

Public Procurement and PPPs

BY KIMON TSAKIRIS | NOVEMBER, 2019

A. Amendments to law 4412/2016 on public works

The amendment to the public procurement law (Law 4412/2016) touches the issue of the award of a public contract that includes both the design and construction of a project. As the law was in force before the introduction of the Invest in Greece Law, the contracting authority could stipulate in the contract documents that the public works contract covers both the design and the construction of the project but that can only be implemented subject to the prior approval of the technical advisor of the contracting authority and the following cumulative conditions:

- (a) the existence of an approved preliminary design and approved environmental conditions, calculations and documentation for determining the budget of the contracting authority, and a "Regulation on Project Design (Κανονισμός Μελετών Έργου)" specifically for that project or already used in the past in similar projects;
- (b) the available studies of the contracting authority are compulsorily accompanied by all the necessary accompanying supporting studies, such as geological, geotechnical,

- (c) the existence of studies and reports of the project such as feasibility study, performance requirements, technical description, information on the necessary expropriations, any archaeological findings and the Analytical Report on Archaeological Documentation, information on infrastructure, supporting designs and risk assessment.

The amendment introduced by the Invest in Greece Law is focusing at expediting the procedure by removing the requirement of having approved preliminary designs or accompanying supportive studies, such as geotechnical or geological designs. Further, it also allows for the application of this clause to (building) constructions and redevelopment projects.

B. Amendments to law 4413/2016 on the award of concession contracts

Although the law on the award of concession contracts (Law 4413/2016) was only recently introduced further fine tunings to such have been included in the Invest in Greece Law in order to shorten the period from the award to the signing of concession contracts and reduce the

lengthy delays in the materialization of major projects.

In particular, according to the provisions of the concessions law (as in force before the Invest in Greece Law), the signing of concessions contracts could not take place without the prior completion of all expropriations, all archaeological investigations/excavations as well as the acquisition of all necessary environmental term approvals. An exception to the above rule could only have been granted by the competent Minister, who could allow the signing of the respective concession contract should, at least, 75% of both the expropriations and the archaeological investigations, as such are provided in the Report of Analytical Archaeological Documentation (Έκθεσης Αναλυτικής Αρχαιολογικής Τεκμηρίωσης (E.A.A.T.)), be completed.

With the Invest in Greece Law, the competent Minister may now allow for the signing of the concession agreement if, instead of 75%, only 50% of the expropriations and 50% of the archaeological investigations have been completed. That change will certainly expedite the signing of the concession contract, yet it remains to be seen what other issues may arise as the concessionaire will not be in a position to proceed with on-site works until completion of expropriations and archaeological excavations.

C. Amendments to law 3389/2005 on PPPs

The amendments to the PPP law focus on the modernization of the procedure and the speeding up the completion of the related construction works.

In particular, the Invest in Greece Law, by the amendment of article 21 of Law 3389/2005, creates a two-level approach in the handling of the delays resulting from archaeological findings and the respectively halting of construction works. Following the expiration of the sixty-day-term within which the competent Archaeological Authority should advise the SPV on the means and way to proceed with the construction works, it is the Ministry of Culture who should advise on how to proceed as well as to how to protect any antiquities. The deadline for the Ministry to act is thirty (30) days. Any extension of the project time-schedule will apply after the expiration of this ninety-day period.

In practical terms the competent authorities will have to comply with a very strict deadline which may prove to be unrealistic. On the other hand, the SPV will have a period of ninety days to find a solution to the continuation of the works, which include protection of the antiquities, through co-operation with the competent authorities. Only after the lapse of this ninety day period will the SPV be entitled to seek an extension to his deadline.

The second amendment, affecting article 23 of Law 3389/2005, is with regards the removal of the typical obligation to justify in the act approving the expropriations that the intended expropriations are to the benefit of the public interest in order to be

considered. With this amendment there will be no grounds for unnecessary disputes on the justification of the intended expropriations being to the benefit of public interest, hence facilitating the process.

Further, the Invest in Greece Law introduced a provision not included in the new Development Bill, in an attempt to organize the PPP environment. According to the introduced provision during the construction and the operation period, both the Public and the Private sector entity should file, every two months, a progress report on the project to the General Secretariat of PPP.

Last, a three-party committee, having as members a representative of the General Secretariat of PPPs, one from the Public sector entity and one from the Private sector entity.

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