

OFFSETS FACILITATE COOPERATION WITH COMPANIES IN THE EUROPEAN DEFENCE, TECHNOLOGICAL AND INDUSTRIAL BASE

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Abstract: The head of the Offsets Department of the Ministry of Economy, Energy, and Tourism of the Republic of Bulgaria presents the latest amendments to the offsets regulations, emphasising the opportunity for pre-offsets and detailing the offsets-related aspects of the tender procedure.

Keywords: Defence procurement, code of conduct, European defence technological and industrial base, EDA.

The offset as a compensatory mechanism to return back to the national economy part of the public expenses for defence and security is regulated by the *Ordinance on the Award of Special Public Orders*, adopted in 2004 and amended with an Ordinance of the Council of Ministers # 1 of 5 January 2007.¹

The European framework for offset development was adopted by the European Defence Agency (EDA) with the Code of Conduct on Offsets, unanimously approved by EDA's Steering Board in 2008, in force since July 1st, 2009.² The main purpose of the Code is to stimulate the development of a common European Defence, Technological and Industrial Base through the implementation of "intelligent" compensatory mechanisms. The Code, based on article 296 of the EC Treaty (article 346 of the Lisbon Treaty), is a result of the Strategy for the European Defence Technological and Industrial Base and it is an inseparable part of the main Code of Conduct on Defence Procurement of the EU members.

A number of amendments in the Bulgarian legislative base, developed by an inter-governmental working group comprising experts from the Ministry of Economy, Energy and Tourism and the Ministry of Defence (which is the main body that awards special public orders), were needed in connection with meeting the Code's requirements and the need to bring part of Bulgaria's industry into the common European

defence, technological and industrial base (EDTIB). Most significant among these amendments are:

- The offered and required indirect offset will be directed only in the fields of defence and security;
- The offset is a binding requirement for participation in tenders for the award of special public orders, but will not be taken into account in the evaluation of the offer of the candidate as far as the technical parameters and financial conditions of the contract are concerned. This amendment allows the selection of the best offer in terms of technical and financial parameters. The offered indirect offset has to correspond to the preliminary set of requirements for compliance in the bidding documentation.
- The amount of the offset is equal to the value of the special public order. The amendment follows the unconditional adoption of the Code of Conduct on Offsets by the Bulgarian party.
- Removal of the compensatory (offset) coefficients, which were part of the unified evaluation methods of the offset projects – direct and indirect offset.
- Direct/Indirect offset ratio 30/70 remains the same – it may vary by 5 percent.
- The penalties for companies, not complying with the terms of an offset agreement, will be decreased from 50 to 20 percent of the offset obligation.
- There is an opportunity for preliminary implementation of activities (prior to the award of a special public order) that might be subject of the offset agreement. The offered projects for implementation of the preliminary offset activities must be connected with the strengthening of the country's defence and security, the production of dual-use items, transfer of technology and industrial cooperation.

It is the Minister of Economy, Energy and Tourism that approves the pre-offset projects. Pre-offset activities can be included in future offset agreements in a period of seven years from the date of issue of a certificate for recognised offset credits. The implementation of preliminary offset will not be considered as priority in the selection of a special public order executor.

The Ministry of Economy, Energy and Tourism keeps a register of the required and approved pre-offset activities and issues certificates for approved offset credits. The accumulated pre-offset credits can be used to redeem future indirect obligations or to be transferred to any other executor of a special public order aiming to clear off their offset obligations. To this purpose, the parties have to submit a notarised contract on the change of the offset credit rights to the Ministry of Economy, Energy and Tour-

ism. On the basis of this contract, the Ministry updates the registry and issues new, updated certificates of the parties involved in the transaction.

The evaluation committee for a special public order is constituted by the awarding party and performs:

1. Review and an overall evaluation of the offers in accordance with the criteria and methods set in the bidding documentation;
2. Preliminary rating of the bidders by evaluating the offers in accordance with the criteria and methods set in the bidding documentation. Offset proposals of foreign candidates or candidates whose main subcontractor is a foreign citizen, are not taken into account in the preliminary rating;
3. Check of the offset proposal in accordance with the requirements of article 24, paragraph 4, point 5 of the Ordinance³;
4. Negotiations for the signing of a contract for the award of a special public order and the compensatory agreements.

After the preliminary rating takes place, the committee checks the offset proposals for compliance with the requirements set. In case of discrepancies, the committee gives a chance to the candidate/candidates to change and/or complete or confirm their offset proposal in a period of seven working days. After this deadline expires, the committee checks again the offset proposal for compliance with the set requirements and takes into account the changes made or the confirmation.

When a changed and/or added or confirmed offset proposal is not in compliance with the set of requirements, the committee proposes that the candidate be disqualified from the further phases of the procedure.

After reviewing the offset proposals, the committee makes the final rating of the candidates.

In conclusion, significant amount of financial resources is being spent on defence and security, and a portion of that amount goes to foreign contractors. This should not be considered only as an expense, but also a kind of investment, creating new opportunities for the armed forces and, through the offset mechanisms, can make Bulgaria's industry part of the European Defence, Technological and Industrial Base.

Notes:

¹ *Ordinance on the Award of Special Public Orders*, amended, *State Gazette* 7 (January 2007).

- ² *Code of Conduct on Offsets* (Brussels: European defence Agency, 24 October 2008), <www.eda.europa.eu/WebUtils/downloadfile.aspx?fileid=460>.
- ³ *Ordinance on the Award of Special Public Orders*, as amended in 2007.

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