



Council of State ruling No. 2325/2023 on public procurement matters | ESPD & certificates of quality assurance standards

A significant judgment by the Plenary of the Council of State (“CoS”) has recently been published, ruling upon provisions of Law 4412/2016 (the “Public Procurement Law”), pertaining to a) the scope of the European Single Procurement Document (the “ESPD”) and b) the admissibility of certificates attesting to compliance with quality assurance standards in a public tender context. The long-awaited decision, issued following a pilot trial, puts at rest any remaining controversy as to the need for issuance of the provisional contractor documentation prior to offer submission by clearly stating that the latter needs to cover three distinctive tender stages namely: (a) the offer submission; (b) the provisional award and (c) the final award of any given contract.

Need for compilation of evidence in support of the ESPD statements

By virtue of its recently issued ruling the CoS defined the nature of the ESPD as preliminary evidence of fulfillment of the tender qualitative selection criteria which serves as a means of alleviating the contracting authorities’ and the tenderers’ administrative burden at such

initial stage. It is however clarified that the ESPD needs to be covered by written evidence in support of the ESPD statements.

The main findings of CoS ruling no. 2325/2023 are as follows:

- i. The awarding authorities’ verification of the tender qualitative selection criteria must cover three distinct

tender stages, namely: (a) offer submission, (b) for the provisional contractor, its declaration as such, (c) for the final contractor, the final award and conclusion of the contract.

- ii. The ESPD only serves as preliminary evidence of the tenderers' fulfillment of the tender qualitative selection criteria upon offer submission; it may not replace the documentation in evidence of its various ESPD statements.
- iii. The certificates against which the verification of ESPD statements is in order shall be issued at the critical verification points (as per point (i) a-c above) and kept on record, in the interest of providing evidence of the ESPD statements starting from the offer submission, for the benefit of both the awarding authorities and other participants, and in mitigation of the risk of award to a tenderer on the basis of a self-certification, in the context of which misrepresentation may not be excluded.
- iv. The same rules shall govern tenders of awarding bodies in the water, energy, transport and postal services sectors having opted for the adoption of qualitative selection criteria in their own procurement processes.

Admissibility of certificates pertaining to quality assurance standards

The CoS goes on to set out the main admissibility requirement of certifications of compliance with the tender quality standards.

According to CoS ruling no. 2325/2023:

- Certificates of compliance with the quality standards set forth in the tender documents shall be issued by

quality assurance bodies accredited pursuant to Regulation (EC) No 765/2008 (the "Regulation"), i.e. having received the relevant accreditation by national accreditation bodies of EU member states as opposed to third - country accreditation bodies not subject to the Regulation; this, without prejudice to the cross-border accreditation possibilities set forth by the Regulation.

- Whether or not the issuing quality assurance bodies have been accredited pursuant to internationally accepted standards for the exercise of accreditation activity or have entered into agreements of mutual recognition is not pertinent in terms of admissibility of the quality certifications presented as evidence of compliance with the quality criteria of a tender governed by the Public Procurement Law.
- As a rule, certificates of compliance with quality standards required to be evidenced in a tender context will only be admissible if issued by quality assurance bodies accredited by the national accreditation body of their jurisdiction of establishment, such as the Hellenic Accreditation System (Greek acronym: "ESYD") in the case of Greek quality assurance bodies.

Key takeaways

- Following the issuance of the CoS judgment, entities participating in public procurement procedures in Greece must ensure that the documentation in support of the ESPD evidencing compliance with the personal eligibility criteria, as well as with the professional, technical,

financial and other tender requirements covers the stage of the bid submission. To some extent, this rule has been consistently followed by many entities familiar with the Greek public procurement landscape despite the controversial references included in the Greek Public Procurement Law, the recent CoS judgment thus coming as a confirmation of this prudent practice.

- Entities participating in public tender procedures must run a sanity check of their certificates of compliance with quality standards (such as ISOs) to ensure that the respective issuance bodies have the correct accreditation.

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