



Law 4782/2021 introduces wide reforms in public procurement legislation

On March 4th, 2021 the Hellenic Parliament passed Law 4782/2021 (the “Law” or “New Law”) on the modernisation, simplification and reform of the public procurement framework. The Law introduces critical and far reaching amendments to the existing rules covering the entire spectrum of the procurement process and touching upon critical provisions that have caused controversy in the past. As implied by its title, the New Law aims to create an up to date legal environment for the tendering of public contracts in line with the requirements of the EU Directives.

The Law includes two separate parts as follows:

Part A, which introduces extensive amendments to Law 4412/2016, on procurement of supplies, works and services.

Part B, which includes amendments to the existing legal framework on procurement in the defence and security sectors (i.e. to the Laws 3978/2011, 3433/2006 and 3883/2010).

Some of the Law’s key amendments in relation to the **general rules applying to the procurement procedure** may be summarised as follows:

- **Direct awards:** The threshold for direct awards is raised from Euro 20,000 to Euro 30,000. Moreover, for contracts of this category, judicial protection may be sought exclusively before the Administrative Courts, the previously applicable administrative appeal stage being abolished. The submission of a bid bond will not be mandatory for contracts of this value.
- **Expansion of the instances justifying bid bond forfeiture:** The New Law provides for an expanded list of instances which could trigger

bid bond forfeiture. In addition to forfeiture grounds applicable until now, namely withdrawal of the offer within the term of its validity, provision of false data or information, failure to provide the award documentation on a timely basis and withdrawal of the contractor from the actual execution of the contract, the submission of an inappropriate offer, will also cause forfeiture of bid bonds. As per the definitions set forth by the Law, an inappropriate offer is one which is not relevant to the contract and which evidently fails to comply with the awarding authority’s requirements, may also cause the forfeiture of the bid bond.

- **Amount of the good performance bond:** By virtue of the New Law the amount of the good performance bond is set at 4% of the contract value for the procurement of goods and services, and 5% for works.

This replaces the 5% requirement which was previously horizontally applicable to all three categories of public contracts.


- **Expansion of the applicable mandatory exclusion grounds:** Besides the criminal



offences listed in EU Directive 2014/24 which had been embedded in the previous version of the law, economic operators will be henceforth excluded if they have been convicted for a series of offences provided by the Hellenic criminal code or equivalent offences set forth in the pertinent legislation of their country of origin, in case such economic operators are foreign. Such offences indicatively include bribery, forgery, embezzlement, fraud in relation to subsidies, misappropriation of funds etc.

- **Self-cleaning measures:** Amendments are also brought in relation to the self-cleaning measures which can be adopted by economic operators to demonstrate their reliability despite the existence of exclusion grounds. In this regard the Law provides for a new composition of the committee competent to render its opinion with respect to the sufficiency and appropriateness of the adopted measures and provides for an exclusive forty days' deadline in which the competent Committee needs to opine. Failure to meet the deadline will enable the awarding authority to approve or reject the self-cleaning measures on its own.
- **Horizontal exclusion:** The New Law includes enabling provisions which could serve as basis for the issuance of a presidential decree detailing the rules applicable to horizontal exclusion of economic operators. Moreover, it provides for the creation of a database where the previous conduct of economic operators will be registered. Information to be registered in the database shall indicatively include misconduct during the execution of public contracts, disciplinary penalties, fines and penalties for infringements of competition, environmental and labour law as well as tax and social security legislation.
- **Evaluation of offers:** In cases of tenders conducted under the criterion of the most economically advantageous offer, contracting authorities shall be entitled to issue a single decision for their evaluation validating the results of all stages of the procedure, i.e. participation documents, technical offer, financial offer and award documents. In cases where the criterion for the award of the contracts is the most economically advantageous offer on the basis of the optimal quality – price ratio, two decisions will be needed (participation documents together with the technical offer and financial offer together with the award documents) instead of the three provided by the existing provision.
- **Lenders of capacities:** Clarifications are introduced as to the role of third parties, i.e. lenders of capacities in participating public tender procedures. As far as the pre contractual stage is concerned it is notably foreseen that awarding authorities will be entitled to request the replacement of lenders of capacities if the latter do not meet the eligibility requirements or are subject to exclusion grounds within an exclusive deadline of 30 days. Replacement will only be permissible once.

Importantly, awarding authorities may request for part of the contract to be performed by the economic operator itself regardless of the participation of third parties, lenders of capacities.
- **Submission of ESPD:** Economic operators will henceforth be entitled to submit the ESPD upon opening of the tender's electronic platform without being bound by the time restrictions previously applicable, i.e. they will no longer need to have the ESPD dated within the last 10 days from the offer's submission.



The withdrawal and resubmission of the ESPD until the exhaustion of the submission deadline will be permitted.

- **Requests for clarifications:** Under the new provision of the Law, economic operators will be permitted not only to clarify or complete information or documentation but also to supplement such when missing; provided that relevant requests are made in full compliance with the principles of equal treatment and transparency.

A significant part of the New Law's provisions touches **upon works' contracts and respective tender procedures**. Some of the most noteworthy provisions are the following:

- **Launching of tenders before the issuance the Environmental Approvals:** Launching of tenders will henceforth be permitted even prior to the issuance of ETAs. The latter will have to be issued before the award of the contract while they may not result in a material modification of the tendered contract.
- **Possibility of using private bodies for the supervision of works:** Awarding authorities will be permitted to allow for works supervision to be undertaken by certified private bodies to be indicated by the economic operators.
- **Obligation to abide by the respective work's tender studies:** Economic operators are expected to examine the work's tender study and to comment thereon, proposing changes if required. If such changes are non-material, the execution of the contract may proceed, whereas in case of material changes the awarding authority will be entitled to either terminate the contract or to proceed to its execution with another contractor. The aim of this provision is to ensure that the contractor will abide by the proposed study thus avoiding

excessive delays and costs due to substantial modifications.

- **Prim awards:** Contracts for a value exceeding the amount of Euro 1,000,000 shall provide for the award of prim payments in case of early delivery of the work (by at least 10% of the initially foreseen time schedule). The value of prim awards may not be higher than 5% of the contract's value, excluding VAT.
- **Subcontractors & Construction Consortia:** The limitations previously applicable as to the part of the contract that may be subcontracted are lifted in an effort to align the national legislation with the pertinent EU framework. Moreover, the New Law provides for the possibility of forming consortia between construction companies post award under specific terms and conditions.
- **Digitalization of the procedure:** The procedure of monitoring works' progress is digitalized through the introduction of pertinent provisions including the contractor's obligation to keep electronic logs.
- **Recourse to arbitration:** Pursuant to the provisions of the New Law, recourse to arbitration will henceforth be possible. For works and studies whose value exceeds the amount of Euro 10,000,000, recourse to arbitration shall be possible subject to a pertinent clause being included in the contractual documentation. For contracts below this amount, the approval of the competent technical council will also be required in order for the arbitration clause to be included in the tender documentation.

Part B of the New Law touches upon defence procurement and other provisions. Indicatively, the recently adopted provisions provide for the possibility to use the ESPD within the context of defence procurement as well as the contractors'

obligation to notify the awarding authority on changes of their ownership status.

As it becomes evident from the above, the New Law introduces a substantial number of reforms that touch upon a wide array of issues. While some of the new provisions are expected to modernise the award and execution of public contracts, and hopefully facilitate the much needed investments especially on the

infrastructure front, others seem, upon preliminary review, more controversial. The latter will thus eventually need to be interpreted by the administrative courts where many of the New Law's reforms are bound to be referred. It will definitely be very interesting to follow this matter in the months to come in order to see the impact the new law will have on procurement processes in practice.

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