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Greece

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1 Relevant Legislation

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

Until 2016, public procurement legislation in Greece consisted of a multi-layered structure of legal acts; EU Directives transposed into the Greek legal system together with national legislation formed the Greek legislation on public procurement. The division of public procurement contracts was based on whether these were above or below the set EU thresholds.

With law 4412/2106, with effect from August 2016, EU Directives 2014/24 and 2014/25 have been transposed in the Greek legal system. EU Directive 2014/24 is transposed as Book I of law 4412/2106 and provides rules in relation to public procurement, while EU Directive 2014/25 is transposed as Book II and relates to procurement by entities operating in the water, energy, transport and postal services sectors.

The new legislation has come to set a unified platform on public procurement and covers all public procurement contracts irrespective of their value, i.e. even if they fall below the EU thresholds, unless specifically excluded.

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.

Further, Law 3310/2005, relating to the transparency of public contracts ("The Major Shareholder Law") 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. Also, as an EU Member State, Greece must comply with all EU legislation including within the field of public procurement. In relation to the latter, it should be noted that the award of public contracts by or on behalf of Member States' authorities has to comply with the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular, the free movement of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

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;
3. competition in order to succeed the best possible offer; and
4. protection of the environment.

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 3918/2011, 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.

Further, procurement by entities operating in the water, energy, transport and postal services sectors is governed by the special provisions of Book II of law 4412/2016.

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, as well as associations formed by one or more of such authorities or by one or more such legal entities governed by public law. Further, 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. are also covered by the provisions of public procurement 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?

Law 4412/2016 on public procurement covers contracts ("public contracts") for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services. In particular, these are:

- 'public works contracts', that is public contracts having as their object the execution, or both the design and execution, of a work and the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work. Work has the meaning of the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;
- 'public supply contracts', that is public contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A public supply contract may include, as an incidental matter, siting and installation operations;
- 'public service contracts' means public contracts having as their object the provision of services other than those referred to as public works contracts;
- A framework agreement meaning an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged;
- 'contracts for the supply, works and services' meaning contracts for pecuniary interest concluded in writing between one or more contracting entities and one or more economic operators and having as their object the execution of works, the supply of products or the provision of services; and
- mixed contracts which embody features of more than one of the aforementioned contracts.

In the case that any of the above contracts are concluded as public-private partnerships (PPP), the provisions of PPP law (law 3389/2005) shall apply in a complementary manner to the laws on public procurement.

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

Greek contracting authorities shall act in a transparent way and shall treat all economic operators (both inside and outside the Greek jurisdiction) equally and non-discriminatorily. Moreover, 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?

Law 4412/2016 provides that all public procurement contracts, irrespective of their value, are covered by its provisions. This does not apply indiscreetly but is limited to contracts the subject matter of which is included in the law. The difference in approach to contracts above and below the thresholds is that for those below certain more elastic provisions may also apply – each time at the discretion of the contracting authority, while contracts above the thresholds are in line with the respective EU Directives (2014/24 and 2014/25).

Thus, law 4412/2016 has set a unified legal ground for all contracts, yet with minor differences for those below the thresholds.

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

Law 4412/2016 contains 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 shall not circumvent these 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 the contract.

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

Concession contracts are contracts for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the execution of works/management of services to one or more economic operators the consideration of which consists either solely in the right to exploit the works/services that are the subject matter of the contract or in that right together with payment.

Law 4413/2016 by which Directive 2014/23 on the award of concession contracts has been transposed in the Greek legal system covers concession contracts with a projected value higher than €5,225,000.

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

Books I and II of law 4412/2016 contain particular provisions in relation to framework agreements, i.e. agreements between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

Depending on the nature of the contracts, their duration is limited to four years for Book I nature procurements and to eight years for Book II nature procurements.

Equally to procurement contracts, the rules for the conclusion of framework agreements are based on the same principles of transparency, equal opportunity and competition.

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

The law forbids the methods of prospective splitting of the contracts in order to avoid the application of any of the terms of the law. As already mentioned, law 4412/2016 applies both to procurement contracts falling below as well as above the EU thresholds. Thus, contrary to the previous regime, the importance of securing the non-division of the contracts into lots is limited to the extent that additional/exceptional provisions may also apply that normally only apply to contracts falling below the EU thresholds.

For the avoidance of this prospective undervaluation of public contracts and the consequent non-implementation of all the provisions emanating from the EU Directives and the possible application of rules only applicable to contracts below the thresholds, EU and national legislation provide for special methods in relation to the calculation of the contracts' estimated procurement 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.

The following procedures are freely available to the contracting authorities for the award of a public contract:

- **Open procedure**: Any interested economic operator may submit a tender in response to a call for competition. 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).
- **Competitive procedure with negotiation**: Any economic operator may submit a request to participate in response to a call for competition. Only those economic operators invited by the contracting authority following assessment of the provided information may submit an initial tender which shall be the basis for the subsequent negotiations. Unless otherwise provided for, contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tenders, to improve the content thereof. Exceptionally, where the contracting authorities have reserved the right, they may award contracts on the basis of the initial tenders without negotiation.
- **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. Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the contract notice or in the descriptive document.
- **Innovation partnership**: Any economic operator may submit a request to participate in response to a contract notice by the contracting authority, where the latter shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market and shall indicate which of the elements define the minimum requirements to be met by all tenders.

Only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the procedure. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure. The contracts shall be awarded on the sole basis of the award criterion of the best price-quality ratio.

The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of the remuneration in appropriate instalments.

The contracting authority may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts, provided that the contracting authority has indicated in the procurement documents those possibilities and the conditions for their use. Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents.

- **Use of the negotiated procedure without prior publication**: In specific cases and circumstances, contracting authorities may award public contracts by a negotiated procedure without prior publication. This procedure may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:

  (a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests;

(b) where the works, supplies or services can be supplied only by a particular economic operator; or

(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority.

Further requirements apply for the award of public works contracts, public supply contracts and public service contracts, depending on the nature of the contract.

- **Negotiated procedure with prior call for competition**: Any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting entity. Only those economic operators invited by the contracting entity following its assessment of the information provided may participate in the negotiations. This procedure applies to the awarding of supply, works or service contracts by entities operating in the water, energy, transport and postal services sectors.

For public procurement contracts with a value below the set thresholds, the contracting authorities may also use the following procedures:

- **Draft tender procedure**: This type of award procedure is only available for public contracts of a value up to €60,000 (excluding VAT). For these tender procedures, there is only a need for publication at the national level of the invitation to tender.
- **Direct award**: Direct award of a public contract is allowed when the value of the contract is up to €20,000 (excluding VAT).

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, law 4412/2016 sets out the following minimum timescales for the receipt of tenders:

- In the case of open procedures, the minimum time limit shall be 35 days from the date on which the contract notice was sent.
- In restricted procedures, the minimum time limit shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest was sent.
- In competitive procedures with negotiation, the minimum time limit shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, from the invitation to confirm interest was sent.
- In competitive dialogue and innovative partnership procedures, the minimum time limit shall be 30 days from the date on which the contract notice was sent.
- In negotiated procedures with prior call for competition, the time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that they all have the same time to prepare and submit their tenders. In the absence of such an agreement, the time limit shall be at least 10 days from the date on which the invitation to tender was sent.

In certain cases (i.e. for reasons of urgency or when the contract notice is sent by electronic means), the above minimum timescales can be shortened to fifteen (15) or in some circumstances even to ten (10) days.

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

Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established or are otherwise aware that that economic operator has been the subject of a conviction by final judgment for participation in a criminal organisation, corruption, fraud, terrorist offences or offences linked to terrorist activities, money laundering or terrorist financing, or child labour and other forms of trafficking in human beings. The obligation to exclude an economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.

An economic operator shall also be excluded where the contracting authority is aware or can demonstrate that the former is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.

Exceptionally, for overriding reasons relating to the public interest, such as public health or protection of the environment or where an exclusion would be clearly disproportionate, a derogation from the above mandatory exclusions may be provided.

Contracting authorities may exclude from participation in a procurement procedure any economic operator:

- where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations in the fields of environmental, social and labour law or that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;
- where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;
- where a conflict of interest cannot be effectively remedied by other less intrusive measures;
- where a distortion of competition from the prior involvement of the economic operators in the preparation of the procurement procedure cannot be remedied by other, less intrusive measures; or
- where the economic operator:
  - is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws and regulations;
  - has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract which led to early termination of that prior contract, damages or other comparable sanctions;
  - has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, has withheld such information or is not able to submit the supporting documents; or

- has undertaken to unduly influence the decision-making process of the contracting authority, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

The applicable selection criteria shall be limited to those requirements (expressed as minimum levels of ability) that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded. All requirements shall be related and proportionate to the subject matter of the contract.

3.4 What are the rules on evaluation of tenders? In particular, to what extent are factors other than price taken into account (e.g. social value)?

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 abovementioned criteria) by which the award will take place.

3.6 What are the rules on debriefing unsuccessful bidders?

Contracting authorities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement, not to award a contract for which there has been a call for competition, to recommence the procedure or to not implement a dynamic purchasing system.

Following a request from the candidate or tenderer concerned, the contracting authority shall, within 15 days from receipt of a written request, inform:

- any unsuccessful candidate of the reasons for the rejection of its request to participate;
- any unsuccessful tenderer of the reasons for the rejection of its tender;
- any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement; or
- any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

Please note that the contracting authorities may withhold certain information regarding the contract award, the conclusion of framework agreements or admittance to a dynamic purchasing system, where the release of such information would impede law enforcement or would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or might prejudice fair competition between economic operators.

3.7 What methods are available for joint procurements?

Two or more contracting authorities may agree to perform certain specific procurements jointly.

Where the conduct of a procurement procedure, in its entirety, is carried out jointly in the name and on behalf of all the contracting authorities concerned, they shall be jointly responsible for fulfilling their obligations. This also applies in cases where one contracting authority manages the procedure, acting on its own behalf and on the behalf of the other contracting authorities concerned.

Where the conduct of a procurement procedure is not in its entirety carried out in the name and on behalf of the contracting authorities concerned, they shall be jointly responsible only for those parts carried out jointly. Each contracting authority shall have sole responsibility for fulfilling its obligations in respect of the parts it conducts in its own name and on its own behalf.

3.8 What are the rules on alternative/variant bids?

Contracting authorities may authorise or require tenderers to submit variants. They shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest whether or not they authorise or require variants. Variants shall not be authorised without such indication. Variants shall be linked to the subject matter of the contract.

Further, contracting authorities authorising or requiring variants shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation. In particular, they shall indicate whether variants may be submitted only where a tender, which is not a variant, has also been submitted. They shall also ensure that the chosen award criteria can be applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

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 (of overall value of more than one million euros).

Moreover, Law 4281/2014 aiming at mitigating corruption phenomena provides that 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 as they 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 measures to remedy the conflict. If no measure can be found, the contracting 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?

Law 4412/2016, i.e. the main legislative tool for public procurement, does not apply to:

a) contracts awarded pursuant to international rules;

b) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;

c) the acquisition, development, production or co-production of programme material intended for audio-visual media services or radio media services, that are awarded by audio-visual or radio media service providers, or contracts for broadcasting time or programme provision that are awarded to audio-visual or radio media service providers.

d) arbitration and conciliation services;

e) legal services;

f) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council(3), central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;

g) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;

h) employment contracts;

i) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, except patient transport ambulance services;

j) public passenger transport services by rail or metro;

k) political campaign services; and

l) public contracts concerning services awarded on the basis of an exclusive right.

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

a) A public contract awarded by a contracting authority to a legal person governed by private or public law is excluded from the scope of public procurement law where:

- the contracting authority exercises control over the legal person concerned similar to that exercised over its own departments;
- more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and
- there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

b) The above also applies where a controlled legal person acting as a contracting authority awards a contract to its controlling contracting authority, or to another legal person controlled by the same contracting authority, provided that there is no direct private capital participation in the legal person being awarded the public contract with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the EU Treaties, which do not exert a decisive influence on the controlled legal person.

c) Further, a contracting authority, not exercising control over a (private or public) legal person, may award a public contract to that legal person without applying the provisions of public procurement law where all of the following conditions are fulfilled:

- the contracting authority exercises jointly with other contracting authorities a control over that legal person which is similar to that which they exercise over their own departments;
- more than 80% of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or by other legal persons controlled by the same contracting authorities; and
- there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

d) A contract concluded exclusively between two or more contracting authorities shall fall outside the scope of public procurement law provisions where:

- the contract establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
- the implementation of that co-operation is governed solely by considerations relating to the public interest; and
- the participating contracting authorities perform on the open market less than 20% of the activities concerned by the co-operation.

5 Remedies

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

Under Book IV of Law 4412/2016, 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:

- interim relief measures (provisional remedy);
- request for annulment of the acts (or omissions) of the contracting authority (ordinary remedy); and
- award of damages.

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

- File a pre-judicial objection (administrative recourse) before the competent newly set Authority for the Hearing of Pre-Judicial Objections (AHPJO).
- If the recourse is either explicitly or deemed to be rejected by the AHPJO, an application for interim relief measures may be lodged before the competent Administrative Court of Appeal (or the Council of State for PPP projects or public procurement of value above 15 million euros) that rules on

first and final degree. The court may, upon special request of the candidate, issue an order suspending the award procedure.

- 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.
- Finally, the candidate is expected to claim damages if the awarding authority proceeds to sign 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 AHPJO, whereas judicial review of the award procedures and compensation claims is vested with either the Council of State or the competent Administrative Courts of Appeals.

5.4 What are the limitation periods for applying for remedies?

The filing of a pre-judicial objection against an act or omission of the contracting authority shall take place within fifteen (15) days from the occurrence of the act or the occurrence of the omission on behalf of the contracting authority.

5.5 What measures can be taken to shorten limitation periods?

The above time limits may be shortened to ten (10) days if the economic operators are informed of the act of the contracting authority by electronic means (i.e. email) or fax.

5.6 What remedies are available after contract signature?

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 obligations have not been respected, any interested party may request from the competent Court to declare the contract as invalid as from its signing.

Regarding, however, problems arising from the execution of the contract, any party may seek for the restitution of any damages suffered by filing a lawsuit before the Administrative Courts, unless of course an out of court settlement is reached.

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

A *pre-judicial administrative recourse* shall be filed before the AHPJO within fifteen (15) days from the date the affected party has become aware of the act or omission of the contracting authority that it seeks its annulment. The AHPJO should immediately inform the contracting authority who should send to the AHPJO the file of the case within ten (10) days from becoming aware of the filed lawsuit. The case is heard within forty (40) days from its filing and the respective decision should be issued within twenty (20) days from the hearing of the case.

Anyone with a legal interest, including the contracting authority, may file a suspension request and/or an annulment petition of the decision of the AHPJO before the competent Administrative Court of Appeal. The suspension request should be filed within ten (10) days from the issuance of the decision of the AHPJO on the pre-judicial administrative recourse and the annulment petition within ten (10) days from the service of the Court's decision on the suspension request.

The date of the hearing of the annulment petition shall be within three months from the filing of the annulment petition.

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 abovementioned 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 relaunched.

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

Contracts and framework agreements may be modified without a new procurement procedure:

1. Where the modifications, irrespective of their monetary value have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, (which may include price revision clauses, or options). Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract or the framework agreement.
2. Further, for additional works, services or supplies by the original contractor that have become necessary and that were not included in the initial procurement where a change of contractor:
   - cannot be made for economic or technical reasons; and
   - would cause significant inconvenience or substantial duplication of costs for the contracting authority.

Any increase in price shall not exceed 50% of the value of the original contract. For procurement by entities operating in the water, energy, transport and postal services sectors, the changes shall be below the set thresholds and below 10% of the initial contract value for service and supply contracts and below 15% of the initial contract value for works contracts.

3. Where all of the following conditions are fulfilled:
   - the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;
   - the modification does not alter the overall nature of the contract; and
   - any increase in price is not higher than 50% of the value of the original contract or framework agreement.
4. Where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of either:
   - an unequivocal review clause or option;
   - universal or partial succession into the position of the initial contractor; or
   - in the event that the contracting authority itself assumes the main contractor's obligations towards its subcontractors.
5. Where the modifications, irrespective of their value, are not substantial.

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. That transfer of contract shall be governed by the post-signing modifications presented in question 6.3.

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, is 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. However, it should be noted that public procurement legislation is not applicable to 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 in 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 responsible for the financing, 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 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?

Law 4412/2016 has only recently been implemented and there is no relevant case law as of yet. Based on the previous legal environment, yet on the same legal principles, we identify two rulings of the Council of State with regard to interim measures, whose reasoning is appealing. More specifically, in Decision no. 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?

Law 4412/2016 on Public Procurement has only recently entered into force and no other change of law is expected.

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.

Law 4412/2016 by providing that, to a large extent, the same provisions shall apply to public procurement both above and below the threshold, assist in the transparency of the procedure and the increase of competition.

9.3 Have there been any regulatory developments which are expected to impact on the law and if so what is the timescale for these and what is their likely impact?

There have been no regulatory developments with an expected impact on the law.

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He acts mainly for international investors and international and local financing institutions by providing specialised legal services in the financing of infrastructure projects and the performance of due diligence of major projects.

Kimon has experience in drafting and negotiating agreements (EPC, O&Ms, etc.) for major infrastructure related projects as well as in drafting tender documents for awarding authorities. In addition, Kimon advises on matters of environmental, commercial and public procurement law.

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