

:: Public Law

Article 107 of the new Law 4497/2017 simplifies the documentation procedure for Public Tenders

December 18, 2017

A new Law has just been passed which introduces, inter alia, changes in the Greek Law on Public Tenders, L.4412/2016, mainly by simplifying the first stage of the Public Tenders procedure.

General

In November 13th, Law no 4497/ 2017, was set in force which introduces multiple changes in the public procurement's sector. Article 104 of the new law provides for the addition of article 79A to law 4412/2016, stipulating the following:

“Signing of the European Single Procurement Document

Upon submission of the European Single Procurement Document (ESPD) mentioned in Article 79, provision of preliminary evidence of the grounds for exclusion referred to in Article 73 (1) for all natural persons who are members of its administrative, managerial or supervisory body or have the power to represent, take decisions or control over it shall be possible, with the signature of the representative of the economic operator..

For the purposes of this Article, the economic operator's legal representative shall be deemed to be its representative, based on its current statutes or its representation at the time of submission of the tender or of the request for participation; alternatively, any natural person duly authorized to represent the economic operator within awarding procedures in general or for a specific awarding procedure.

This Article applies to the signing of the Standardized Solemn Declaration Document (TEYD) issued by the Unified Independent Public Procurement Authority (AEPP)."

This Article applies also to procurement procedures that are in progress including those being at the stage before the award of the contract.

After the second paragraph of Article 80 of Law 4412/2016, the following paragraph is added:

In particular, foreign private documents may be accompanied by a translation into the Greek language, certified either by a person competent under the provisions of national law or by a person competent under the law of the country in which the document was drawn up”

Provision Analysis

As regards to the aforementioned provisions the following points should be underlined:

Preliminary evidence of the exclusion reasons mentioned in the EWC / TEWF for all BoD members is possible with the sole signature of the legal representative as appropriate (as defined in paragraph 2 of Article 79A). The above amendment also applies to tenders which have already been announced and are before the award stage.

The Solemn Declarations that are occasionally required by Public Hospitals when conducting public tenders do not appear to be covered by the provisions of the relevant law which specifically refer to ESPD / SSDF (TEYD).

Admittedly, in a proportional interpretation of the provision of Law 4497/2017 and based on the reasoning of the “argumentum a maiori ad minus”, it appears that since the signature of the legal

representative on the submitted ESPD / SSDF (TEYD) is sufficient to prove that there are no grounds for exclusion covering the whole BoD, common declarations should also be covered only by this one signature. However, considering the unpredictability of the Administrative Authorities and the wording of certain regulations (which leave space for various interpretations), it would be safer for tenderers to contact the concerned authorities, before proceeding to submit the declarations signed only by their legal representatives.

In accordance with paragraph 11 of Article 80 of Law 4412/2016 introduced by the new law (4497/2017), foreign private documents may be accompanied by a translation into the Greek language certified by a person competent by virtue of either the provisions of domestic law or the provisions of the state where the document was issued. It is therefore concluded that the translations of criminal records / apostilled affidavits sent by foreign members of the BoD in order to be included in the Tender Documents may be translated not only by the competent service of the Ministry of Foreign Affairs but also by any other legally competent person from the country of origin of the document or from Greece (e.g. a lawyer).



Conclusions

Considering the abovementioned amendments on the Law of Public Tenders, it is concluded that as of the issuance of L.4497/2017, less time, money and effort shall be required from any foreign company in order to participate in a Public Tender in Greece.

Contact

For any further comment or query, please contact the KG lawyer you are in contact with or the Public Law practice team.

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