyist or commercial agents are not subject to any general registration requirements, though commercial agents who directly engage or provide assistance in the export of certain defence and security articles require an export licence from the Ministry of Foreign Affairs.

DAR section 7-4, paragraph 2 dictates that the procuring authority shall provide contractors, at the request for tender, with the guidelines on prudence, non-disclosure and conflict of interest (DAR appendix 3):

> *The name of any lobbyist acting on behalf of the supplier must be reported to the Defence sector. If a supplier fails to act with openness and strict adherence to good business practices and high ethical standards, this may undermine trust in the relationship between the supplier and the Defence sector, and potentially also the rating of the supplier's bid in the final decision process.*

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

As a main rule, Norwegian law does not contain any limitations on the use of agents or representatives that earn a commission on the transaction between the contractor and the procuring authority.

If the contract in question is between the procuring authority and an agent, the procuring authority may require disclosure of the commission or agreement between the agent and the contractor (see DAR section 17-3, paragraph 7).

If the contract falls under EEA article 123, the procuring authority may not enter into a contract with an agent (see DAR section 36-3).

Aviation

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

When converting military aircraft to civilian use, the process is subject to a case-by-case pre-conference review by the Civil Aviation Authority, which reviews the relevant documentation, with applicable procedures for registration of ownership, security and certification from the civil aircraft register to follow.

When a civilian aircraft is considered converted for military use, the armed forces perform a case-by-case assessment of the aircraft's military use and capabilities, and requirements concerning the aircraft's safety and airworthiness. Upon acceptance of the conversion, the armed forces notify the Civil Aviation Authority and the aircraft receives the appropriate marking and certification in the military aircraft register.

Deletion of the aircraft's certification in the civil aircraft register is a prerequisite for certification in the military aircraft register.

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

There are none.

Miscellaneous

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

The Working Environment Act of 17 June 2005 No. 62 and Regulation No. 112 of 8 February 2008 on Wages and Working Conditions in Public Contracts will apply if the contractor is operating or performs work within Norway.

Contractors performing work within Norway on procurements exceeding 100,000 Norwegian kroner, excluding value added tax, shall provide the contracting authority with a health, safety and environment (HSE) statement warranting that the contractor complies with all legal requirements pertaining to HSE (see FOSA sections 3-13 and 8-18).

See question 35 for further information.

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

See questions 2, 3 and 13 for further information.

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

The procuring authority shall contractually require the contractor to adhere to the national legislation related to wages and working conditions in the country where the contractor carries out work (DAR section 3-1). Further, the contractor shall adhere to the prohibition against child-, forced- and slave labour, discrimination and the right to organise in accordance with the UN Convention on the Rights of the Child and ILO Conventions Nos. 29, 87, 98, 100, 105, 111, 138 and 182.

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?

DAR section 4-1 mandates that the procuring authority issue to the contractor the Ethical Statement for Suppliers to the Royal Norwegian Ministry of Defence with underlying agencies. The procuring authority shall issue the statement (DAR appendix 5) to the contractor together with the request for tender or otherwise.

The statement places a duty on the contractor to inform the procuring authority if the contractor, its employees or associates have:

> *been convicted by a final judgment of any offence concerning its professional conduct, such as, for example, infringement of existing legislation on the export of defence and/or security equipment [or] criminal acts of participation in a criminal organisation, corruption, fraud, money laundering, financing of terrorism or terrorist activities [or] been guilty of grave professional misconduct, such as, for example, a breach of obligations regarding security of information or security of supply during a previous contract.*

The contractor may see his or her current and future offers rejected by the Ministry of Defence or its underlying agencies, should he or she fail to comply with the information duties imposed by the statement.

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

The Directorate for Civil Protection and Emergency Planning requires contractors operating within Norway to adhere to the regulations concerning the production, storage and transport of materiel of a chemical, biological, explosive or otherwise dangerous nature. In that regard, the Directorate may perform inspections and require prior notification, certificates and permissions.

Regulation No. 718 of 19 June 2013 on the Export of Defence-related Products, Dual-use Items, Technology and Services governs the possibility for Norwegian companies to acquire certification to receive defence-related goods from other EEA countries operating under a general transfer licence. Such goods may include materiel used for production.

The certification is subject to a case-by-case review where, among other things, the department factors in the company's reliability and defence-related experience.

38 What environmental statutes or regulations must contractors comply with?

Contractors transporting or storing deliverables or operating within Norway must comply with the environmental rules in Act No. 6 of 13 March 1981 Concerning Protection against Pollution and Concerning Waste, as well as any requirements imposed in the contract with the procuring authority.

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

The procuring authority may impose environmental targets on contractors through inclusion of environmental requirements in both contracts and framework agreements (see FOSA sections 8-3 and 8-16). If the procuring authority requires documentation that shows the contractors are adhering to certain environmental standards, the procuring authority should refer to the Eco-Management and Audit Scheme or other European or international standards.

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

Green solutions do not have an outright advantage in procurements as such, but may have an advantage in the sense that the procuring authority is obliged to consider the life-cycle costs and environmental consequences of the procurement when it designs the requirements of the deliverable. As such, environmentally conscious contractors may be better able to meet these requirements depending on the desired deliverable in question.

If possible, the procuring authority should require the contractor to meet certain environmental criteria concerning the deliverables performance or function. Additionally, the procuring authority may give green solutions an advantage in accordance with the applicable rules and regulations.

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