

Public Contracts in Greece are mostly assigned through Calls to Tenders issued by the relevant contracting authority and addressed to entities which fulfil certain criteria set by the above authority¹. Similarly, private authorities increasingly choose the issuing of such Calls to Tenders to address the potential contractors for major projects. The purpose of this article is to determine the necessary certificates usually required by such Tenders for companies that are non-EU resident.

The field of Public Service Contracts is regulated in Greece by Presidential Decree 346/1998 which implemented Directive 92/50/EEC in the Greek legislation. The above P.D. provides for certain criteria to be met, the existence or absence of which can usually be verified by certain certificates. Although it is not obligatory for the contracting authorities to request such certificates, the practice indicates that the majority of the Tenders issued hitherto, include most or all of these as prerequisites for the participation in the Tender.

These certificates can be generally classified in three categories: a) those relating to the general standing of the company, b) those relating to the financial standing of the company, and c) those relating to the ability of the company to perform the specific project. The lists that follow are indicative and not restrictive and include the most common requirements; in some (although few) cases some or all of the following certificates are not required at all, while in other cases the contracting authorities require some extra evidence, depending on the nature of the project.

A. Certificates Relating to the General Standing of the Company

1. The following are certificates that can usually be issued by a public authority and which verify that the Company:

(i) is not bankrupt or wound up, its affairs are not being administered by the court, has never entered into an arrangement with creditors, has not suspended business activities and is in no analogous situation arising from a similar procedure under national laws and regulations;

(ii) is not subject to proceedings for a declaration of bankruptcy, compulsory receivership or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws or regulations;

(iii) is not under a status of liquidation, and no such procedure has commenced against the company;

¹ A summary of each Public Call to Tenders is included in the Supplement of the Official Journal of the EU for Public Procurements located in <http://ted.eur-op.eu.int/ojs/en/eurlex.htm>

(iv) has no pending obligations in relation to social security contribution issues or tax issues;

If the country of the company's residence does not issue some or all of the above certificates, the Tenders require these to be replaced by a declaration on oath by the lawful representative of the company taken before a public authority or a Notary Public. Although not always required, it is generally suggested that the above declarations be apostilled (a certification procedure required by the relevant Hague Convention) so as to avoid unnecessary complications. It is, nevertheless, advisable that the companies contact the public authorities to certify their inability to issue such certificates before resorting to the above declarations.

2. If, for the performance of certain works, the local laws require the companies to participate in certain organisations or chambers, certificates of enrolment in such are usually required.

3. Each company is also required to submit official copies of its Articles of Incorporation with all amendments thereof, including a certificate indicating the person(s) representing the company. In most cases, foreign companies are required to appoint a representative and/or attorney-in-fact in Greece for the purposes of the specific Tender.

B. Certificates Relating to the Financial Standing of the Company

The candidates are usually required to submit some or all of the following:

1. Balance sheets or summaries thereof.
2. Bank guarantees on a percentage of the estimated budget of the project. The above must be issued by a Bank or Financial Institution authorised to perform such operations within the EU.
3. Certificate of relevant professional risk indemnity insurance.

If, due to a well-founded reason, the company is unable to provide such evidence, the contracting authority may accept the establishment of the above by any other document it may deem acceptable.

C. Certificates Relating to the Ability of the Company to Perform the Specific Project

According to the nature, quantity and purpose of the services to be provided, the contracting authorities may require one or more of the following as evidence of the ability of the candidate to perform the requested services:

- (i) Educational and professional qualifications and/or those of the firm's managerial staff;

(ii) A list of the principal services provided in the past three years, with the sums, dates and recipients, of the services provided. The contracting authorities usually require evidence of the assignment of the above, such as the assigning agreements;

(iii) A statement of the candidate's average annual manpower and the number of managerial staff for the last three years;

(iv) A statement of the tool, plant or technical equipment available to the candidate for carrying out the services;

(v) An indication of the proportion of the contract which the service provider may intend to sub-contract;

(vi) A list of the clientele to which the company has provided similar services in the past.

The above are the most common requirements; however, depending on the nature of the services, the contracting authorities may require more detailed evidence to be provided.

General Observations

In case of a joint proposal, the contracting authorities usually require that the selected bidders form a Joint Venture, requesting the submission of a letter of intent in which the candidates undertake to form such a Joint Venture, should they be the assigned the project.

In the majority of the Tenders, the contracting authorities require all the documents to be submitted in Greek, or officially translated into Greek. Such tasks can be extremely time-consuming; it is, therefore, advisable to promptly prepare the necessary documentation so as to leave time for the translation of same and for the correction of possible mistakes, especially since long distances do not guarantee for the timely delivery of the original certificates.

Non-EU companies are at disadvantage in such procedures because of the long distances and the differences in legislation and practices. Since, in most Tenders, late or incomplete submissions result to the elimination of the candidate, it is necessary that all the above are prepared in co-ordination with a Greek lawyer and, preferably, with a Greek company experienced in such proceedings.