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Public Procurement 2016

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1 Relevant Legislation

1.1 What is the relevant legislation and in outline what does each piece of legislation cover?

Public procurement legislation in Greece consists of a multi-layered structure of legal acts. It may be divided into the legislation by which the core EU Directives were transposed into the Greek legal system, and the legal instruments that regulate those cases that either fall below the EU thresholds or are not covered by EU legislation.

Directives 2004/17/EC, 2004/18/EC, 2009/81/EC and 1989/665/EEC have been transposed into the Greek jurisdiction through:

(i) Presidential Decree (PD) 59/2007 (on public procurement contracts in the fields of water, energy, transportation and postal services);

(ii) PD 60/2007 (on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts);

(iii) Law 3316/2005 (on studies and other connected services relating to the design and performance of public works and falling within the scope of Annex II A of Directive 2004/18/EC and Annex XVII A of Directive 2004/17/EC);

(iv) Law 3669/2008 (codification of legislation on public works);

(v) Law 3886/2010 (on legal protection of the parties participating in public tender); and

(vi) Law 3978/2011 (on contracts within the fields of defence and security).

When the value of public contracts is below the EU thresholds (see question 2.5), the following shall apply:

(i) Law 2286/1995 (on public procurement);

(ii) PD 118/2007 (Public Supplies Code);

(iii) Law 3669/2008 (codification of laws on public works);

(iv) Law 3316/2005 (on studies and other connected services relating to the design and performance of public works and falling within the scope of Annex II A of Directive 2004/18/EC and Annex XVII A of Directive 2004/17/EC); and

(v) other provisions of public procurement contained in special legislation relating to the Municipalities, Prefectures, Church, or other particular bodies (i.e. TRAINOSE, EYDAP, etc.).

On 1 January 2016, Law 4281/2014 will enter into force, fully incorporating Directives 2004/17 and 2004/18 and regulating all matters regarding public procurement, with the exception of contracts in the field of defence and security.

1.2 Are there other areas of national law, such as government transparency rules, that are relevant to public procurement?

Transparency is one of the basic principles in Greek jurisdiction and a prerequisite for safeguarding public interest.

Article 139 of Law 4281/2014 provides for the operation of a Central Electronic Register of Public Contracts, which aims at the collection, processing and publicity of data regarding public contracts concluded by contracting authorities/entities and central purchasing bodies. The data which are published to the Register refer to all of the stages of public contracts.

Finally, Law 3310/2005, relating to the transparency of public contracts (major shareholder) imposes disclosure obligations *vis-à-vis* any candidate in public tenders who has been awarded a public contract; in particular, according to the relevant legislation, the financing documentation which provides the granting of loans to entities participating in tender processes must be notified to the national broadcasting authority (National Radio and Television Authority; NRTA/ESR as per its Greek initials). Failure to do so might render the financing null and void.

1.3 How does the regime relate to supra-national regimes including the GPA, EU rules and other international agreements?

Greece has been a member of the GPA since 1 January 1996, and a member of the Revised GPA as an EU Member State. Membership of the latter was accepted on 6 April 2014.

As an EU Member State, Greece must comply with all EU legislation in the field of public procurement.

1.4 What are the basic underlying principles of the regime (e.g. value for money, equal treatment, transparency) and are these principles relevant to the interpretation of the legislation?

The basic principles of Greek public procurement law are:

1) transparency and publicity of the procedures;

2) equal and non-discriminatory treatment of candidates/economic operators; and

3) competition in order to succeed the best possible offer.

Other applicable principles are (a) the obligation of the awarding authority to provide sufficient reasoning of its decisions, and to

ensure legal certainty and compliance of candidates with public procurement rules, and (b) the principle of formality of the procedure, according to which all terms and conditions of the tender documents are material, and deviation from them results in the exclusion of the candidates.

1.5 Are there special rules in relation to procurement in specific sectors or areas?

Public procurements of the defence sector are governed by Law 3978/2011, incorporating Directive 2009/81/EC, and Law 3433/2006 (supply of military equipment).

Moreover, public procurement of public hospitals is governed by Laws 3580/2007 and 2955/2001, and PPP contracts by Law 3389/2005.

2 Application of the Law to Entities and Contracts

2.1 Which public entities are covered by the law (as purchasers)?

The public entities that are covered by the rules of public procurement legislation are the Greek State, regional and local authorities (i.e. Prefectures and Municipalities), legal entities governed by public law, and associations formed by one or more of such authorities, or by one or more of such legal entities governed by public law.

2.2 Which private entities are covered by the law (as purchasers)?

Private entities covered by public procurement legislation are:

- entities established to accommodate public interest needs, without an industrial or commercial character, vested with legal personality and either financed or controlled by the State, public law legal entities, municipalities, etc.; and
- entities financed (by at least 50%) by the State, regional or local authorities or other public law legal entities.

2.3 Which types of contracts are covered?

Under Greek public procurement law, the following types of contracts are covered:

a) public works (construction) contracts of either only the execution or the design and execution;

b) contracts for the supply of goods, including the purchase, financial leasing, leasing or sale and lease-back agreement of goods. Such a contract also covers services of installation and adjustment of these goods;

c) contracts for the provision of services covering both the execution of services on behalf of public sector and the offer of services with the form of a complete project, falling within the tertiary sector;

d) public works concession agreements (beyond the threshold of €5,278,000);

e) mixed contracts which embody features of more than one of the aforementioned contracts; and

f) public-private partnerships (PPP).

2.4 What obligations do purchasers owe to suppliers established outside your jurisdiction?

Greek contracting authorities shall treat all economic operators equally and non-discriminatorily, and shall act in a transparent way.

Moreover, according to Article 4 of PD 60/2007, when contracting authorities conclude a contract, they shall apply, in their relations with other Member States, conditions as favourable as those which they grant to economic operators of third countries in implementation of the Agreement on Government Procurement concluded in the framework of the Uruguay Round multilateral negotiations.

2.5 Are there financial thresholds for determining individual contract coverage?

As per PD 60/2007 (on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts), the set financial thresholds are:

a) €134,000 regarding public contracts for the supply of goods and provision of services, awarded by governmental authorities, mentioned in Annex IV of PD 60/2007;

b) €207,000 with regard to public contracts for the supply of goods and the provision of services awarded by authorities other than those mentioned in Annex IV of PD 60/2007, or by authorities which are mentioned in the above Annex but work in the field of national defence or by any public authority with regard to the services mentioned in Annex II A (eighth category); and

c) €5,186,000 with regard to public contracts for the assignment of construction works.

As regards the public contracts in the fields of water, energy, transport and postal services (PD 59/2007), the minimum thresholds – excluding VAT – are set as follows:

a) €414,000 with regard to contracts for supplies, services and project planning; and

b) €5,186,000 concerning contracts for the assignment of construction works.

As regards public contracts in the sector of national security and defence, the following financial thresholds are currently in force and refer to the value of contract, excluding VAT:

a) €414,000 with regard to contracts for supply of goods and provision of services; and

b) €5,186,000 with regard to works contracts.

For those contracts, the value of which fall below the above thresholds, the provisions of PD 118/2007 shall apply.

The aforementioned thresholds will remain until 31 December 2015. As of 1 January 2016, the new public procurement legislation which is expected to apply will set the threshold for its application to the amount of €2,500.

2.6 Are there aggregation and/or anti-avoidance rules?

PD 59/2007 and PD 60/2007 contain specific provisions regarding the calculation of the contract, which include aggregation and anti-avoidance rules. The calculation of the value of a public contract is based on the total payable amount (excluding VAT) as determined by the contracting authority. In this calculation, the estimated overall net value of the contract to be awarded (including all options, lots and extensions of the contract) should be taken into consideration.

Contracting entities may not circumvent the above provisions by splitting works projects or proposed purchases of a certain quantity of supplies and/or services, or by using special methods for calculating the estimated value of contract.

2.7 Are there special rules for concession contracts and, if so, how are such contracts defined?

Concession contracts are contracts of the same nature as works/services contracts, except for the fact that the consideration consists either solely in the right to exploit the work or in that right together with payment.

Articles 67 to 72 of PD 60/2007 contain specific rules for the award of public works concessions, whose value is set beyond €5,278,000. According to the law, a public works concession is a public contract signed between a contracting authority and a concessionaire aiming at the construction of a building project or a civil engineer's project, for the purpose of meeting certain financial or technical needs. The payment of the concessionaire consists either solely in the right to exploit the work, or in this right together with payment.

Similarly, a service concession is a contract similar to the public service contract, except that the payment of the concessionaire is not from the purchaser but from third parties which shall use the service. In some cases, the concessionaire might also receive extra payment from the purchaser. Apart from the prohibition of discrimination on the basis of nationality, service concession contracts fall neither within the scope of PD 59/2007, nor of PD 60/2007.

2.8 Are there special rules for the conclusion of framework agreements?

Contracting authorities are free to conclude framework agreements, as long as they do not use this procedure abusively or in a way that restricts or distorts competition. A special feature of the contracts based on framework agreements is that the parties cannot substantially amend the terms of the framework agreement and that its duration cannot exceed a four-year period, unless the nature and the object of the framework justify such an extension. In cases of multi-supplier frameworks, the participating entities should be more than three, unless there is an insufficient number of economic entities fulfilling the choice criteria.

2.9 Are there special rules on the division of contracts into lots?

Although EU Law forbids the methods of prospective splitting of the contracts in order to avoid the strict context of competitive procedure and benefit from the provisions relating to a direct award of the contract, contracting authorities proceed to the division of a public contract into lots, in order that the financial thresholds of each separate public contract will not exceed the Directives' thresholds.

To avoid this prospective undervaluation of public contracts and the consequent non-implementation of EU Directives, EU and national legislation provide for special methods in relation to the calculation of the contract's value.

3 Award Procedures

3.1 What types of award procedures are available? Please specify the main stages of each procedure and whether there is a free choice amongst them.

Under Greek public procurement law, the following procedures are available to award a public contract.

- **Open procedure**: This procedure allows anyone to submit a tender to supply the goods or services that are required. Stage award procedure is very common; generally, an invitation will be launched, giving notice that the contract is being tendered, and offering an equal opportunity to any party (organisation or individual) to submit a tender.
- **Restricted procedure**: This procedure evolves in two stages. In the first stage, the contracting authority publishes an invitation to an Express of Interest (EoI). The second stage begins after the expiry of the deadline for the submission of interest; the contracting entity will select, taking into consideration the criteria of the tender, the number of eligible candidates who will submit an offer, inviting all of them through a Request for Proposal (RfP).
- **Draft tender procedure**: This type of award procedure is only available for public contracts from €20,000 to €60,000 (excluding VAT). For these tender procedures, there is no need for a publication of the invitation to tender.

For the cases falling above EU thresholds, the following are also available:

- **Competitive dialogue**: This procedure applies to complex contracts and is a three-stage procedure. At the beginning, the contracting authority publishes an EoI invitation. After pre-selecting some eligible candidates, the public entity conducts a dialogue with the candidates, attempting to find some suitable solutions which could accommodate the former's needs. On the basis of this dialogue, the pre-selected candidates submit a tender. However, this procedure does not apply in public contracts in the sectors of water, energy, transport and postal services.
- **Negotiated procedure**: This is the most flexible and least formal public procurement procedure, and can be held either with or without the publication of a contract notice. The negotiated procedure is generally applied if an open or a restricted tender had not been successful, or in cases enumerated in PD 60/2007 (e.g. the contract can only be carried out by a particular contractor for certain reasons or, due to extreme urgency, the contracting entity cannot abide by the specific dates set for an open or restricted procedure).
- **Framework tendering**: This procedure can only be applied after the conduct of an open, restricted or negotiated tendering and selection of the respective bidders. The selection of the contracting parties to the framework agreement takes place pursuant to the award criteria. One or more suppliers are then selected and appointed. Where there is more than one suitable supplier on the framework, the contracting authority may introduce a secondary selection process to assess which supplier is likely to offer the best value for a specific project.
- **Dynamic purchasing system**: As this system is a completely electronic stage, in the first stage, all the tenders who fulfil the criteria set by the authority are invited to submit a non-binding offer for the provision of commercially available services. Subsequently, all economic operators who satisfy the selection criteria are invited to submit a bid.

3.2 What are the minimum timescales?

In general, contracting entities should take into account several aspects when setting the time limits for receiving a tender (e.g. the complexity of the contract to be signed, the time required for preparing their offers, etc.). The minimum timescales vary according to the type of awarding procedure and the stage of the respective procedure. Moreover, under certain circumstances, timescales could be shortened (e.g. extreme urgency, usage of electronic communication, etc.). Nonetheless, Article 32 of PD 60/2007 (in accordance with Article 38 of Directive 2004/18/EC) sets out some minimum timescales as follows:

- In the case of open procedures, a time limit of fifty-two (52) days – starting from the date on which the contract notice (invitation to tender) is sent – is granted to candidates for submission of bids.
- In restricted procedures, negotiated procedures with publication of a contract notice and competitive dialogue, a minimum timescale of thirty-seven (37) days after the issuance of the contract notice should be allowed.
- With regards to restricted procedures, the minimum timescale before receipt of requests is forty (40) days, starting from the date on which the Request for Proposal (RfP) is sent.
- In cases where contracting entities have published a prior contract notice, the minimum timescale before receipt of tenders can be shortened to thirty-six (36) days, but under no circumstances can it be less than twenty-two (22) days. For open procedures, this deadline starts from the date on which the contract notice is sent, and for restricted procedures, from the date on which the RfP is sent.

With regards to restricted procedure and negotiated procedure, in certain cases (i.e. for reasons of urgency or when the contract notice is sent by electronic means), the minimum timescales can be shortened to fifteen (15) and ten (10) days respectively.

3.3 What are the rules on excluding/short-listing tenderers?

If proven that a candidate has been convicted for certain offences, such as participation in a criminal organisation, corruption, fraud and money laundering, then the contracting authority should (mandatory competence) exclude (disqualify) such a candidate from the procedure. Additionally, if the candidate, the major shareholder, or the members of the board are media corporations or major shareholders or members of the BoD of such corporations respectively, then they should be excluded from the contractual procedures. Similar restrictions apply *vis-à-vis* BoD members or representatives of offshore companies located in any of the non-cooperative tax jurisdictions.

However, there are exclusion criteria when the contracting authority has the choice (discretionary power) to include in the invitation to tender. These cover cases when:

a) the candidates are not fulfilling the financial or technical standards set by the contracting authority;

b) the candidate is declared bankrupt or has submitted a petition for bankruptcy, or is subject to a rehabilitation process;

c) the candidate does not comply with the existing environmental obligations as well as legal constraints regarding labour law;

d) the candidate has been convicted for a crime regarding its professional capacity;

e) the contracting authority spots that the bidder has violated the rules regarding the competition between candidates, or has tried to influence the contracting authority by using unlawful means;

f) the candidate fails to provide evidence of meeting other obligations such as tax and insurance obligations; and

g) the candidate fails to provide evidence of meeting quality standards.

3.4 What are the rules on evaluation of tenders?

Public contracts are awarded to candidates deemed as eligible, taking into account the nature of the contract and the criteria set in the tender invitation. Apart from this, some general rules (i.e. suitability of the candidate for exercising a professional activity, economic and financial standard of the candidate, and technical and professional ability) should also be considered. When the contracting authority evaluates the content of the tender offers, it should also take into consideration the compliance of the bidder with all formal requirements (e.g. time limits, etc.).

3.5 What are the rules on awarding the contract?

The contracting authority may award the public contract on the basis of one of the following two criteria:

a) the most economically advantageous tender from the point of view of the contracting authority; or

b) the lowest price.

In the first case, the award shall depend on various criteria linked to the subject matter of the public contract in question; for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion.

In the second case, the only criterion is the lowest price, objectively decided.

In the contract notice, the contracting authority should clearly state the specific criterion (out of the above-mentioned criteria) by which the award will take place.

3.6 What are the rules on debriefing unsuccessful bidders?

Upon issuance of any decision in relation to the public procurement contract, the awarding authority is obliged to inform all candidates about the outcome of their tender. This information is essential in order for the excluded applicant to be able to exercise its legal rights. Moreover, according to Article 35 of PD 60/2007, upon the request of each rejected bidder or applicant, a personal notification can be sent sufficiently substantiating the reasons for the rejection of their bid or application. If the applicant has submitted an admissible tender, the contracting authority should then also provide him with the name of the successful bidder, and mention the award criteria and the main arguments for the selection of this specific bidder.

3.7 What methods are available for joint procurements?

With respect to joint tenders, meaning the combination of the procurement actions of two or more contracting authorities, Greek public procurement law contains no specific provisions. However, it does not rule them out.

3.8 What are the rules on alternative/variant bids?

Greek law states that contracting authorities may allow candidates to submit variant bids under the condition that the contract is awarded based on the criterion of the most advantageous tender. Contracting authorities should clearly state in the tender notice whether they accept variant bids; otherwise, alternative bids are prohibited. Furthermore, contracting entities who allow variant bids should include, within the tendering specifications, the prerequisites which variant bids should meet, in addition to specification of the way of submitting these bids. Only those alternative bids which meet the set standards should be taken into consideration.

The same rules will apply after the entry into force of Law 4281/2014.

3.9 What are the rules on conflicts of interest?

According to Article 4 of Law 3310/2005, media corporations and their major shareholders are prohibited from signing public contracts.

Moreover, the new Law 4281/2014, entering into force on 1 January 2016, includes a special Article (no. 45) under the title "conflict of interests". Under this provision, aiming at mitigating corruption phenomena, any member of the contracting authority should raise personal conflicts of interest issues, as well as conflicts of their relatives with a candidate, or a candidate. The same applies for the applicants who are also obliged to disclose any kind of conflicts with members of the contracting entity. In cases of conflicts of interest, the contracting authority should immediately inform the Hellenic Single Public Procurement Authority and take any adequate measure to remedy the conflict. If any measure cannot be found, the authority may proceed as an *ultimum refugium* to the exclusion of the candidate or the bidder.

4 Exclusions and Exemptions (including in-house arrangements)

4.1 What are the principal exclusions/exemptions?

As mentioned above in question 1.1, public contracts in the field of water, energy, transport, postal services, telecommunications and national security and defence are regulated by special rules (PD 59/2007 and Law 3978/2011). Moreover, there are other special regulations in specific public procurement sectors (e.g. supplies, public works, etc.) and rules of specific entities (churches, municipalities, etc.).

Apart from the above, PD 60/2007, which is the main legislative tool for public procurement, does not apply to:

- contracts awarded pursuant to international rules;
- public contracts for the provision of services concerning:
  - i) the purchase or lease of land, existing buildings or other immovable property or concerning rights thereon;
  - ii) the purchase, development, production and co-production of programmes intended for TV and radio organisations;
  - iii) arbitration and conciliation services;
  - iv) the issuance, purchase or transfer of securities or other financial instruments;
  - v) employment contracts; and
  - vi) research and development other than those services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on the condition that the service provided is wholly remunerated by the contracting authority;
- public contracts concerning services awarded on the basis of an exclusive right;
- public contracts for the construction of social housing; and
- service concessions.

4.2 How does the law apply to "in-house" arrangements, including contracts awarded within a single entity, within groups and between public bodies?

In-house arrangements are excluded from the scope of the EU Directives. More specifically, these arrangements, regarding the ability of the contracting authorities to accommodate their needs using internal means, are not considered as public contracts. As a result, the rules which regulate public contracts do not apply in these cases. Therefore, there is no provision for the application of the law to in-house arrangements, including contracts awarded within a single entity, within groups and between public law entities.

5 Remedies

5.1 Does the legislation provide for remedies and if so what is the general outline of this?

Under Law 3886/2010, acts or decisions issued by the contracting authority in breach of EU rules or national legislation may be challenged by anyone with legal interest. The available legal measures include:

a) interim relief measures (provisional remedy);

b) request for annulment of the acts (or omissions) of the contracting authority (ordinary remedy); and

c) award of damages.

In order to initiate judicial proceedings for interim relief measures, the candidates are expected to:

a) File a pre-judicial objection (administrative recourse) before the competent contracting authority.

b) If the recourse is either explicitly or deemed to be rejected by the contracting authority, an application for interim relief measures may be lodged, based on the same grounds as in the above-mentioned recourse. According to Law 3886/2010, the court may, upon special request of the candidate, issue an order suspending the award procedure.

c) In cases where the candidate obtains interim measures, he may initiate ordinary proceedings and submit an application for the annulment of the illegal act or omission.

d) Finally, the candidate is expected to claim damages if the awarding authority proceeds to signing the contract, despite the declared interim measures, or in cases where it had been excluded or the tender was not awarded, in breach of EU or internal legislation.

Similar legal remedies (interim measures and annulment) may be pronounced for tenders falling outside the scope of the EU legislation.

5.2 Can remedies be sought in other types of proceedings or applications outside the legislation?

Apart from the aforementioned procedures, a complaint to the European Commission can also be made, and this may ultimately

lead to the Commission taking action before the Court of Justice of the EU under Article 258 of the TFEU against the Member State concerned for infringement of the relevant Directive.

5.3 Before which body or bodies can remedies be sought?

The pre-judicial administrative recourse should be addressed to the competent contracting or tender authority, whereas judicial review of the award procedures and compensation claims is vested with either the Council of State or the Administrative Courts of Appeals.

5.4 What are the limitation periods for applying for remedies?

1) *Pre-judicial administrative recourse under the ambit of Law 3886/2010*

   This shall be filed before the contracting authority within ten (10) days from the date on which the candidate has been aware of the Administration's illegal action or omission.

2) *Application for interim measures under Law 3886/2010*

   Filing of application for interim measures takes place within ten (10) days from the explicit or implicit rejection of the pre-judicial recourse.

3) *Request for annulment of an act or omission*

   - If the application for interim measures is upheld, the request for annulment is lodged within thirty (30) days from the service of the relevant ruling on interim measures.
   - In cases where the application for interim measures is rejected, the annulment request is lodged within sixty (60) days as from the date of issuance of the relevant decision.

With regard to the judicial review of tender decisions for the award of contracts falling under the EU thresholds, general principles regulating common annulment requests apply (sixty (60) days from the date of publication/notification of the decision).

5.5 What measures can be taken to shorten limitation periods?

No relevant provision exists. However, application for interim measures may prematurely be filed, i.e. before the expiry of the 15-day period, provided that, until the hearing of the said measures, such a period has lapsed.

5.6 What remedies are available after contract signature?

As per Law 3886/2010, if the contract has been awarded and signed without the prior publication of a contract notice in the *Official Journal of the EU*, or if the standstill obligation or the obligations laid down in Articles 26(4), 27(2)(b) and 27(5) and (6) of PD 60/2007 have not been respected, any interested party may request from the Court to declare the contract as invalid as from its signing.

5.7 What is the likely timescale if an application for remedies is made?

As regards the *pre-judicial administrative recourse*, the respective decision should be issued within fifteen (15) days from the filing of the recourse. With respect to the *application for interim measures*, the hearing date should not be set beyond thirty (30) days from the filing of such an application. The Court is expected to hand down the ruling within twenty (20) days from the hearing. The ruling without its justification is published within seven (7) days from the hearing date.

As far as the *request for annulment* is concerned, as a rule of thumb, the (initial) hearing date is not expected to be set beyond three (3) months from the filing of the recourse. The hearing date before the regular administrative courts is normally set within six (6) months from the filing of the recourse; however, both the above timescales are extended due to the heavy backlog of the Courts.

5.8 What are the leading examples of cases in which remedies measures have been obtained?

Cases for which remedies measures have been obtained are for the following grounds:

a) Provisions included in the RfP violating the principle of equal/non-discriminatory treatment of candidates (Council of State 354/2014).

b) The contracting authority has illegally granted to the candidates the right to submit supplementary documents to the documentation already submitted with the initial proposals (Council of State 325/2012).

A candidate illegally excluded from the tender process is entitled to claim the award of damages, including the loss of profit, even if the liability of the state has arisen in the course of the pre-contractual stage (Council of State 451/2013).

5.9 What mitigation measures, if any, are available to contracting authorities?

Upon the filing of interim relief measures, the contracting authorities are entitled to:

a) file a request to the competent court in order to lift the suspensory effects of the application;

b) comply with the decision (i.e. amend or revoke the challenged act or omission) or wait until the final decision of the court, regarding the annulment of the decision, is issued; or

c) cancel the tender and re-launch a new one, in compliance with the rules.

6 Changes During a Procedure and After a Procedure

6.1 Does the legislation govern changes to contract specifications, changes to the timetable, changes to contract conditions (including extensions) and changes to the membership of bidding consortia pre-contract award? If not, what are the underlying principles governing these issues?

The content of the contract to be signed by the successful bidder is disclosed as being part of the invitation to tender. This means that the content should remain unchanged until the conclusion of the relevant agreement is in compliance with the principle of equal treatment between the candidates and the transparency principle.

In consequence, the main terms and conditions of the tender are not to be altered materially; failing which, the process may eventually lead any affected candidate to seek recourse, arguing that such an amendment is in breach of the above-mentioned principles. In the post-signing phase, the core principle of law "*pacta sunt servanda*" certainly applies in the field of public contracts as well. As a result, in principle, the content of the contract should not be amended materially.

6.2 What is the scope for negotiation with the preferred bidder following the submission of a final tender?

Upon submission of the final tender, it is generally accepted that no negotiations with the preferred bidder can be accepted, since it would be against the core principle of equal treatment between the candidates and of transparency. In all negotiation procedures, the final tender results from the evaluation of the bids. Thus, if no bid meets the criteria set by the contracting authority, then the procedure should be recalled and, eventually, a new tender re-launched.

6.3 To what extent are changes permitted post-contract signature?

Despite the fact that the special rules of public procurement legislation do not include any provisions for post-contract signature changes, Greek courts apply two general rules, arising from Articles 288 and 388 of Civil Code, in order to modify some terms and especially the due payment (judicial readjustment of the terms of the contract).

More specifically, according to case law, if the circumstances which constituted the foundation for the conclusion of the contract have changed after the signature of the contract due to exceptional and unpredictable reasons and if, due to such reasons, the performance of the contract obligations – taking into consideration the financial consideration – became burdensome for the contractor, the court might correct the contract accordingly and readjust the consideration mechanism to the appropriate extent.

Moreover, according to Articles 200 and 288 of the Greek Civil Code (which by way of analogy apply to public contracts), the Courts – if the administrative authority denies it as such – can amend the contract and redefine its terms if necessary, according to good faith and commercial practice standards.

6.4 To what extent does the legislation permit the transfer of a contract to another entity post-contract signature?

The general rule is that the contractor should perform the obligations arising from the contract by himself. Under certain circumstances, and only if specifically stipulated, a transfer of the contract (substitution of another party to the contract) would be acceptable. Particularly within the sector of public works, substitution for the performance of the work (wholly or partially through subcontracting) is prohibited without the explicit prior consent or approval of the contracting entity (Article 65 of Law 3669/2008). Moreover, substitution of the contractor by another party may be sought by the contracting authority in the case of disqualification of the former.

7 Privatisations and PPPs

7.1 Are there special rules in relation to privatisations and what are the principal issues that arise in relation to them?

The economic stagnancy in Greece, coupled with concerns regarding the expansion of the real estate sector through privatisations of State-owned land assets and infrastructure stock, monitored by the Hellenic Republic Asset Development Fund's (HRADF), a vehicle in the form of a *société anonyme*, supervised by the European institutions. The sole mission of the HRADF is to maximise the proceeds of the Hellenic Republic from the development and/or sale of assets. This should be construed as the virtual sum of the proceeds from the transfer of assets to the private sector and the economic benefits from ensuing direct investment in these assets, in addition to the opening-up of the respective market sectors.

With regards to the legislation under which privatisations are regulated, Law 3986/2011 ("*Urgent Measures for the Implementation of the Medium-Term Fiscal Strategy Framework 2012–2015*") established a general framework for privatisations and delegated the power for the management of public property to the HRADF. Public procurement legislation is not applicable to the HRADF's privatisations.

7.2 Are there special rules in relation to PPPs and what are the principal issues that arise in relation to them?

Greece has established a detailed legal framework regarding the selection of private investors in public-private partnerships (PPP). Public procurement relating to PPP contracts is regulated by Law 3389/2005 on the Co-operation of the Public and the Private Sector. Law 3389/2005 (Article 1, paragraph 2) defines PPPs as the written commercial co-operation agreements for the performance of construction work and/or services ("Partnership Agreements") between Public Entities acting within their specific sector of activity and entities governed by private law ("Private Entities").

The requirements set out in Law 3389/2005 are the following:

a) Private Partner Operator (PPO) should be a special-purpose company and vest the form of a *société anonyme*.

b) The Partnership Agreements' object is the execution of works or the provision of services in an area which is part of the Public Entity's responsibility as defined by law or by agreement, or in its memorandum of association. Services which are exclusively reserved to the State (i.e. national defence, justice, penitentiary competence – police and the execution of criminal sanctions) do not fall under the scope of Law 3389/2005 and cannot be executed via a PPP.

c) Private Entities are to finance, either in whole or partly, the execution of the work or services.

d) Financial contribution of the PPO in return can be sought, either in whole or partly, by the final users of the works or services, or else by the Public Entity (e.g. State) – usually assured through the Public Investments Budget (PIB) funding the Public Investments Programme (PIP); the inclusion of an investment in the PIB is secured through the issuance of a ministerial decision grouping a number of similar investments (designated as "Collective Decision"), and which provides an indicative breakdown of the allocation of funds per investment. Such an inclusion, however, does not mean that the funds are physically or otherwise earmarked in an account for the whole life of the project, but rather that the Greek State undertakes to automatically register the qualifying investment in the State Budget on an annual basis for the whole contractual term of the investment. The Private Entity/s is/are to bear a substantial part of the risks associated with the financing, construction, the availability of relevant work and related risks, as for instance, managerial and technical risks.

8 Enforcement

8.1 Is there a culture of enforcement either by public or private bodies?

In Greece, there is quite a strong culture of enforcement with regard to public procurement procedures. There are no statistics relating to

the number of proceedings before the contracting authorities or the Greek Courts; however, in most cases, bidders who are excluded, or who are unsuccessful in a tender procedure, challenge the acts or omissions which affect their interests. In addition, most of the bidders are scrupulous about the procedures which they have to follow in order to suspend or annul an act or omission.

8.2 What national cases in the last 12 months have confirmed/clarified an important point of public procurement law?

During the past year, there has been no significant case law relating to final remedies which clarifies an important point of public procurement. There are two rulings, however, of the Council of State with regard to interim measures, whose reasoning is appealing. More specifically, in Decision 70/2015 – regarding an application for interim measures under Law 3886/2010 of a *société anonyme* against the State Company managing the railways of the urban region of Athens (Attiko Metro SA) – the Court ruled that the legal interest of a company to apply for the annulment of an awarding procedure, on the grounds that the technical bid of another candidate is defective, is not affected by the fact that the applicant's bid might be defective as well.

Moreover, the Council of State (Decision 16/2015) ruled that the criteria under which the technical bids are to be evaluated by the contracting authority should be **proportionately** linked to the object of the scope of the contract; otherwise, the core principles of equal treatment and non-discrimination amongst the candidates are violated.

9 The Future

9.1 Are there any proposals to change the law and if so what is the timescale for these and what is their likely impact?

As mentioned above, Greece will implement a new law regarding public procurement proceedings, which is targeted to enter into force at the beginning of 2016. More specifically, Law 4281/2014 relating to "Measures for the Support and Development of Greek Economy, Organisational Issues of the Ministry of Finance and Other Provisions" introduces a new approach with regard to public procurement. Its scope aims to capture all public contracts regarding works, services and supplies, including public work concessions and framework agreements, as well as design tenders. The *rationale* of Law 4281/2014 is the following:

a) unification of the legal framework regarding public contract award;

b) simplification and modernisation of the award procedures;

c) elimination and control of corruption, especially in the field of public works; and

d) enforcement of the principles of transparency, equal treatment, proportionality and free competition.

Greece, as all EU Member States, should also transpose, by 18 April 2016, the three (3) new EU Directives on public procurement (2014/23/EC on "*the award of Concession Contracts*"; 2014/24/EC on "*public procurement*", and 2014/25/EC on "*procurement by entities operating in the water, energy, transport and postal services sectors*").

9.2 Are any measures being taken to increase access to public procurement markets for small and medium-sized enterprises and other underrepresented categories of bidders?

By issuing Law 4281/2014, the legislator has intended to introduce provisions in order to facilitate and increase the access of SMEs to public procurement procedures. In particular, both the simplification of awarding procedures and the reduction of the minimum threshold to €2,500 echo the above principle.

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