

DECISION OF THE PRESIDENT OF THE REPUBLIC OF 13 MARCH 2013 N. 49

Regulations governing the activities of the Ministry of Defense in respect of works, services and military supplies, pursuant to Article 4, paragraph 1 of Legislative Decree no. 208 implementing Directive 2009/81 / EC.

Source, Changes, and Updates:

(OJ No.110 of 13-5-2013)

{in force since 28/05/2013}

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Preamble

THE PRESIDENT OF THE REPUBLIC

Having regard to Article 87, paragraph 5, of the Constitution;

Having regard to Legislative Decree no. 163, which contains a code of public contracts for works, services and supplies, and the relevant implementing and implementing regulation contained in the decree of the President of the Republic of October 5, 2010, no. 207;

See Law No 3 of August 3, 2007, no. 124, laying down rules on the Republic's security information system and new rules on secrecy;

Given the decree of the President of the Council of Ministers of 8 April 2008, published in the Official Gazette no. 90 of April 16, 2008, setting out criteria for the detection of news, information, documents, acts, activities, things of places likely to be the subject of state secrets;

Having regard to the Decree of the Prime Minister of the Republic of Croatia of 12 June 2009, no. 7, published in the Official Gazette no. 154 of July 6, 2009, defining the scope of the individual levels of secrecy, the subjects with ranking power, the criteria for identifying the subject matter of the rankings, and the ways of accessing the military or designated places of interest for security of the Republic;

Having regard to Directive 2009/81 / EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works, service and service contracts in the fields of defense and security by administrations contracting entities / contracting entities, amending Directives 2004/17 / EC and 2004/18 / EC;

Having regard to Legislative Decree no. 66, containing the Code of Military Order, and subsequent modifications;

Given the unique text of the regulations on military ordination, pursuant to Article 14 of Law No 28 of 28 November 2005, 246 of Decree of the President of the Republic of 15 March 2010, no. 90, and subsequent modifications;

Given the decree of the President of the Council of Ministers July 22, 2011, published in the Official Gazette no. 203 of 1 September 2011 laying down detailed provisions for the administrative and protection of state secrets and classified information;

Having regard to Legislative Decree no. 208 on the rules governing public contracts relating to works, services and supplies in the field of defense and security in implementation of Directive 2009/81 / EC, and in particular Article 4 (1) thereof;

Having regard to EU Regulation no. Commission Regulation (EC) No 1251/2011 of 30 November 2011 amending Directives 2004/17 / EC, 2004/18 / EC and 2009/81 / EC as regards the thresholds for the award of contracts;

Having regard to the Decree of the President of the Republic of 15 November 2012, no. 236, which lays down the regulations governing the activities of the Ministry of Defense in respect of works, services and supplies, pursuant to Article 196 of Legislative Decree No 1263 of 12 April 2006;

Obtained the opinion of the High Council of Public Works, made on May 18, 2012;

Given the preliminary deliberation of the Council of Ministers, adopted at the meeting of 16 November 2012;

Having regard to Article 17, paragraph 1, of Law no. 400;

Hearing the opinion of the State Council, expressed by the Advisory Section on Legislative Matters at the meeting of 10 January 2013;

Given the Council of Ministers resolution, adopted at the meeting of 15 February 2013;

On the proposal of the Minister of Defense, in agreement with the Ministers for European Affairs, Foreign Affairs, Economic Development, Infrastructure and Transport, and Economy and Finance;

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the following rule:

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TITLE I - COMMON PROVISIONS

CHAPTER I - DEFINITIONS AND SCOPE OF APPLICATION

Article 1 Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

(a) "legislative decree": Legislative Decree no. 208, laying down rules on public contracts relating to works, services and supplies in the field of defense and security in implementation of Directive 2009/81 / EC;

(b) 'code' means the legislative decree no. 163, which contains the Public Contracts Code in the implementation of Directives 2004/17 / EC and 2004/18 / EC;

(c) "General Regulation" means the Decree of the President of the Republic of 5 October 2010, no. 207, which contains the regulation referred to in Article 5 of the Code;

(d) "regulation on defense contracts": the decree of the President of the Republic of 15 November 2012, no. 236, which regulates the activities of the Ministry of Defense in relation to works, services and supplies issued pursuant to Article 196 of the Code;

e) "Code of Military Order": Legislative Decree no. 66, and subsequent amendments, containing the Code of Military Order;

f) "unique text of the military order": the decree of the President of the Republic of 15 March 2010, no. 90, and subsequent modifications, containing the unique text of the regulations on military ordinance, pursuant to Article 14 of Law no. 246;

(g) "international agreements" means protocols, memoranda, agreements, or any other document designated by the Italian Defense Administrations with one or more third countries, or Italy and one or more Member States with one or more more third countries, descendants of agreements ratified;

(h) "High Authority" means the Chief of Defense, the Secretary General of Defense and the National Armaments Director, the Heads of State of the Armed Forces and the General Commander of the Carabinieri Army;

(i) 'economic operator' means a natural or legal person, or a public body, or a group of such persons or bodies or network of undertakings which offers on the market the execution of works or works, the supply of goods or the provision of services;

(l) "area of operations" means the territorial operational scope defined by the top governing bodies during the planning of the military operation abroad;

m) 'economic operator localized' economic operator who, in the area of operations, has resources such as to promptly meet is adequately operational needs.

2. Notwithstanding paragraph 1, Article 1 of the Legislative Decree shall apply.

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Art. 2 Purpose and Scope

1. Pursuant to Article 4 (1) of the Legislative Decree, this Regulation lays down the implementing and implementing rules on contracts, including those entrusted with defense-related economic procedures, limited to institutions requiring special rules compared with the one contained in the implementing regulations referred to in Articles 5 and 196 of the Code, which have as their object:

a) the supply of military equipment, including parts, components or sub-assemblies;

(b) works, supplies and services directly related to the material referred to in (a), for each and all elements of its life cycle;

c) works and services specifically for military purposes.

2. The authorities of the Summit, Inter-Force and Armed Forces shall, in the framework of their respective competences, declare the nature of the works, services or supplies for the purposes of subparagraphs (b) and (c) of paragraph 1.

3. This Regulation shall also govern the contracts referred to in Articles 6 and 7 (2) and (3) last term of that legislative decree, in accordance with the provisions of Article 8 of the Legislative Decree.

4. Notwithstanding the provisions of this Regulation, the contracts referred to in paragraph 1 shall apply, where they are compatible or not, with the provisions of the Code, the General Regulations and the Defense Procurement Regulations as well as those relating to the Negotiation provided by the code of military order and by the unique text of military order.

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Art. 3 Discipline of contracts excluded from the application of the legislative decree

1. Contracts excluded pursuant to Article 6 (1) of the Legislative Decree shall be governed by specific procedural rules dictated by international agreements or agreements concluded by Italy with one or more third countries or by Italy and one or more States members with one or more third countries, or internal procedural rules to an international organization identified in (a), (b) and (c) of the same paragraph.

2. Without prejudice to the exclusions provided for in Article 6 (2) (a), (b), (c), (d) and (g) of the Legislative Decree, the exclusion of contracts excluded pursuant to the remaining letters e), f), h), i), l) and m) and the last paragraph of Article 7, paragraphs 2 and 3 shall be made in accordance with Article 8 (1) and (2) of the same legislative decree after exploratory consultation possible in relation to the context and operational needs of at least five economic operators.

3. The operational requirements referred to in Article 6 (2) (e) of the Legislative Decree shall be identified by reasoned order of the commander of the quota or of the higher-ranking summit.

4. The contingent commander, provided he has the competent technical bodies, may authorize the assignment and execution of the contracts referred to in Article 6 (2) (e) of the Legislative Decree. Of the so prepared contracts for the work it is immediately posted on the direction of the work and of the state of the General Secretariat of the defense and the technical bodies of armed force, to which are also broadcast the final of the works carried out and the costs incurred.

5. For the execution of the contracts referred to in Article 6 (2) (e) of the Legislative Decree, the provisions relating to the protection of health and safety in the workplace shall apply within the limits provided for in Article 253 paragraph 4, letter a), of the unique text of the military order.

6. Contracts referred to in Article 2 (3) may be carried out by means of economic procedures, subject to the provisions of the Defense Procurement Regulation and in particular as regards work to be carried out abroad in the under Article 66 of the same Regulation, after exploratory consultation, where possible in relation to the context and operational requirements of at least five economic operators.

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CHAPTER II - SUBPARAGRAPH

Art. 4 Subcontracting Discipline

1. Contracting authorities, by January 31 of each year and in accordance with any prior information notice if published, predispose job lists, services and supplies, broken down by industrial sectors, for which plan to apply for subcontracting under ' Article 27, paragraph 1 of the Legislative Decree. Such lists shall be published in the client's profile of each contracting station within the next 15 days, with the indication of the value fork referred to in Article 27 (3) of the Legislative Decree for the purpose of determining the share of work, supplies or services included in the contract for which subcontracting is sought.

2. Pursuant to Article 27, paragraph 10, of the legislative decree is faculty of contractors to use, also, to the subcontracting within the limits specified in accordance with Article 118 of the Code, to be considered further share and distinct compared to that of subcontracted the request of the contracting station pursuant to paragraph 1 of this Article.

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Art. 5 Subcontracting at the request of the contracting station

1. For the purpose of subcontracting covered by Article 27 (1) of the Legislative Decree, the successful tenderer shall select the third parties concerned by competitive procedures, in accordance with Articles 29 and 30 of the same legislative decree.

2. Economic operators interested award of contracts referred to in the lists provided for in paragraph 4, which they intend to subcontract the same basis of a framework agreement, proceed in the manner prescribed by Article 59, paragraph 8, points (a), (b), (c) and (d) of the Code and lay down the conditions necessary for the award of the single subcontracting. When the performance conditions are already fixed in the framework agreement, they shall proceed without requiring a further selective procedure among the selected competitors, equal to at least five where possible. The framework agreement determines the order of priority for the choice of the subcontractor to which the single contract is to be awarded, giving priority to the rotation criterion in accordance with Article 287 (1) of the General Regulation. At the time of the bid formulation, the competitor must indicate the selected subcontractor and produce the documentation relating to the framework agreement for the due verifications.

3. The procedures for the conclusion of each framework agreement shall not exceed sixty days. For preparing tenders has established a term not less than twenty days and not more than thirty days.

4. In the case referred to in Article 27 (7) of the Legislative Decree, the contracting authority may impose on the successful tenderer the full execution of the contractual obligations, without changing the costs compared to the tender formulated in the tender including subcontracting activities.

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CHAPTER III - SECURED OR EXECUTABLE CONTRACTS WITH SPECIAL SAFETY MEASURES

Article 6 Secrecy and security

1. With a reasoned decision of the competent authority in accordance with the procedures and provisions in force in the Ministry of Defense, the works, works, services and supplies being secreted, or executable with the adoption of special measures of safety. The same provision indicates the level of security clearance required to execute contracts.

2. The assignment of contracts for works, works, services or supplies referred to in paragraph 1 shall be carried out in accordance with the provisions of Article 17 (4) of the Code.

3. Information may be omitted from the alert on the results of the custody procedure, within the meaning of and within the limits of Article 23, paragraph 4, of the Legislative Decree.

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TITLE II - WORK CONTRACTS

CHAPTER I - WORK TO EXERCISE OUT OF NATIONAL TERRITORY

Art. 7 Work to be performed outside the national territory

1. Except as provided for in Article 3, the work to be performed outside the national territory shall apply, as they are not derogated from this Title, from the provisions of the Defense Procurement Regulation on Interventions outside the national territory As well as the provisions concerning the execution and testing of works referred to in Articles 11 and 12.

2. Works for works specifically for military purposes or directly related to the material referred to in Article 2 (1) (a) to be carried out outside the national territory may be carried out in economy within the meaning of Article 66 2, second period, of the Defense Procurement Regulation, or Article 67 of the same Regulation, if carried out by means of Military Gov- ernments as provided for in Article 196 (7), third term, of the Code.

3. Within the limits of the provisions of Article 3, paragraph 4 of the Legislative Decree, the delivery of works or the start of executive design, in the case of design and execution contracts, may be made immediately after the effective the contract and the contract.

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Art. 8 Urgent work to be performed outside the national territory

1. The contingent commander, or the organ appointed by the superordinate command, if unforeseen events impose it on it and make it available to the competent technical bodies, authorizes, by reasoned decision, the execution of the necessary interventions to ensure the operation of the forces.
 2. Those measures referred to in paragraph 1 is immediately posted on the direction of the work and of the state of the General Secretariat of the defense and the technical bodies of armed force, to which are also broadcast the final of the works carried out and the costs incurred.
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CHAPTER II - WORKINGS UNDER THE COMMUNITY SUBJECT

Art. 9 Works contracts under the Community threshold

1. For contracts for an amount less than one million euro, is on the faculty of contracting station provide custody according to the procedures provided for in Article 122, paragraph 7, of the code. Such procedures, according to Article 3, paragraph 4, of the Legislative Decree, do not apply to the dilatory term referred to in Article 11, paragraph 10 of the Code.
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Art. 10 Work in economy

1. Without prejudice to the provisions of Article 7 (2), the work referred to in Article 2 (1) (b) and (c) may be carried out in economy in accordance with Articles 65, 66 and 67 of defense procurement regulations, within the following maximum amount limits:
 - (a) EUR 200,000, for works by trusteeship;
 - b) EUR 200,000 for work in direct management;
 - c) without any amount limits, for work carried out by Military Genius departments.
2. For jobs whose value is higher than 80,000 Euros and up to 200,000 EUR, the reliance by trustee cottimo processed in compliance with the principles of transparency, rotation and equal treatment, after consultation of at least five economic operators, if there are in such number eligible subjects, identified on the basis of

market surveys or through lists of economic operators prepared by the contracting station. To work the amount of which is less than or equal to 80,000 euro, it is allowed direct credit lines from the head of the procedure.

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Art. 11 Certificate of Regular Execution

1. For the specifically military jobs and those related to the supply of military equipment to the amount of one million euro, the test certificate is replaced by that of regular execution; for amounts of more than works, but not exceeding the threshold laid down in Article 10, paragraph 1, letter b) of Legislative Decree, is on the faculty of the contracting authority to replace the test certificate with that of regular execution.

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Art. 12 Early Delivery

1. For works not exceeding the amount referred to in Article 10 (1) (b) of the Legislative Decree, the findings for early delivery may be made by the Director of the Works.

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TITLE III - CONTRACT FOR SUPPLIES AND SERVICES

CHAPTER I - PARTICULAR PROVISIONS CONCERNING CONTRACTUAL IMPLEMENTATION AND CONFORMITY VERIFICATION

SECTION I - SPECIFIC PROVISIONS CONCERNING THE IMPLEMENTATION

Art. 13 Contracting entities, contractors and beneficiaries of the contract

1. In the case of contracts meeting the needs of one or more Armed Forces or one or more entities, the Procuring Station shall identify, in accordance with the provisions of the Code of Military Order, one or more contracting entities, executives and users of the contract, which, even outside the national territory:

- (a) perform the contractual performance in accordance with the procedures laid down in the contract documents;
- (b) verify the smooth running of the services;
- (c) carry out the verification of conformity;
- (d) ensure, in terms of quantity and quality, compliance with the requirements laid down in the contract documents;
- (e) carry out, in an autonomous manner, the functions assigned by the Director-General to the execution;
- f) perform the other functions provided for in the contract documents.

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Art. 14 Early execution of the contract

1. The person in charge of the proceedings may, by reasoned order, authorize the early performance of the entire contractual benefit after the effective effect of the final award, even before the contract is awarded:

- (a) whether the contract concerns the supply of goods or services referred to in Article 2 which must be immediately delivered or executed, by virtue of their nature or place of performance;
- (b) in cases of proven urgency.

2. In the case of anticipated execution referred to in paragraph 1, the party responsible for the proceedings, in the event of a subsequent non-performance of the contract, shall take into account what has already been provided or provided for the purpose of reimbursing the expenses to the relevant executives or suppliers.

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Art. 15 Provision of services and supplies for technical-logistical support

1. Without prejudice to the limit of the amount fixed by the notice or by notice of race or, failing that, by the Act negotiation, services and supplies when it is not possible to predetermine exactly the amount of benefits and related costs, for the technical and logistic support of the Defense Organizations can be obtained through contracts of indefinite duration.

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SECTION II - SPECIAL PROVISIONS CONCERNING THE CONFORMITY CHECK

Art. 16 Check in flight of military aircraft with experimental serial number

1. For the supply of military aircraft equipped with an experimental serial number, on the day fixed for compliance verification, the performer shall, at his own risk and expense, at the airport indicated by the Administration or provided for in the contract, complete aircraft in all its parts and ready for the start of the general test of in-flight tests as well as of its own pilot.
 2. The Performer shall be liable for any damage occurring during the verification tests referred to in paragraph 1.
 3. In the event of an unfavorable outcome of the tests referred to in paragraph 1, the importer shall withdraw the aircraft at its expense within the time limit set by the Administration.
 4. In the case of aircraft coming from a previous military service assignment, the performer shall provide the aircraft with the necessary tools to carry out the tests referred to in paragraph 1.
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Article 17 Verification of Aircraft Compliance and Military Checks

1. Even in the event of a favorable outcome of the conformity assessment, the verification body may provide for further military aircraft testing before the acceptance of the aircraft, in order to ensure the proper functioning of the equipment and their parts and full compliance the contractual requirements of all on-board installations.
 2. The decisions of reviewing bodies in order to set out in paragraph I running or not the test is noted at the bottom of the verification reports.
 3. In the event of a non-favorable outcome of the test referred to in paragraph 1, the inspection body may suspend the acceptance of the aircraft. Acceptance may be refused if, in a second test, the disadvantages encountered during the first test are confirmed.
 4. If suitable professionalism is present within the body of verification, it, for the purposes of completion of the flight test, can be part of the crew as an observer or as a pilot.
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CHAPTER II - ACQUISITION OF GOODS AND SERVICES IN ECONOMY

Article 18 Cases of using purchasing procedures in the economy and spending limits

1. Subject to the terms and procedures of the Regulation for defense procurement, within their limits laid down in Article 10, paragraph 1, letter a) of the legislative decree, it is possible to acquire the following types of goods in the economy and services:

- (a) training courses for military and professional training in Italy and abroad of military and civilian personnel;
- (b) goods and services necessary to ensure operational activities related to maneuvers, exercises, transport and related technical and logistical support services;
- (c) studies, specialist consultancy, surveys and surveys, design and construction of models and prototypes of weapons, machines, apparatus, installations and special materials relating to military defense;
- (d) goods and services necessary for the repair of naval, aircraft, flying, telecommunications and flight assistance vehicles, vehicles equipped with wheels and crawler vehicles, firearms, weapons, generating sets; for the operation of the laboratories, repair shops for land, naval and aerospace, on-board and on-board equipment and equipment;
- (e) goods and services necessary for the operation of the countryside, ship and aircraft services, and supplies of military, military and military vessels abroad and naval units located in areas other than naval logistics;
- (f) goods and services necessary for the design and operation of contingents constituted, where appropriate, by an organic unit or a complex of organic, even inter-operable units, for particular needs linked to missions and operations in Italy or overseas, or similar units;
- g) goods and services necessary for the immediate and direct repair of the damage caused by exercises;
- h) goods and services to ensure the barracks service, as well as services related to the lever, enrollment and recruitment, as well as for rental of stocks, carbolubrificanti, oxygen, combustible, non-perishables and materials commissariato and material for the technical and logistical support of the means terrestri, naval and aeronautici;
- (i) functional architecture and engineering services to activities governed by this Regulation.

2. Without prejudice to the modalities and procedures laid down in Regulation for defense procurement, is also permitted, in the presence of emergency reasons related to operational requirements that make it incompatible with the conduct of the normal procedures the Protection of slenderness requirements and speeds required, direct custody, up to an amount of 80,000 euros, by the person in charge of the proceedings. The necessity and the urgency must be the motivated act of the commander of the quota holding the acquisition of goods and services referred to in paragraph 1 or of the person in charge of the institution that puts it into operation.

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Art. 19 Administrative acts of trust

1. The head of the administrative department, which is the official who performs equivalent functions, on the basis of estimates of the recognition of findings, emits a specific device for the next acquisition, which is perfected:

- (a) if the amount of the expenditure does not exceed EUR 80,000 by means of an order letter;
- (b) in other cases, through a negotiating act to be entered in the forms referred to in Article 11, paragraph 13, of the Code.

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Art. 20 Proof of regular execution

1. For the amount of performance below the threshold referred to in Article 10, paragraph 1, letter a) of Legislative Decree, the certificate of conformity clearance is replaced by attestation of regular execution issued by the Director and confirmed by the person in charge of the proceedings.

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