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## GREECE

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### A. THE GREEK SUBSTANTIAL LAW OF THE PUBLIC PROCUREMENT CONTRACT

#### I. IN GENERAL

Three are the basic legislative texts that dominate the process of the conclusion and the fulfillment of public procurement contracts.

First of all, the Law 2286/1995, which is referred to the procurement-contracts that the public sector, the organizations of local government, the public legal entities, which are governed by the public or private law and banks owned by the State, regulates the process, which is followed by the Greek State for programming public procurements.

Especially, this law contains general rules about the incorporation of the procurements of vehicles that are subject to this law, in an integrated program of procurements, which is approved and comes to implementation with joint decisions of the Ministers of National Finance and Development, when at the same time it provides the constitution and the operation of specific committees, which are involved in the process of programming public procurements with consultative and conclusive competence. Moreover, the above law generally refers to four types of processes for the conclusion of procurements, which are distinguished in synoptic, opened, closed and negotiated. At the same time it grants legislative authorization for the publication of a presidential decree, which will constitute the Regulation of the Public Procurements and it will include detailed dispositions about the terms, the conditions for carrying out procurements, the criteria for the participation and the evaluation of the participants, the deadlines for several processes, the constitution of collective instruments, which participate at the conclusion and the execution of the procurement contracts, the way of administrative settlement of the differences, coming up during pre-contractual stage, the way of implementation of the contract, and the pecuniary or penalties of any other administrative nature imposed to those who violate the engagement undertaken by the contract.

The above Presidential decree is P.D. no 394/96, which concludes specific articles over the procedure followed in order to conclude and apply a public procurement contract entered into Greek State and Public legal entities under Greek public law. Meanwhile it is also applied additionally in cases of procurement contracts of goods that are not included to the unified program of public procurements and are executed according to the Articles 79 to 85 of law 2362/95 "Of Public logistic and Examination of State expenses". It is also applied on the procurement contracts regulated according to the third basic Greek Law of procurement contracts of the greater public sector Presidential Decree No.370/95, which

was adopted in implementation of EC Directive E.C/93/36 and concludes articles regulating only the pre-contractual stage.

In that way it regulates specifically the manner of public procurement contracts procedure more thoroughly either in an open or in a closed tender or in negotiations, while at the same time it concludes articles of general interest to the Regulations of Public Procurement Contracts relevant to technical specifications and criteria for the quality choice of providers.

It is mentioned, in this short presentation of the substantial Greek law frame that the legal entities of the greater public sector, without actually being state legal entities under public law, are governed by specific regulations of procurement. These regulations are formed by the legal entities themselves, are approved by mutual decision of the Minister of Commerce and of the competent Minister in each case, and begin to be in force by their publication in the Official Gazette.

Specific legal frame also exists on the procurement public contracts entered by the Greek Armed forces, the Municipalities and the Public Hospitals, which differ the procedure on conclusion and application of such public procurement contract. Special legal frame also applies for the establishment of a public procurement contract among the Public Sector of Water, Energy, Public Transportation and Telecommunication services.

## **II. THE REGULATIONS OF THE PRE – CONTRACTUAL STAGE**

### **a. Procedures of entrusting public procurements contracts.**

Public procurement contracts can be awarded in the following ways:

- 1. By means of an open tender, where any supplier can file an application and make an offer following the publication of such tender in a daily newspaper;**
  
- 2. By means of closed invitation, where the appropriate authority, after having examined all applications and considered all requirements published in the relevant tender, will invite only those applicants meeting the necessary conditions to make their offers; and**
  
- 3. By means of negotiations, where the appropriate authority invites certain suppliers of its choice to negotiate the terms of the public procurement contract. Generally, this procedure is followed when a closed or open invitation fails to attract acceptable offers, provided that the terms of the initial tender are not substantially modified**

### **b. Publicity Regulations of the invitation to tender**

It is the duty of those authorities responsible for tenders to inform the general public of the intention of the state to award certain procurement contracts during the next 12 months, of which the total value will be in the region of ECU 750.000. This information should be published in the Official Journal of the European Union and relevant publication expenses are charged to the European Union.

During the procedure for an open or closed tender, the authority conducting the competition should proceed with the following actions:

1. Publishing the main points of the tender in two daily financial newspapers circulated all over the country and, if the tender was announced by a regional authority, in a local one, after its publication in the Official Journal of the European Union
2. Placing a summary of the tender on a wall of the premises, open to the public, of the authority conducting the tender
3. Sending the tender to the Greek Chambers; and
4. In a closed invitation procedure, placing the tender, document or invitation, after its summary is published, at the disposal of the interested parties.

The appropriate authority must inform the bidders who have not been chosen as to the reasons for their rejection. It also must provide them with the full particulars of the bidder selected.

Regarding a public procurement contract, the authorities must keep records of the procedure, in which the following should be stated:

1. Name and address of the authority responsible for the tender
2. Contractual terms and price
3. Names /trade names of the bidders selected and those rejected, along with the grounds for such decisions
4. The part of the contract that the contracting bidder will entrust to a third party and
5. The reasons for which the authorities decide to award a public procurement contract by means of negotiation.

c. The content of the invitation to tender has to be published

The conditions set forth in an invitation to tender for a public procurement contract, should be fully and clearly expressed.

In the case of an open invitation procedure, the following must be stated:

1. Type of tender
2. Quality and quantity of the material procured

3. The supplier's possibility to provide an offer for only part of the quantity needed
4. Full particulars of the officials involved and the fax number of the appropriate authority
5. Date of filing of the tender with the Publications Office of the European Union for its publication
6. The time span during which any and all suppliers interested may ask the appropriate authority to provide them with information and documents required
7. Any information about the exact date, time, and procedure
8. Any guarantees
9. The financier(s) involved and method of payment
10. The Criteria considered for the evaluation of offers and the final award
11. Any documents and information required by the appropriate authority to estimate if all necessary financial and technical specifications are fulfilled
12. The terms and conditions under which a price could be changed and
13. The basic rules, ignorance of which results in the rejection of an offer.

In the case of a closed invitation procedure, the following must be referred to:

1. All statements required for an open invitation procedure
2. The type of application required, time limits, and the appropriate authority to which the application should be submitted;
3. The maximum number of applicants that may be invited to provide offers and
4. The time period during which the invitations to the chosen suppliers should be sent.

The invitation to suppliers asking them to submit offers should include, at least, the following:

1. The authority to which offers should be addressed and the relevant time limitation
2. The identity of persons responsible, and the exact date, time, and procedure of bringing the offers to light; and
3. The period of validity of an offer.

The invitation and relevant tender are both sent to those suppliers chosen by the appropriate authority to provide their offers. In cases of negotiations, the invitation must include all the information mentioned above relating to the closed invitation procedure.

- d. The time limits for filling an application from the prospective suppliers

**Open Tender:** The time limit for filing an application must be fixed at no less than 52 days from the day

when the delivery of the announcement of the tender to the appropriate Publication's Office of the European Union takes place. If the tender was announced in a Greek daily newspaper and there was no requirement that it be published in the Official Gazette of the European Union, the time limit shall be fixed at no less than 30 days.

In cases of urgent needs, this 30-day period may be reduced to 15 days, following a justified decision of the appropriate authority. After interested suppliers are asked to provide the appropriate authorities with the necessary documents, such documents should be filed within six days from the acknowledgement of this request. If suppliers are asked to provide further supplementary information, they should provide this at least six days before the date on which the offers are to be filed.

**Closed Invitation:** The time limit for filing an application must be no less than 37 days from the day of the delivery of the notice to the appropriate Publications Office of the European Union. If it was published in a Greek daily newspaper and there was no requirement that it be published in the Official Gazette of the European Union, the time limit must be fixed at no less than 20 days. In cases of urgent need, the time limits may be reduced to a minimum of 15 and 10 days respectively, following a fully justified decision of the appropriate authority.

Following the examination of all applications, a written invitation is sent to the suppliers who have been chosen to submit their offers. The time limit within which these offers should be submitted must be fixed at no less than 40 days from the date the invitation was sent. In any other case, the time limit must be fixed at no less than 20 days. In cases of urgent needs, the above time limit may be decreased by 10 days. When supplementary information is required, this must be provided following a fully justified decision of the appropriate authority and at least six days before the day set for the submission of an offer.

### **Negotiations**

When the appropriate authority invites certain suppliers to make their offers, such offers should be filed within a time span of no less than 37 days from the date on which the relevant notice was sent to the Publications Office of the European Union. When the matter is one of urgency, this time span will be reduced to that of 15 days.

#### **e. The prospective suppliers**

Natural persons, legal entities, associations, joint ventures, and unions of suppliers submitting a joint offer have the right to participate in the procedure for the award of public procurement contracts.

With their offer, the participants must file the following documents:

- 1. A deed of security**
- 2. An extract of their criminal record, issued during the last three months, certifying that they have not committed any criminal offence related to their business**

3. A certificate issued by the appropriate judicial or administrative authority, within six months before the start of the tender procedure, certifying that the party is not in bankruptcy, liquidation, compulsory administration, or any-other similar situation
4. A certificate of good standing issued by the appropriate tax office at the time the tender is made and
5. A certificate from the appropriate Chamber, issued within the six months prior to the start of the tender procedure, stating the supplier's specific occupation and good standing.

When the bidders are foreign residents, the above documents must have been issued by the competent authority of their respective country. If the bidders are legal entities, all the above documents are required except for the second. If the bidders are associations, apart from the aforesaid documents, a certificate confirming their lawful operation also is required. If a bidder is represented in the competition by another person, the relevant power of attorney also should be submitted with the offer. Additionally, all documents should be translated into Greek.

**f. Regulations in connection with the bidding of the offer**

Suppliers who wish to participate in the procedure for the award of a public procurement contract must file their written offer within the period of time provided for in the relevant tender document or invitation. Two copies of the offer should be filed in a sealed envelope with all other relevant documents. The following should be written on the envelope:

1. The word "offer"
2. The name of the authority holding the tender for the public procurement contract
3. The full particulars of the bidder
4. The number of the relevant tender document and
5. The date of the tender.

Only the required documents relating to technical or financial issues are sealed in separate envelopes bearing such indication on the envelope.

Written offers should be clearly and fully described without corrections or modifications that obscure the meaning. Corrections already existing in the document at the time of filing should bear the stamp of the bidder and the official stamp of the appropriate authority to which the offer is submitted.

Often, the tender states that, together with the Offer, some samples of the tendered material should be at the disposal of the authority responsible for the tender. With regard to a closed invitation, any offer by a bidder who has not been invited to the procedure is returned with the seal on the envelope intact and without examination of the offer. Furthermore, counter offers are not acceptable and always rejected.

Bidders are bound to their offers, and these are valid for a period of 30 days commencing from the final



date of the tender, unless the tender provides otherwise. They will also be valid for any extension of time that the bidders previously agreed upon. An offer stating that it is valid for less time than that provided for in the tender will be rejected.

**Joint Offers:** A joint offer must be signed by all members of the union or by their legal-representative. It is essential that the offer must state the total quantity of the material offered and each member's contribution to the offer. However, every member of the union is responsible for the whole offer, until the execution of the public procurement contract.

If a member is unable to carry out the obligations under the tender, due to force majeure or any other reason, the rest of the members still have the responsibility of providing the whole offer and executing the contract under the original terms and conditions. These members of the union may also propose the replacement of the member who is unable to fulfil the obligations under the tender.

**Regulations Relating to Participation:** The appropriate authorities have a duty to ensure that all information provided by bidders remains confidential.

When a public procurement contract is to be awarded in accordance with the best financial offer, the authorities may also consider alternative offers filed by bidders, provided that these fulfil the minimum requirements set by the authorities holding the competition. If alternative offers are not permitted, this prohibition should be highlighted in the tender.

The appropriate authority may request that the bidders, in their offer, specify the part of the contract they intent to entrust to a third party.

#### **g. The Price**

When the offer is made, the price of the material tendered is also given. This price includes any third party deductions or other charges, except value-added tax, for the delivery of the material at the place provided for in the tender. The tender defines whether the prices offered will be given in Greek or foreign currency, but the Greek State is not obliged to pay the supplier in the currency stated.

In order to make a comparison between offers, prices in foreign currency are converted into euros on the basis of the rate of exchange quoted in the bank's official bulletin on the date the tender took place.

Offers including a condition regarding price readjustment are rejected if there is no relevant provision in the tender. If the price offered is not clearly stated or cannot be assumed with certainty, then the offer is rejected, by means of a Ministerial Decision, as being unacceptable.

When the tender provides that the date of delivery of the goods tendered is a 12-month period after the date of the tender, a condition for the price readjustment should be included. The method and particular

conditions under which the above readjustment is to be made should be expressly stated. In addition, it should be considered that:

1. The time period during which the price readjustment is calculated begins on the date of the offer's submission, as defined in the relevant tender document or invitation to suppliers, and ends on the date of the delivery of the goods
2. Any payment in advance is not considered part of the price to be readjusted
3. In the case of partial deliveries, any readjustment is calculated only on the price of the quantity that will be delivered after a period of 12 months according to the tender; and
4. In the case of a delayed delivery owed to the supplier, any excess of time is not taken into account when calculating the price readjustment.

Under certain circumstances provided for in the tender and on judgement of the authority conducting the tender, a price readjustment may be permitted, even if the delivery date set is within a 12-month period.

For payment of the extra amount of money resulting from a price readjustment, an additional contract is not required. When the tender refers to a price readjustment, offers at fixed prices are rejected.

#### **h. Processing the offer**

The authority that received the offers in sealed envelopes will open these on the date provided for in the tender. Offers received after these envelopes are opened are not accepted and will be returned to the applicant. Envelopes containing the technical data relevant to the offer are left unsealed. Those containing the financial conditions are sealed with the authority's official seal and placed in another envelope to be opened on the date provided for in the tender. The latter will remain unsealed only if the technical specifications of the corresponding offer meet the ones required. If an offer is rejected because it does not comply with all official technical specifications, then the relevant envelope of the financial part of such an offer will not be opened.

During an open invitation procedure, the envelopes are opened in public. During a closed invitation procedure, the envelopes will be opened in the presence of those bidders who were invited to make offers or in the presence of their lawful representatives.

All bidders and all supporting documents must be recorded in official records which are signed and sealed.

#### **i. Evaluation of the offer**

If, when choosing a supplier, the decision is mainly based on the lowest price offered, the important factors influencing this decision are as follows:

1. The satisfaction of technical and other conditions provided for in the tender or invitation

2. The comparison between the present price offered and the price offered in previous tenders for the same or similar goods; and

3. The current prices.

If, when choosing a supplier, the decision is mainly based on the most advantageous offer, the important factors influencing this decision are the following:

1. The price and terms of payment

2. The total establishment and/or operating costs.

3. The technical specifications provided by the offer, as defined in the tender or invitation

4. The suitability of the tendered goods to fulfil a particular aim.

5. The similarity of the goods selected to the goods already used by the authority tendering.

6. Any security offered by the bidder.

7. Service and assistance provided by the bidder following the sale, especially in relation to technical matters.

8. The date of delivery, if the authority views this as an important factor affecting the procurement contract and

9. Any other factor relating to the specific needs that the procurement should satisfy.

All the above-mentioned factors, apart from the financial aspects of the offer, i.e., price, method of payment, and costs, are classified into the following two groups:

1. Technical specifications, as to quality and efficiency, i.e., technical characteristics and suitability of the goods; and

2. Technical support and cover, i.e., security, service, and help in technical matters.

For each group there is an evaluation factor of up to 80 per cent and 20 per cent respectively. The factors of each group are evaluated according to different factors of evaluation. The authority, whose needs will be covered by the goods procured, defines the exact factors of valuation of each group and of each factor of both groups. This must be specifically stated in the relevant tender document.

General and obscured offers or offers the price of which cannot be clearly identified are rejected by the authority responsible for the valuation of the offers. Offers that do not meet all the conditions and technical specifications provided for in the tender are also rejected. However, offers which do not satisfy all the requirements provided for in the tender are not rejected when the authority holding the tender takes the view that the missing requirements are not essential.

j. Evaluation of the supplier

A supplier may be excluded from participating in the procedure for the award of a public procurement contract in the following circumstances:

1. The supplier has been declared bankrupt, has gone into liquidation, is under compulsory administration, has stopped payments and/or business, has suspended payments, or is under a similar situation provided for by the legislation of the supplier's country
2. The supplier has been convicted by an irreversible judgment for any offence punishable by the Penal Code and related to his professional behaviour
3. The supplier was found guilty of offences ascertained by the appropriate authority
4. The supplier has not paid taxes or contributions for social security provided for by the legislation of his country; and
5. The supplier has deliberately provided the authority conducting the procedure with false information

The solvency of the supplier must be proved by presentation of:

1. Certificates issued by banks
2. A copy of the company's balance sheet
3. A declaration relating to the total level of the company's range of activities over the last three years, especially regarding the goods offered; and
4. Any other official document that the authority conducting the procedure deems is necessary.

The technical efficiency of the supplier must be proved by the following:

1. Lists in which the main deliveries made during the last three years to private and/or public consignees are mentioned
2. Descriptions of the technical equipment of the bidding company
3. A report on the technical staff and services provided
4. Samples, pictures, and/or descriptions of the tendered goods
5. Certificates issued by certain organizations or institutes, confirming the specifications of the goods offered; and
6. An examination of the goods offered by the authority conducting the procedure or by any organization of the country where the supplier's head offices are, when the goods are compound and must fulfil certain needs.

#### **k. Specifications**

Technical specifications are regarded as being the technical requirements stated in the tender document which define the basic characteristics of the goods to be tendered that make them suitable for a certain use. These specifications refer to the quantity, quality, safety, packaging, labels, and methods of testing the offered material.

Technical specifications set by Greek authorities are based on models approved by recognized standardization institutions and which comply with European Union Directives. However, it is not obligatory for the authority to follow the above models, and these may be disregarded by the authority if they provide no information about the valuation or suitability of the goods offered.

Finally, specifications involving goods of a certain origin or manufacturing process and particular methods that exclude or favour certain suppliers and goods, are not acceptable. Such specifications are allowed only if the particular goods cannot be otherwise described. In this case, however, reference to the features must include the phrase or equivalent.

### **III. THE REGULATIONS CONCERNING THE IMPLEMENTATION OF A PUBLIC PROCUREMENT CONTRACT**

#### **a. Notification of award**

The chosen supplier must receive a written notification, which must include the following:

1. The type of procurement, exact quality, and price
2. The authority that conducted the procurement
3. The award agreement, including the terms set by the tender or invitation and any accepted modifications of the above; and
4. The time-period during which the contract should be signed.

The public procurement contract is considered as signed once this notification has been given.

The chosen supplier must appear within 10 days following receipt of the above notification to sign the contract. At this time, the supplier must present the good performance guarantee referred to above. In the case of a foreign supplier, the notification must be addressed to its legal representative in Greece, if such representative exists, or to the supplier himself by means of telegraph. If the supplier does not appear to sign the contract, he is declared as having forfeited all his rights.

#### **b. Performance and Preview**

Following the award of a public procurement contract, the authority draws up the contract, which is signed by both the authority and the supplier, and includes at least the following:

1. Date and place of the signing

2. Contracting parties
3. Quality and quantity of the goods to be procured
4. Date, mode, and place of the delivery of the goods
5. Technical specifications of the goods
6. Any guarantee required
7. Price, date, and method of payment, as well as any readjustment of price
8. The method of dispute resolution; and
9. Special clauses, if agreed.

The contract may be modified only if such procedure is provided for in the contract itself or if the contracting parties agree to do so.

The contract is considered as having been executed in the following cases:

1. The whole quantity or the greatest part of it has been delivered
2. The quantity delivered has been unconditionally received
3. The contractual price has been fully paid; and
4. Any other contractual duties and obligations have been fulfilled by both parties and any guarantees have been released according to the contract.

The supplier is obliged to complete the procurement under the terms agreed in the contract and to inform the appropriate authority and committee of the exact delivery date at least five days in advance. Following storage of the goods tendered, the supplier must submit to the appropriate authority a delivery receipt, signed by the person responsible for the storage facility. The contractual time of delivery may be changed by a Ministerial Decision on the occurrence of an event that makes the delivery on the due date impossible or in the case of force majeure. Acceptance of the procurement is certified by a specialized committee that checks the quality and quantity delivered and draws up a document confirming delivery. If the committee refuses to accept the material, it states the reasons for rejection and gives an opinion as to whether the goods delivered are suitable for the intended use. If the appropriate authority decides that the technical divergences did not affect the suitability of the goods, the committee must approve their delivery, with or without a price reduction.

If the delivery of the goods and the drafting of the relevant documents are not performed within the contractual period, delivery is assumed to have taken place pursuant to a Ministerial Decision, and the Greek state reserves all its rights. In such case, the goods are still examined, and the following apply:

1. If the goods are to be rejected, the supplier is obliged to replace them so as not to be subjected to penalties; and

2. If the goods are acceptable, although not in accordance with the relevant contractual terms, the supplier must repair them, if possible, or reduce the price. .

#### **c. The Payment**

The price of the procured goods may be paid in one of the following ways:

1. Full payment
2. Advance payment of 50 per cent of the total value and the balance payable following delivery
3. Deferred payments for the whole price or a part of it; or
4. Any other manner provided for in the tender.

The tender must state the mode of payment and all other relevant details. With particular regard to domestic procurements, the following supporting documents are required:

1. A document confirming the quantity and quality of the goods delivered
2. A document confirming the delivery of the goods at the storage facility
3. An invoice bearing the indication "Fully Paid"
4. A supplier's receipt, if the invoice does not include the words "Fully Paid"; and
5. Any other document required by the authority responsible for payment and examination of the goods.

As regards non-domestic procurements where payment is effected through the Bank of Greece, the following documents are required:

1. Three copies of the certificate of origin of the goods
2. Bills of lading
3. Six copies of the supplier's invoice bearing the indication "Fully Paid";
4. Supplier's receipt if the invoices do not contain the words "Fully Paid";
5. A certificate of quality and quantity following the examination of the goods;
6. A document confirming the place of delivery and storage of the goods; and
7. A copy of the supplier's telegraph communicating to the Greek Authority the details of the loading.

#### **d. Security**

Security is issued by credit institutions or other legal entities of the member states of the European Union that have such authority. If the relevant documents are not in Greek, a translation should be attached to the original. By means of a promissory letter, the credit institution undertakes the obligation to pay an amount of money without investigating the existence of a debt. All types of guarantee should include the following information:

1. Date of issue, issuer, and number;
2. Authority to which it is addressed;

3. Amount covered by the security;
4. Full name and address of the supplier in whose favor the security is issued; and
5. The terms that the issuer of the security will unconditionally pay, that the amount guaranteed will be paid in total or partially within three days following a written notice by the responsible public authority, and that the issuer is obliged to accept any extension of the security's validity, following the service of a relevant document by the authority before the expiration date.

#### **e. Types of security**

**Participation Guarantee:** The participation guarantee is issued in favor of the participant, and it amounts to five per cent of the total Costs estimated plus value-added tax, unless the relevant tender document or invitation provides otherwise. Such a guarantee is also required in the procedure for the award of a public procurement contract by means of negotiations.

The participation guarantee should include:

1. The relevant tender, date of tender, and procurement required; and
2. The expiry date of the security provided

The participation guarantee is returned to:

1. The supplier which has been chosen after the good-performance guarantee has been provided and within five days from the signing of the contract; and
2. The rest of the bidders within five days from the award of the contract.

**Good Performance Guarantee:** The chosen supplier must deposit a guarantee for the amount of 10 per cent of the total contractual value, excluding value-added tax, unless the tender document or the invitation provides otherwise. Such a guarantee must be submitted prior to or upon signing the contract.

**Advance Payment Guarantee:** Upon signing the contract and if the contract so provides, the supplier may be paid a maximum of 50 per cent of the total contractual price, excluding value-added tax. This amount and its corresponding interest are set off against the total payment or payment of each partial delivery. Such advance payment is effected only upon payment of a guarantee of the same amount.

The guarantees for good performance and advance payment are returned after the unconditional quantitative and qualitative receipt of the goods. In the case of partial delivery, the above guarantees are released partially according to the value of the quantity delivered each time.

In the case of unions of suppliers, any security provided covers the obligations of all members of the union.

#### **f. Contractual penalties**

If goods are loaded, delivered, or replaced after the expiration of the contractual time or any extension



thereof, the following fines are imposed:

1. For any delay not exceeding one-quarter of the contractual time, including any extension granted by a Ministerial Decision, a fine in the region of 0.5 per cent of the contractual price of the quantity delivered late
2. For any delay between one-quarter and one-half of the contractual time, a fine in the region of two per cent Of the contractual price of the quantity delivered late; and
3. For any further delay, a fine in the region of five per cent of the contractual price of the quantity delivered late.

However, if there is delay in delivery of a certain quantity of goods tendered and this causes damage to or affects the use of the rest of the quantity, the fine imposed' will be calculated on the basis of the contractual price of the total quantity.

If the supplier has received a payment in advance, interest on this amount also is payable in the above cases. The authority collects fines and interest of payment in advance by deducting the relevant amount from the remaining amount owed to the supplier. Regarding a union of suppliers, fines are imposed on the members pro rata.

#### **g. Replacement of goods**

If the goods delivered are entirely or partially rejected, the appropriate Minister by means of a decision may decide that they be replaced by another quantity meeting the contractual conditions and terms within a period of time set by the same Ministerial Decision.

If the supplier does not comply with such decision, he is declared to have forfeited his rights and is subject to penalties for delayed delivery. With the same decision, a 20-day period is set during which the supplier has to recover the rejected goods. This period may be extended following the supplier's request submitted at least five days before its expiration.

As regards partial deliveries, the quantity rejected may not be returned before the total quantity contracted has been delivered. Additionally, any rejected goods will not be returned until they are replaced with other goods, fulfilling all contractual requirements.

By a Ministerial Decision following the opinion of the appropriate authority, the supplier may be allowed to recover the rejected goods before they are replaced, on the condition that a financial guarantee is granted covering the price of the rejected quantity already paid.

#### **h. Default and termination**

A supplier who does not appear within the prescribed time allotted to sign the relevant contract forfeits all rights on the award of the public procurement contract by means of a Ministerial Decision following the opinion of the appropriate authority.

In accordance with the above-mentioned procedure, a supplier is declared in breach of contract and loses any rights arising from the contract, if he has not loaded, delivered, or replaced the goods procured or kept the goods in good condition, or repaired them, within the contractual time or any extension thereof.

The supplier does not forfeit any rights if the contract has not been signed or the goods have not been loaded or delivered or replaced due to actions of the Greek state. Furthermore, the supplier does not forfeit any rights in the case of force majeure.

If the supplier is in default of his obligations according to the above, the following penalties may be imposed pursuant to a relevant Ministerial Decision after hearing the defence of the supplier:

1. A total or partial forfeiture of the participation guarantee or the good performance guarantee
2. A new procedure for the procurement of the goods at the expense of the supplier in default who also is under the obligation to cover any direct or indirect loss of the Greek state relating to the procurement
3. The temporary or permanent exclusion of the supplier from the whole or a part of any future procurement, with such exclusion imposed only by means of a decision of the Minister of Development
4. A fine, corresponding to 10 per cent of the total value of the procurement in relation to which the supplier is in default, if the supplier has been given the right to deliver the goods until the day before the new tender regardless of whether he exercised this right; and
5. The return of any advance payment made by the authority, plus interest calculated from the day of issue of the decision declaring the supplier as having forfeited his rights.

If the new procedure involves changes in the terms and technical specifications of the award or the contract with respect to which the supplier is in default, any balance in favor of the supplier resulting from such amendment will be deducted from the total amount payable by such supplier.

A supplier who pleads force majeure must communicate in writing to the appropriate authority the events constituting force majeure within 20 days from the date they occurred. Furthermore, he must submit within the same time period all necessary supporting documentation.

## **B. THE LEGAL PROTECTION DURING THE PRE- CONTRACTUAL STAGE AND THE IMPLEMENTATION OF THE PUBLIC PROCUREMENT CONTRACT**

### **a. Administrative procedure before public authorities during the pre – contractual stage**

According to the Presidential Degree No 394/1996, every natural or legal entity participating in a public procurement contract procedure has the right to object before the competent administration member and

asking:

- a) The annulment of a condition of the tender
- b) The exclusion of another party during the tender
- c) The judgement of illegal execution of the tender in general or specific terms over the procedure that follow the receipt and the unsealing of the offers

Specifically:

**Objection against the Tender:** In an open invitation procedure, any Objections must be raised within half the time period commencing from the publication of the tender until the expiry date of the period set for the submission of the offer.

In a closed invitation procedure, only suppliers who have been invited to make offers can raise objections within half the time period, commencing from the date of dispatch of the relevant invitation to them 'until the expire date of the period set for the submission of the offers. The decision on the objection must be issued within a maximum of five working days before the tender.

**Objection against Supplier's Participation and Legality of Opening the Envelope:** An objection may be raised during the tender and until the next working day and will not postpone or terminate the procedure. The objection will be examined, together with the valuation of the results of the tender, and consequently, a relevant decision will be issued. An objection against the participation of a supplier must be served to that supplier. In a closed invitation procedure, only suppliers who have been invited to submit offers are entitled to raise objections.

**Objection against Legality of the Tender and Award Decision:** An objection may be raised within three working days from the registration of the award decision in the book kept by the authority conducting the tender. In a closed invitation procedure, only suppliers who have been invited to submit offers are entitled to raise such objections. The decision regarding such an objection is issued within a maximum of 10 days after the expiry date of the period set for the submission of objections.

b. Administrative procedure before public authorities after the signing of the public procurement contract

The supplier to be declared undertaker, has also the right to object before the competent member that rules over the legal entity contacting the competition and against any other decision inflicting him penalties.

Specifically, suppliers may raise objections against decisions imposing any penalty upon them within 30 days from the day of registration of such penalty in the Penalty Book. The Minister is competent to decide on such objections, and his decision cannot be appealed.

These objections have peculiar double legal significance, first of all because the participators in the pre-contractual stage are in a position to satisfy promptly their demand through the medium of the administrative procedure and secondly because into the Greek procedural system they form precondition for the plea in abatement in the administrative court.

### c. Provisional judicial protection during the pre – contractual stage

Except of the possibility every involved person, who had or will have the interest to entrust a specific public procurement contract, to raise an objection before the administrative public authorities, same also has the right if he goes or will eventually go through damage from an infringement of the Greek or European Union Law, to apply during the pre – contractual stage for provisional legal protection before the competent court. The above mentioned provisional legal protection will be in force until the issue of a decision of the main judicial process.

The law, that regulates the mentioned process, is Law 2522/1997. This Law, despite of the fact that it is published for the adjustment of the Greek legislation in the orders of the Directive 89/665/EC, it sets stricter substantial conditions in comparison to the directive. Especially, in order that the Court satisfies the request of a participant with a public tender and unspent the application of an administrative act, which causes or is likely to cause damage, it is required that the violation is seriously speculated and, pursuant to the Directive, the Court may not content itself to the simple surmise.

We should drop the remark that in this case, according to the Greek procedure system there exist a separation in addition to the court that has the jurisdiction to afford temporary legal protection. If the assigned authority is the state or the a public entity that is dominated by the public law, the court in competent to hear the injunction is the Greek Public Supreme Court, while the assigned authority is a private entity or a public organ that holds by the private law, the complement court is the Court of first instance of the region where the authority has its domicile