KYRIAKIDES GEORGOPOULOS
LAW FIRM

LIFE SCIENCES & HEALTHCARE PRACTICE

Pharma & Healthcare Procurement: Top-10 changes affecting healthcare industry regarding the new Law 4782/2021 on reforming public procurement in Greece

May 24, 2021

LIFE SCIENCES & HEALTHCARE PRACTICE

Pharma & Healthcare Procurement: Top-10 changes affecting healthcare industry regarding the new Law 4782/2021 on reforming public procurement in Greece

BY ORAIOZILI KOUTSOUPIA

On 9 March 2021, Law 4782/2021 was published, with the aim of "modernizing, simplifying and reforming the regulatory framework of public procurement". The Law overhauls the legal framework for public works tenders, while also affecting public tenders for the supply of goods and services. The amendments were not prompted by any recent updates to the relevant EU legislation, but rather by a need to consolidate and streamline a legal framework, namely that of Law 4412/2016, which has undergone more than 300 amendments since it was first introduced. Unlike previous times, a number of these amendments refer expressly to public procurement in the health sector.

Below are the top-10 healthcare-related highlights of the new law:

1) Establishment of the (national) European Single Procurement Document ("ESPD", "ΕΕΣΣ" as per its Greek initials). The ESPD, available at: https://espdint.eprocurement.gov.gr/#/start, is a multi-page form, now used uniformly in all tender procedures. The "TEYD" document, previously used for tenders under EUR 60,000, is therefore abolished. The European Single Procurement Document (ESPD) is a self-declaration of the businesses' financial status, abilities and suitability for a public procurement procedure, used as a preliminary evidence of fulfillment of the conditions required in public procurement procedures across the EU ('business passport' for companies bidding for tenders in the EU). This entails a significant reduction of administrative burden and simplification of access to cross-border tendering opportunities, in the context of the digital transformation of public procurement on EU level. The Service is addressed to buyers, bidders and other parties interested.

2) Abolition of informal tenders and the corresponding objection procedure related to tenders with a budget value of less than EUR 60,000. This abolition was

made in order to avoid the intermediate stage of informal, and not electronic, procedures that the contracting authorities often used, bypassing the publicity and formalities of the standard open procedure. Furthermore, the new, lower, threshold for direct awarding is EUR 30,000 instead of 20,000 that was before.

3) For medical devices and medicines in particular, the requirement, as per L. 4412/2016, to provide a solemn declaration stating that the product is produced by a company which owns/exploits the manufacturing unit and that it's authorized representative or agent agreed to execute this specific order is now repealed as overly bureaucratic.

4) The Law delegates to the administrative authorities the issuance of implementing decisions ordering contracting authorities to procure health supplies, medical devices and pharmaceuticals through electronic auctions (e-marketplace) for tenders budgeted up to EUR 40,000.

5) Designation of two special authorities for the procurement of contracts for goods and services in the health sector (EKAA), and the issuance of technical requirements for medical devices (EKAPY). Details are pending in anticipation of the issuance of a Ministerial Decision.

6) Introduction of a new method of detection and exclusion of "pseudo-candidates" who initially submitted their participation solely to access the bids and tender documents of competitors. From now on, all participants will have until the deadline for the submission of tenders to file their letter of guarantee. Candidates without the intention or capacity to win are thus discouraged from participating.

7) Creation of a horizontal exclusion system, a register of excluded economic operators, and information registers. These will record data related to professional credibility and the execution of previous public contracts, and will be accessible to contracting authorities. Details are pending the issuance of a Ministerial Decision.

8) The "SEPE" Certificate ("ΣΕΠΕ" as per it's Greek initials) is now abolished. The certificate was supposed to reflect a company's "clean slate" in labor-related issues. Albeit of good intentions, the provision merely added red tape requirements and corresponding burden to companies, given that the certificate was never really issued by the Greek authorities, and the companies had to instead produce a notarized affidavit.

9) Changes in the operation of Authority for the Examination of Preliminary Recourses (AEPP). A single-member formation will now examine preliminary

appeals on contracts with estimated value of up to EUR 100,000. A three-member formation will examine those arising from contracts of a higher value. Cases of high importance will be channeled to a seven-member formation. In addition, the presiding judge of the pre-trial appeal panel is given the opportunity to invite the applicant, the intervener or the contracting authority to develop orally their arguments, if they so request.

10) Introduction of the possibility of combining, for reasons of procedural expediency, in a single petition the applications for interim relief (suspension) and annulment against the decisions of the AEPP.

We note that the above changes do not have a uniform date of entry into force; some of them already took effect on 9 March 2021, while others will enter into force on 1 June or 1 September 2021.

All in all, this new restructuring of the Greek public procurement framework addresses a number of procedural gaps and deficiencies that the whole regime suffered from; this will also benefit pharmaceutical and medical devices procurement procedure. That said, public procurement regulation is not only about procedural organization. More fundamentally, it is based on certain principles, including those of transparency, equality and impartiality. The success of any attempted reform therefore depends on the extent to which the various stakeholders, and most importantly, the awarding authorities, will be able to consolidate these principles into the contemplated reform in practice.

Contact Us

Irene Kyriakides
PARTNER
i.kyriakides@kglawfirm.gr

Victoria Mertikopoulou
PARTNER
v.mertikopoulou@kglawfirm.gr

Follow Us

ATHENS OFFICE

28, Dimitriou Soutsou Str.,
115 21 Athens

T +30 210 817 1500
F +30 210 685 6657-8

E kg.law@kglawfirm.gr

THESSALONIKI OFFICE

31, Politechniou Str.,
546 26 Thessaloniki

T +30 2310 441 552

E kg.law@kglawfirm.gr

www.kglawfirm.gr