



PUBLIC & ADMINISTRATIVE LAW

Supplementation of the participation supporting documents in public procurement

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The Law 4782/2021 introduced a series of modifications to the Law 4412/2016, providing the temporary contractor in any tender with a new, unexpected "ally": the contracting authority. Among other new provisions, in Article 102 of Law 4412/2016, as amended by Article 42 of Law 4782/2021, the contracting authority seems to "support" and protect the respective temporary contractor by allowing them to complete and correct their participation documents, the EEES, the financial and technical offer, within the framework and limitations of this provision.

Cases are varied and related to the nature of each specific contractual object and the terms of each tender notice. The fundamental direction is whether the application of the article in question will lead or not to a change in the object of the offer, as defined from the outset. Here are some basic examples to clarify the scope of the provision as much as possible:

1) If it is positively established, for example by the EEES or any technical brochures, that the minimum requirements of the respective tender notice are not met, it is obviously not possible to correct or replace the

contentious documents, because the issue of reliability and seriousness of the procedure would be raised in.

2) Despite the vague grammatical phrasing of Article 102, its invocation is precluded for changing the identity of the bidder/consortium, for supplementing the use of third-party providers to meet selection criteria, for altering their identity, for the criteria for which they provide support, for the use of subcontractor(s), for their percentages and/or portions, nor for declaring or supplementing a representative or coordinator of the consortium.

3) The correction of any unacceptable signature on the necessary documents of the offer or the signature by an unauthorized and incompetent person is excluded from the scope of Article 102.

4) Deficiencies related to the placement or use of digital signatures cannot be corrected under this article as a simple error because it will never be possible to ascertain that the bidder would have genuinely submitted and declared the same at that crucial moment. An exception is when the document is not essential or when the bidder has placed the document with an acceptable

signature before the submission of the offer.

5) It is not possible to change the total amount of the financial offer, nor the price of its specific components.

6) Changing, increasing, or improving the technical offer through correction or supplementation in a way that affects the score or results in a different score treatment of the bidder is not possible.

7) It should be noted that with this provision, responses to the EEES are generally acceptable for correction and supplementation. Therefore, a bidder is not excluded simply because of failure to declare one or more of precedent contracts or turnovers requested.

This article aims to define and satisfy a particularly important and crucial requirement of contracting authorities: not to exclude economic entities for minor matters or issues related to the type or form of supporting documents when all the prerequisites for valid and legal participation in tenders are met. However, this must be subject to clear limitations to ensure transparency and equal treatment of entities.

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