

Foreign supplier in defence procurement in Ukraine

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1. Defence procurement as a market with special rules

Defence procurement during martial law serves as an instrument to ensure the supply of the armed forces, where speed, managed risk and data security often outweigh classical market competition. Some procedures are conducted through the electronic procurement system, while others take place outside it, and the applicable rules are periodically subject to targeted amendments or clarifications.

For businesses, the practical conclusion is straightforward: entry into this market requires not merely responding to demand, but disciplined compliance with procedural requirements and documentary formalities.

2. Who may act as a supplier

At the level of statutory definitions, the approach appears pragmatic: a contractor under a state defence contract may be not only a Ukrainian entity but also a foreign business entity. The definition of a "contractor under a state contract (agreement)" expressly refers to a foreign business entity.

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This is an important signal: market access for a foreign supplier is not closed "by passport". Moreover, in practice, certain procurements expressly provide for equal treatment of residents and non-residents, accept equivalent documents issued under the law of the country of incorporation and, where no equivalent exists, allow explanations regarding the impossibility of submission.

At the same time, there is also another – equally real – practice. In certain cases, contracting authorities formally notify that they conclude contracts exclusively with residents, referring to internal rules and their own interpretation of requirements applicable to contractors.

Hence the key market reality: assessment must focus not on abstract eligibility but on the specific procurement. If the procurement notice and annexes do not provide a tailored approach for non-residents, a formally open system may in practice prove procedurally closed. Conversely, where the path for a non-resident is clearly described, such non-resident will usually have an opportunity – but only subject to impeccable documentary compliance.

Against this background, foreign suppliers should think in terms of participation models. In some cases, direct participation by the non-resident is optimal; in others, participation through a local partner (distributor/integrator) as the tenderer, with the non-resident acting as manufacturer/supplier within the supply chain, may be more appropriate. This is not about circumventing rules, but about selecting the model permitted by the specific procurement documentation and managing the related risks in terms of timing, warranties and confirmation of origin.

The participation model must be determined before the tender package preparation, not after submission, when documents, forms and certificates have to be assembled under time pressure.

3. Key challenges for non-residents

The first systemic barrier is the qualified electronic signature (QES). Contracting authorities often require a qualified electronic signature to be affixed to the tender proposal or to individual documents.

For a non-resident, this may present technical and organisational difficulties (identification procedures, technical compatibility, time required to obtain the relevant tools).

An important nuance: in certain procurements, it is expressly stated that the requirement to affix a QES does not apply to non-resident tenderers.

There are also public clarifications indicating that, for companies registered in the system as non-residents, the functionality for applying a

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signature may not be mandatory. The practical conclusion is that the signature issue must be resolved on the basis of the specific procurement documentation and the actual configuration of the non-resident's participation.

Another often underestimated aspect concerns the bidder's account on the electronic platform and the role of the signatory. Participation by a non-resident involves more than uploading files. It requires verification that the platform correctly recognises the foreign registration, allows the appointment of an authorised person, and that documents confirming the signatory's authority (corporate extracts, resolutions, powers of attorney) are submitted in an acceptable format and accompanied by translations where required.

What may appear to be a minor defect frequently becomes a formal ground for rejection.

The second barrier is language. It is typical for procurement documentation to require that supporting documents be submitted in Ukrainian and, where the original is drawn up in another language, accompanied by an authentic translation.

Parallel requirements may apply to quality documents for the goods, specifically in Ukrainian and for each unit.

For a foreign manufacturer, this entails not merely translation, but control of terminology: an inaccuracy in translating a technical parameter may be treated as non-compliance.

The third barrier concerns certificates and integrity confirmations. Even where non-residents are permitted, lists of required documents may include certificates confirming the absence of criminal convictions or corruption-related offences in respect of the person signing the proposal.

This is not always a prohibitive factor, but it is always a timing factor. If such documents are not prepared in advance, the non-resident loses not on price, but on the timeline.

4. Particularities of tender proposals

Where bid security is required, in the segment of unmanned aerial systems (UAS), this frequently takes the form of a bank guarantee.

A key practical detail: in the vast majority of cases, the guarantee must be issued strictly in accordance with the template annexed to the tender documentation, and deviations from the template are expressly prohibited.

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This is a formal requirement with significant consequences: failure to submit the guarantee in the prescribed form will result in the rejection of the proposal without further discussion (and in simplified procedures – without an effective mechanism to challenge the conditions before the review body).

A separate block concerns performance security. In certain procurements, this is implemented not through a guarantee, but by transferring a percentage of the contract value to the contracting authority's account prior to conclusion of the contract.

For a non-resident, this creates two bottlenecks:

- banking logistics of transferring funds within a short timeframe;
- internal bank compliance procedures, which are often more conservative in relation to defence-related transactions.

Another strict rule relates to the technical specification: detailed parameters of the goods may be drafted in such a way that deviation from the specified criteria constitutes grounds for rejection.

In simplified procedures, an additional factor arises: the absence of a classical mechanism for challenging procurement documentation before the review body.

As a result, contesting conditions after launch is usually more costly than selecting the appropriate procedure and contracting authority at the outset.

5. Money and logistics

A foreign supplier often expects that the contract price may be linked to a foreign currency or at least contain a price adjustment formula. In draft contracts accompanying UAS procurements, the approach is generally stricter: the price is set exclusively in hryvnias, the proposal is submitted in hryvnias, payment is made in hryvnias, and price adjustment formulas are frequently absent.

In parallel, delivery terms may be defined on a DDP basis to a specified location within Ukraine.

This means that the tenderer must incorporate into the hryvnia price the entire cost chain: logistics, customs clearance, insurance, taxes and duties, local costs and war-related risks.

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Here, the issue is not only legal accuracy but business logic: where the procedure does not allow price adjustment, the participation model must be financially sustainable in hryvnias at the moment of submission. For many foreign manufacturers, this becomes the point at which the format of market presence (direct participation, local partner, alternative structure) should be reconsidered.

6. Specific compliance requirements for non-residents

In summary, a foreign company planning to supply UAS in Ukraine and participate in defence procurement should consider an approximate list of compliance requirements.

For non-residents, participation in defence procurement almost always begins not with price and not even with technical characteristics, but with compliance issues. Such issues may not be expressly described in the procurement notice, yet they determine whether the company is in principle capable of performing the tender documentation requirements.

The first block is sanctions screening. In practice, not only the non-resident participant but also its control chain is reviewed: ultimate beneficial owners, parent companies, significant shareholders and executives. In the defence segment, this is particularly critical, as even indirect links with high-risk jurisdictions or persons subject to restrictive measures may result in refusal of cooperation before the proposal is substantively evaluated.

The second block concerns corporate capacity to sign. A documentarily impeccable chain of authority is usually required: who has the right to sign, on the basis of which corporate resolutions, within what limits, and how this is confirmed by documents recognised outside the jurisdiction of origin. Issues arise in relation to legalisation/apostille, the format of registry extracts, validity periods of documents, and whether the corporate structure of the non-resident corresponds to the expectations of the procurement documentation (for example, where the contracting authority expects the signatory to be the director/CEO, while signature is in fact made by an authorised representative).

For a non-resident, this is not a mere formality but a calendar issue: most registry extracts, as well as notarised and apostilled corporate documents, are rarely prepared within 48 hours.

The third block concerns banking compliance and payment operability. Even where the participation procedure formally ends with submission of the proposal, the foreign bank of the participant may, already at the preparation stage, request clarifications regarding the nature of the transaction, the status of the contracting authority, the goods, the funds flow route and the end use.

In sensitive defence categories, foreign banks often apply enhanced due diligence, which affects the participant's ability to carry out payment actions within the required timeframe (for example, transferring performance security prior to signing). This is not a question of legality, but

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of whether compliance clearance can be obtained in time.

The fourth block concerns export restrictions and end-use control in the non-resident's home jurisdiction. For a significant number of foreign manufacturers and traders of UAS, domestic law requirements regarding permits, licences, end user and end use are critical. Participation in procurement without prior assessment of such restrictions may lead to a situation where the company wins the tender but cannot deliver – and, importantly for participation, the contracting authority may request confirmation of export capability already at the proposal evaluation stage. Accordingly, the non-resident must assess not only technical compliance but also its legal ability to transfer the goods across borders in accordance with applicable control regimes.

The fifth block concerns the supply chain and origin of components. In UAS procurements, the origin of components (including sensitive electronic components, communication systems, navigation modules, and software) may have a compliance dimension. In certain cases, contracting authorities expressly or implicitly focus on the absence of components originating from high-risk jurisdictions and on a transparent model for updates, support and control over access to software components.

The non-resident should be prepared to explain how updates are managed, whether telemetry is transmitted to external servers, who controls critical functions and how this correlates with the contracting authority's security expectations.

The sixth block concerns the reputational and anti-corruption perimeter. The defence segment traditionally entails heightened sensitivity to intermediaries, agents, commission-based models and opaque consultancy payments. For a non-resident, it is critical to have a clear position: who represents the company, on what basis, for what remuneration, and whether such a model creates conflicts of interest or grounds for questioning the integrity of the procurement.

Participation through a local partner or agent may be an effective business strategy, but from a compliance perspective it must be documentarily transparent and logically justified.

Ultimately, compliance for a non-resident is not an additional layer of bureaucracy, but an instrument of risk management. A pre-prepared compliance dossier (ownership structure, corporate authority chain, sanctions screening results, export restrictions, supply chain structure and reputational profile) does not guarantee success but significantly reduces the risk of losing at a stage where price and technical parameters have not yet been examined.

7. Participation roadmap

The participation of a foreign supplier in UAS defence procurement is a sequence of control points:

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- to verify whether the specific procurement permits participation by non-residents and whether alternatives in terms of documents/explanations are provided;
- to identify electronic signature requirements and assess whether exceptions/simplifications apply to non-residents;
- to close the language block (translations, "quality documents in Ukrainian", supporting documentation);
- to verify security instruments: electronic bank guarantee with a strict template and/or monetary performance security;
- to ensure strict technical compliance with the specification;
- to build a hryvnia-denominated pricing model taking into account logistics costs in wartime conditions and the absence of currency adjustment formulas.

The final conclusion is pragmatic. The possibility for a foreign supplier to participate in UAS procurement in Ukraine exists, but success depends on how disciplined the company is in complying with the formal requirements of the specific procurement.

In this segment, the winner is the one who timely transforms its product into a legally compliant tender proposal.