

# SPAIN

## Overview

The 1996 defense budget totaled 812,114 million pesetas (US \$6.5 billion), a 6 percent decrease over the previous year. There will be zero growth in 1997. Since 1984, the Spanish defense budget has followed a downward trend, falling from 2.1% of Spain's gross domestic product in 1984 to 1.2% in 1996. As a result of these successive budget reductions, the Spanish Armed Forces have been forced to delay or cancel almost all major weapons systems acquisition programs. It is not expected that the current defense spending levels will be increased during the coming three years.

The Spanish defense industry is also in a period of contraction and reorganization similar to the U.S., thus limiting the immediate opportunities for sale of U.S. defense equipment. Further complicating the situation is the Government's budget deficit, which has caused severe cutbacks affecting both defense and defense-related industries.

However, Spanish interest in and respect for American-made defense items remains high and U.S. firms should consider this hiatus as an opportunity to lay the groundwork for potential sales three or four years from now, when the Spanish budgetary situation may improve and Spanish military requirements are clearer.

The Government has given high priority to the privatization of its interests in the public sector which may present opportunities for U.S. companies. The government has identified which state-owned companies in Spain can be privatized and the specific approach needed for privatization. It is understood that the plan is to privatize most of the state-owned companies within the next four years.

## Defense Industry Environment

Professionalization of the Spanish Armed Forces and Spain's full integration into NATO's military structure are top priorities of the current Government, elected in the Spring of 1996. The ensuing review of Spain's national defense needs and the identification of new missions may generate mid-term political support for a leaner, better trained military force, equipped with new, state of the art weapons. Any new acquisition needs will likely be presented to the public, not only in terms of their contributions to the national defense, but also in terms of the resulting employment and manufacturing opportunities for the Spanish economy. In 1995, the Spanish Armed Forces allocated the defense procurement budget among the Spanish military Services as follows: Army, (20 percent), Navy, (46 percent), and Air Force, (36 percent).

Traditionally, U.S. defense companies supplied the Spanish Armed Forces with all major weapons systems through the foreign military sales (FMS) program. Over the past 10-12 years, however, European defense companies, such as Aerospatiale, GEC-Marconi, and Alenia, have

entered the Spanish defense market with the support of their respective Governments, and U.S. firms are faced with fierce competition for each and every sale. Spain has also looked to Israel to purchase specialized electronic warfare equipment.

The major Spanish defense companies are publicly-owned and controlled by the Ministry of Industry. The Spanish defense industry has undergone major consolidation since the national defense budget cannot support more than one major company per sector. During the period 1990-1994, the majority of Spanish defense companies have faced personnel layoffs, factory closures and, in some cases, have gone out of business.

Spain's defense industry has traditionally been dominated by four publicly-owned firms: BAZAN (naval construction), CASA (aerospace), Santa Barbara (armored vehicles, artillery, ammunition, and small arms), and INDRA (defense electronics). The military programs of these companies represent 75 percent of total defense industry sales and a similar share of employment.

Under existing regulations, foreign companies cannot acquire more than 25 percent interest in any Spanish defense industry company without Government approval, on a case-by-case basis, of an equity interest of up to 49 percent.

### **Traditional Domestic Suppliers of Defense Equipment**

#### *Aeronautics/Aerospace*

- Construcciones Aeronauticas, S.A. (CASA)
- Aeronautica Industrial, S.A. (AISA)

#### *Electronics/Radar/Communications*

- Ceselsa; Guiado Y Control, S.A. (Gyconsa); Enosa; and Sociedad Anonima De Electronica Submarina (SAES) - all part of the Government owned INDRA group.
- Amper Programas De Electronica Y Comunicaciones, S.A.

#### *Weapons and Ammunition*

- Empresa Nacional Santa Barbara De Industrias Militares, S.A. (Santa Barbara)
- EDB
- Explosivos Alaveses, S.A. (EXPAL)
- Fabricaciones Extremenias, S.A. (FAEX)

#### *Shipbuilding*

- Empresa Nacional Bazan De Construcciones Navales Militares, S.A. (BAZAN)

### *Aeronautical Engines*

- Industria De Turbopropulsores, S.A. (ITP)

### *Armored Vehicles*

- Peugeot Talbot Espana, S.A.
- SBB Blindados, S.A. (SBB)

## **Defense Opportunities**

The Spanish market does offer a variety of defense trade opportunities for U.S. firms. Potential upgrades, replacement or spare parts, maintenance, logistics, and service opportunities include the following programs:

### *Air Force*

- F-18 Aircraft
- P-3 Aircraft - possible follow-on buy of 36 aircraft; possible mid-life upgrade
- C-130 Aircraft - purchase 2-6 aircraft
- Airborne Early Warning and Control System
- Advanced Medium Range Air-to-Air Missile

### *Army*

- Chinook Helicopter upgrade
- M-60 Tank upgrade
- M-113 Armored Personnel Carrier upgrade
- 1.5 Ton Multi-Purpose Wheeled Vehicle
- Attack Helicopters
- Infantry Assault Rifle

### *Navy*

- SH-60 Helicopter Block 1 upgrade
- Harrier AV-8B Aircraft - remanufacture of 11 aircraft
- F-100 Frigate Command, Surveillance, and Weapon Control Systems
- Mine-Hunters

The Services traditionally buy spare parts for U.S. weapons systems through the established FMS logistics follow-on support system; however, this market is not completely closed to U.S. commercial suppliers.

## **Defense Procurement Process**

The principal decision making agencies involved in the weapons system acquisition process are:

- Military Service
- Ministry of Defense
  - Directorate of Armament and Material (Direccion General De Armamento Y Material)
  - Office of the Secretary of State for Defense (Secretario de Estado De La Defensa)
- Office of Industrial Cooperation (Gerencia De Cooperacion Industrial).

The Services are responsible for defining a requirement, developing the corresponding technical specifications, and making a technical recommendation regarding the weapon system which best satisfies the requirement.

Within the Ministry of Defense, the Director General De Armamento Y Material is responsible for defining the acquisition strategy to be used for each procurement and reviewing the service's technical recommendation. Final contract award authority resides with the State Secretary for Defense (Secretario De Estado De La Defensa) and, in rare cases, with the Defense Minister.

The Office of Industrial Cooperation also plays a crucial defense procurement role. In every large procurement from a foreign supplier, it establishes procedures that lead to either substantial technology transfer from the bidder to a Spanish company or an obligation to import from Spanish manufacturers. This office is also responsible for negotiating and approving proposed industrial cooperation plans.

The types of procurement methods used will vary according to the complexity of the purchase. Contracts for spare parts, for example, are announced in the Boletin De Defensa (Defense Bulletin), and are usually firm fixed price contracts. Major weapons systems procurement may require prolonged negotiations. There are no barriers to U.S. firms receiving solicitations. Generally, however, the Ministry of Defense will award a prime contract to a Spanish firm which, in turn, will subcontract with a foreign firm for technical support and/or components. While import tariffs are applied to defense material, in some cases U.S. companies enjoy an advantage over European Union firms, since U.S. companies are not required to include the value added tax in their bids.

Because budgetary constraints force the Spanish Ministry of Defense to stretch out payments for needed equipment, creative financing alternatives will certainly enhance the competitiveness of American products. U.S. competitors are concerned that the U.S. may ease financing rules which would make U.S. defense products even more competitive.

## **Diversification/Commercial Opportunities**

Companies such as CASA, INDRA and BAZAN in the defense sector are earmarked for privatization during the next four years. A large share of INDRA is already in private hands, such as the French company, Thompson, and the U.S. company, Hughes.

There are many opportunities arising from both public and private projects where Spanish firms would welcome partnerships with U.S. high technology defense companies. Spain is investing heavily in infrastructure projects which present major opportunities for U.S. defense electronics manufacturers. Projected investments in airport infrastructure to the year 2010 amount to Pesetas one trillion (US \$7.2 Billion). This investment will be used to carry out major upgrades in security, air navigation, and ground support equipment. Thus, there is demand for laser technology, infrared and night vision equipment, radar communication equipment, and specialized display devices.

### *Telecommunications*

Full deregulation of the telecommunications sector by the year 2000 offers many opportunities for U.S. technology. The Government has approved the creation of a second telephone operator by 1997 (Retevisión), with similar buying power as the current telephone monopoly, Telefonica. A third cellular telephone license will be granted in 1997, complementing the second license granted in 1994. Already deregulated are trunking, paging, data transmission, value added services, and satellite transmission subsectors.

Demand will grow for state-of-the-art satellite (VSAT) equipment and related technology, as this form of transmission grows due to deregulation and the opportunity for direct transmission on independently-owned satellites. The cable TV market in Spain is about to explode and create literally an avalanche of opportunities now that regulations have been implemented. Spain has an excellent fiber optic cable network nationwide (Telefonica), giving defense manufacturers the opportunity to introduce the latest in optoelectronics and other specialized hardware and software.

### *Aerospace*

Even though Spain's flagship-carrier, Iberia, is experiencing severe economic difficulties and is reducing its fleet, there are still opportunities in the aviation/aeronautical sector. Several smaller but rapidly growing commercial carriers, such as Spanair and Air Europa, are interested in fleet expansion, and present opportunities for sales of aircraft, spare parts, and related equipment. Regional and local air travel is beginning to expand.

### *Environment*

According to OECD estimates, environmental investments in the EU, reached US \$54 billion in 1994. Nearly US \$3 billion was invested by Spain. Investments made by Spanish industry totaled US \$9.8 billion from 1990-1994. These investments are expected to increase 46 percent to US \$14.3 billion from 1995-1999.

## **Key Spanish Ministry Points of Contact**

### *Ministry of Economy and Finance*

Ms. Maria Elvira Rodriguez Herrer  
Directora General De Presupuestos  
Ministerio De Economia Y Hacienda  
Alberto Alcocer 2  
28071 Madrid, Spain  
Tel: 011-34-1-583-5056

### *Ministry of Industry and Energy*

Ms. Elisa Robles Fraga  
Directora General De Tecnologias Y Seguridad Industrial  
Ministerio De Industria Y Energia  
P. De La Castellana 160  
28071 Madrid, Spain  
Tel: 011-34-1-349-4000  
Fax: 011-34-1-457-8978

### *Ministry of Development*

Mr. Valentin Sanz  
Director General De Telecomunicaciones  
Ministerio De Fomento  
Palacio De Comunicaciones, P1. Cibeles S/N  
28071 Madrid  
Tel: 011-34-1-522-1972

## **Doing Business in Spain**

### **Marketing**

The Spanish market consists of a series of regional markets joined to two major hubs - Madrid and Barcelona. The vast majority of agents, distributors, foreign subsidiaries, and government controlled entities that make up the economic power block of the country operate in these two hubs. Dealers, branch offices, or Government offices located outside of these two hubs will almost invariably obtain their supplies from their Madrid and Barcelona contacts rather than engage in direct importation. The key to a foreign firm's sales success in Spain is to appoint a competent agent or distributor, or to establish an effective subsidiary in either Madrid or Barcelona. Cost, financing terms, and after-sales servicing play important roles in marketability of a firm in Spain.

American defense equipment companies are generally cost competitive against Western European manufacturers. Nonetheless, European defense equipment exporters provide generous financing and their governments also support them through various trade promotion schemes. Although U.S. defense equipment is respected for its high level of technology and overall quality, U.S. firms often fall short of their competitors in terms of flexibility in financing and after-sales service.

One of the most important aspects about doing business with the Spanish Armed Forces is the need to prepare a comprehensive and attractive industrial package for large procurement projects. An industrial package normally includes one or more of the following elements:

- Domestic manufacture of a significant share of the product
- New purchases from domestic suppliers
- Export assistance and promotion for domestic companies
- Agents and distributors; finding a local partner

Both the government and armed forces headquarters are located in Madrid. Therefore, most of the agents and distributors operating in the defense market are located in Madrid or surrounding areas and cover the entire country. Most U.S. defense equipment manufacturers sell their products in Spain through agents or distributors.

Regulations provide that a principal and an agent execute a written contract in which they stipulate the agreed terms, including provisions for cancellation of the agreement. A fixed-term, written contract normally does not raise any relevant issue with respect to its termination. By contrast, termination of an indefinite duration agreement may raise a number of legal issues. Successive renewals of a fixed-term contract may be interpreted by the courts as an indefinite-duration contract.

Verbal agreements are enforceable contracts, but require burden of proof. Under Spanish law, no one is bound in perpetuity. Should a party grant indefinite, exclusive rights, it is not bound forever by the initial commitment to the point that it cannot revoke the original, exclusive mandate. Nevertheless, an ongoing, indefinite relationship cannot be terminated without a reasonable cause. If it is terminated, damage compensation may apply, particularly if the termination is viewed by the court as being without reasonable notice or abusive.

The U.S. & Foreign Commercial Service (US&FCS) offers several programs to assist U.S. firms in marketing their products in Spain:

- *Agent/Distributor Search (ADS)* - A customized search for interested and qualified foreign representatives; will identify up to six foreign prospects that have examined the U.S. firm's product/service literature and have expressed interest in representing it.
- *Gold Key Service* - One-company trade mission. Appointments scheduled with Spanish companies that meet a profile of potential buyers, distributors, or representatives. An escort interpreter is provided as part of the service. Three week advance notice is required for scheduling. Fax Commercial Attache Rajendra Dheer at (011-341) 575-8655

for access to this service when planning a trip to Madrid or Barcelona.

## **Joint Ventures**

One way for a U.S. company to penetrate the Spanish market is through a joint venture. The following is a description of three types of temporary joint ventures under Spanish law.

- *Uniones Temporales De Empresas (UTE)* - A group of companies can form temporary business associations (UTE) to undertake specific projects for a limited time. This type of association does not have a separate legal personality. Therefore, companies maintain their legal status while allowing common operations under a set of regulations. Foreign companies can enter this type of arrangement.
- *Agrupacion De Interes Economico (AIE)* - This economic interest group is also a type of joint venture between Spanish participants (American companies established in Spain are considered Spanish companies). It is similar in concept to a partnership because its participants have joint and separate liability for their debts. To form an AIE, the participants must execute a public deed, incorporating bylaws, and record it at the commercial register. The internal operation of an AIE is similar to that of a corporation and an AIE can be converted, at any time, into another type of commercial entity.
- *Agrupacion Europea Se Interqs Economico (AEIE)* - This is the European version of the AIE, the European Economic Interest Group. A cross-border version of the AIE was introduced by EU Regulation 2137 of 1985. A local AEIE is a separate legal entity and must be incorporated in Spain and recorded in the commercial register. In most respects, it is similar in constitution and operation to an AIE.

These three joint ventures models are tax transparent, and they apportion their income among members. In all of these cases, the members are responsible for profits and losses.

Joint ventures in the defense sector require approval by the Government. As stated earlier, defense companies cannot have more than 25 percent foreign ownership. The Government (Council of Ministers) must approve and may allow a greater than 25 percent interest (up to 49 percent). If only commercial products are involved, 100 percent ownership interest is possible. U.S. owned companies in Spain are on an equal footing with Spanish firms.

## **Establishing an Office**

The first decision a foreign investor in Spain must make is whether to incorporate a subsidiary (i.e. a separate corporation) or a branch. Both have full legal status for any kind of operation and their profits are taxable in Spain. If the investor decides to incorporate a subsidiary, the next decision is whether to incorporate a public limited-liability company (Sociedad Anonima, or SA) or a private limited company (Sociedad De Responsabilidad Limitada or SL or SEL). The SA is structured for larger businesses, the SL for smaller. In both types of companies, the shareholders are not liable for the company's debts. The main differences are in their capital (10



million pesetas versus half a million), the number of founding members (3 versus 2), flexibility permitted at general meetings, transfer of shares, and management of an Sociedad Limitada (SL).

Companies interested in setting up an operation in Spain must consider legal advice. Major consulting groups, as well as law firms, are available to carry out the necessary steps for incorporation in Spain. The Consular section of the American Embassy maintains an updated list of English speaking attorneys.

## **Selling to the Government**

Although legislation regarding the consolidation and rationalization of public-sector purchases was passed in 1985, there is still no central purchasing agency within the Spanish government or its controlled industries. Each government ministry, agency, or government-owned company procures supplies and services independently. Regional and local government agencies follow the same general procedures regarding foreign purchases as the central government.

The various types of tenders used in Government procurement are as follows:

- *Auction (Subasta)* - the contract is awarded to the lowest bidder;
- *Selective tender (Concurso-Subasta)* - the contract is awarded to the lowest of pre-qualified bidders;
- *Tender (Concurso)* - the contract is awarded on the basis of most advantageous overall proposal in which price may not be the determining factor; and
- *Private Tender* - the contract is awarded to whatever firm the Government chooses.

International tenders are announced at least 40 days prior to the submission date and domestic tenders 20 days before the submission date. Validating documentation may be requested at submission. All requirements are published in the official state bulletin.

Under Spanish law, foreign companies seeking contracts with the Spanish government are treated the same as Spanish firms. In many of the large defense procurement bids, however, decisions are made on political grounds. American companies established in Spain receive national treatment.

Requirements for international tenders are that the foreign enterprise must have legal status (for example, corporation or partnership) in accordance with its own national laws and the firm must also be prepared to waive jurisdiction in favor of Spanish courts. Approval of the Ministry of Economy and Finance is required for contracts resulting in payments in foreign currencies. For major defense procurements, the Spanish government generally asks vendors to offer substantial offsets.

## **Offsets**

There are no established regulations or procedures for offsets in Spain. An offsets

package may include transfer of technology, investment, or additional Spanish export transactions. Typical offset commitments for military sales reportedly range from 130 to 200 percent of the purchase price.

There is not a single government policy towards crediting offsets. The Defense Ministry allows offset credits in privately owned companies or operations. In all cases, prior project approval is required to credit offsets.

## **Intellectual Property Rights (IPR)**

### *Patents*

The Spanish Patents Act of March 20, 1986, brought Spain into conformity with the European patent convention and the anticipated EU patent convention, as a requirement for its entry into the EU. Many products imported before 1986 are still under the previous legal regime which allowed introductory patents for imported goods. The exclusive exploitation period for introductory patents, which are only valid for manufacturing, is 10 years, but these do not afford protection for imported products.

A 20-year period for working patents is available and the patent must be worked within three years of patenting. Third parties may be licensed to use the patent for a fee. There is a two month average wait for provisional registration and more time for patents with opposition. Utility designs incorporating technological innovations are patentable in exclusivity for 20 years.

### *Industrial Designs*

Industrial designs are known by their form or external characteristics and are eligible for exclusive exploitation for renewable periods of 10 years. Although third parties may oppose registration on the basis of similarity to already registered models, registration is not forfeited because of non-use.

### *Trademarks*

Both the Trademark Law of November 1988 and the Intellectual Property Law 175087 of November 1987, address protection for brand names and trademarks. Trademarks must be registered to be protected. The right of exclusive use, following acceptance of the brand or mark in the industrial property register, enjoys full protection.

Trademark protection lasts for 29 years and may be renewed. The courts may declare the expiration of a trademark that has not been used for five years. The first applicant is entitled to registration and exclusive use. As signatories to the "Paris Union" International Convention on Industrial Property, the United States and Spain grant national treatment to the intellectual property of the other.

### *Copyrights*

The Intellectual Property Law of November 1987 offers copyright protection for all original literary, artistic, or scientific creations, including computer software. Spain and the United States are members of the universal copyright convention. To be accorded protection, U.S. authors must include the copyright symbol, title, name of author, and first date of publication. The copyright is valid for the life of the author and for 80 more years for heirs.

Computer software is eligible for 50 years of protection. Nonresident U.S. citizens in Spain may contact the U.S. Department of Commerce, Spain Desk Officer, at the American Embassy in Madrid, or the American Consulate General in Barcelona, for a list of attorneys to file intellectual property rights applications. A list of patent attorneys is also available from the Industrial Registry Section of the Ministry of Industry and Energy.

### **Need for a Local Attorney**

Foreign companies and individuals are advised to seek legal advice for any business operation in Spain, whether it is set up as subsidiary or a branch, to carry out business transactions, or to acquire residency in Spain. Regulations are complex and legal help is useful in many everyday commercial activities. The Consular Section of the U.S. Embassy maintains an updated list of English speaking attorneys operating in Spain.

### **In Summary**

- *Involve the U.S. Embassy* - U.S. and Foreign Commercial Service, the Office for Defense Cooperation (ODC), the Defense Attache's Office (DAO) and/or the political/military and economic sections.
- *Find a good Spanish joint venture partner.*
- *Find an agent* who knows the key Government decision-makers for the procurement project of interest. Key company officials should meet with them.
- *Price is not always the deciding factor.* Political pressure and other factors are also important.
- *Demonstrate concern, not indifference.* Meet delivery schedules; promise only what can be delivered.
- *Demonstrate commitment to the Spanish market.*

As a signatory to the MTCR and other defense and dual-use related control bodies, Spain enforces a licensing system (including end-user certificates) which could affect potential imports and re-exports. U.S. companies should obtain the necessary permits and ensure that their Spanish partner has done likewise before finalizing a contract. Separate from these international regulations, Spain also has a series of laws governing the importation of weapons (including handguns), which may work to limit opportunities for commercial sales. Spain is also a signatory

of the IPC and will protect foreign technology, although the Government firmly opposes the use of "black box" technology.

## **U.S. Government Points of Contact**

Listed below are useful points of contact for U.S. firms interested in the Spanish market.

### **U.S. Embassy**

American Embassy Madrid  
Serrano 75, Madrid  
Tel: (34-1) 577-4000  
Fax: (34-1) 577-5735

Points of Contact at the Embassy:

David Nelson, Counselor for Economics Affairs  
Gustavo Delgado, Political/Military Affairs Officer

Points of Contact at the Defense Attache's Office:

Capt. Tinsley, U.S. Defense Attache  
Maj. Nunez-Barreiro, Assistant Air Attache

US&FCS Madrid  
Serrano 67, 4th floor, Madrid  
Tel: (34-1) 576-0602  
Fax: (34-1) 575-8655

Points of Contact :

Rafael Fermoselle, Commercial Counselor  
Raj Dheer, Commercial Attache  
Harry Tyner, Assistant Commercial Attache  
Luis Santamaria, Commercial Consul (Barcelona)

Office of Defense Cooperation (ODC)  
Tel: (34-1) 549-1339  
Fax: (34-1) 543-3207

Points of Contact:

Capt. Leroy Sheehan, USN Chief, ODC Spain  
LTC Cliff Graham, U.S. Army Material Officer  
Col. Glen Locklear, U.S. Air force Material Officer

LTC Jose Rodriguez, U.S. Air Force Material Officer  
CDR Michael Kapsch, U.S. Navy Material Officer  
CDR Christopher Schnedar, U.S. Navy Material Officer  
LTC Jeffree, USMC Material Officer  
Ms. Paula Guluzian, Armaments Cooperation Specialist