

Amendments on public procurement legal framework

Two years following the enactment of Law 4412/2016, a number of amendments have been introduced by Article 43 of Law 4605/2019 published on 01.04.2019 aiming at simplifying and expediting the procedures for the conclusion of public contracts. Many of the recently adopted amendments were obviously intended to address several disputed issues raised since L. 4412 first entered into force, bringing much-awaited clarifications to the largely non-tested field of new public procurement procedures. The present non-exhaustive summary sets forth specific highlights which may prove useful in the day to day practice of companies regularly interacting with the public sector.

Execution date and other formalities in relation to the submission of supporting documents

Under the previous version of Law 4412 specific issues of purely procedural nature were not addressed thus creating ambiguity and leaving room for contradicting interpretations by the Awarding Authorities and the Courts.

The amendment aims to provide certainty in some of these open issues as follows:

- As per the clarifications introduced by the amendments, the European Single Procurement Document (ESPD) and the Standard Statutory Declaration Form (SSDF) may be executed by the authorized individual up to ten (10) days prior to the bidding.
- It is clarified that the award documents drafted in another language must be submitted duly translated in Greek.
- The validity period of various categories of award documents, i.e. the documents which need to be submitted by the successful bidder, including criminal records, tax and social security clearance certificates, is clarified for the first time. A new certificate issued by the Labor Inspection Body proving lack of infringement of labour law provisions and related sanctions is introduced as one of the supporting documents to necessarily be included in the tender files. For the interim period until such certificate is issued by the competent authority, which to date is not possible for practical reasons, bidders are entitled to submit a solemn declaration instead of a sworn statement before a Notary Public which has thus far been the case.
- Explicit reference is made to the provisions of L. 4250/2014 relevant to the certification of copies for use before administrative authorities; the submission of private documents in plain / uncertified copy is permitted as long as a solemn declaration certifying the exact content of the document is also submitted.
- Foreign bidders may be released from mandatorily using and signing the tender documents by means of a digital signature in which case they must authenticate their statements / documents in any other suitable manner also submitting a solemn declaration to the effect that digitally signing does not constitute a requirement under public procurement law in their country of origin.

- A statement indicating the country of origin of an offered final product may be requested by the Awarding Authority upon penalty of exclusion.
- The amount of the participation guarantee is calculated on the basis of the contractual amount not counting any option rights or extension clauses of the contract.

Accelerating the tender procedure and broadening the use of new technologies

The amendments introduced by Law 4605/2019 aim to expedite the procedure for the completion of the tender and the award of the contract presumably in an effort to facilitate the absorption of EU originating funds and to broaden the use of new technologies. To this end the provisions introduced:

- Enable the simultaneous opening of documents, technical and financial offer folders following which a single decision is issued in tenders where the award criterion adopted is the most economically advantageous offer on the basis of pricing alone [lowest price criterion].
- Introduce a mandatory ten (10) – day deadline for the submission of award documents. Possibility of extension upon request of the bidder within the 10-day deadline on the condition of proof that applications for all pending certificates have been duly submitted.
- Abolish the obligation to submit updated award documents prior to notification of the award decision to the contractor; in the event of pre - contractual audit by the Court of Auditors or of filing of a preliminary appeal against the award decision, the entity which has been awarded the contract on a provisional basis shall be invited to provide a solemn declaration to the effect that no posterior changes have taken place.
- Set forth new shorter deadlines applicable to the various stages of below – threshold and ordinary tender procedures. It is further clarified that exceeding the provided deadlines does not entail nullity of the procedure.
- Amend the procedure set forth by the law for the receipt of services and deliverables.
- Enable the meeting of awarding authorities' collective bodies, including in the context of the opening of tenders, via tele-conference.

Legal remedies

The recent amendments also touch upon the issue of the remedies available to bidders within the context of public procurement. Indicatively:

- The amendments clarify that the level of protection afforded to bidders participating in the so called “short” tenders, i.e. tenders launched for a contract value ≤ 60.000 is the same as the one applicable to contracts of a higher value. In this context it is provided that it is possible to file an appeal against the invitation to tender in the same terms as the call for tenders (which applies to tenders of a higher contract value). It is also explicitly stated that the above administrative appeals shall have a suspensive effect on the execution of the contract.
- Explicit reference is also made to the possibility of request for cancellation - injunction before the competent Administrative Courts of Appeal against the decision of the awarding authority upon the filed objection while it is also clarified that the above administrative appeal is a prerequisite for seeking judicial protection before the administrative courts.

- Detailed reference is made to the remedies against decisions of awarding authorities throughout the execution of the contract, including matters related to evidence before the administrative Courts of Appeal and the procedure before the Council of State.
- Awarding Authorities may set forth additional reasoning to any decision pending for examination before the special Administrative Authority Competent to review Administrative Appeals (AEPP) up to ten (10) days prior to the hearing of the preliminary appeal, which must be notified to the appellant on the same day.
- Additional memoranda may be submitted before the AEPP to oppose the arguments and potential additional reasoning submitted by the Awarding Authority.

For further information, please contact:

Sofia Chatzigiannidou

Senior Associate

T (+30) 210 69 67 000

E s.chatzigiannidou@zeya.com

Nasia Gkouma

Senior Associate

T (+30) 210 69 67 000

E n.gkouma@zeya.com

Established in 1893, Zepos & Yannopoulos is one of the leading and largest Law firms in Greece providing comprehensive legal and tax services to companies conducting business in Greece.

280, Kifissias Ave.
152 32 Halandri
Athens, Greece

newsletters@zeya.com
Tel.: (+30) 210 69 67 000
Fax: (+30) 210 69 94 640
www.zeya.com

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