



GREEK LAW DIGEST

The Ultimate Legal Guide
to Investing in Greece

**VG Lawyers
Vrettos - Ganiatsos &
Associates**

PUBLIC PROCUREMENT & PROJECTS



NOMIKI BIBLIOTHIKI



HELLENIC REPUBLIC
Ministry of Development,
Competitiveness and Shipping



Editor-in-chief:

Adonis Karatzas (adonik@nb.org)

Editorial board:

Geena Papantonopoulou (geenap@nb.org)

Marina Tsikouri (marinat@nb.org)

Advertising managers:

Georgia Siakandari (georgias@nb.org)

Juliana Berberi (juliber@nb.org)

Art Director:

Theodoros Mastrogiannis (mastroth@nb.org)

Creative Director:

Andreas Menounos (andreasm@nb.org)

Desktop Publishing – Films:

Yannis Dedousis (yannisd@nb.org)

GREEK LAW DIGEST

ISSN 2241-133X

www.greeklawdigest.gr

NOMIKI BIBLIOTHIKI SA, © 2012

COPYRIGHT

The content of this Guide is copyright of NOMIKI BIBLIOTHIKI S.A. Copying of part or all of the content of the Guide in any form is prohibited other than that in accordance with the following permission: a) you may copy pages from the Guide for your personal use only, b) you may re-copy extracts from the Guide to individual third parties for their personal information, but only if there is acknowledgment to NOMIKI BIBLIOTHIKI S.A. as the copyright owner of the Guide.

DISCLAIMER

The content of this Guide is intended for information purposes only and should not be treated as legal advice. The publication is necessarily of a general nature; NOMIKI BIBLIOTHIKI S.A. makes no claim as to the comprehensiveness or accuracy of the Information provided; Information is not offered for the purpose of providing individualized legal advice. Professional advice should therefore be sought before any action is undertaken based on this publication. Use of this Guide does not create an attorney-client or any other relationship between the user and NOMIKI BIBLIOTHIKI S.A. or the legal professionals contributing to this publication.

**NOMIKI BIBLIOTHIKI**

23, Mavromichali Str., 106 80 Athens Greece
Tel.: +30 210 3678 800 • Fax: +30 210 3678 857
e-mail: info@nb.org
http://www.nb.org



member of Europe's 500
dynamic entrepreneurs



Committed to excellence

Useful insights of the Greek Economic Environment	16
Judicial System	33
Basic Aspects of Civil Law	75
Business Entities	111
Banking System - Finance - Investment	185
Mergers & Acquisitions	243
Financial Contracts	275
Financial Tools	299
Competition	313
Industrial & Intellectual Property Rights	337
Transportation	355
Insurance	403
Insolvency - Bankruptcy	411
Tourism	425
Technology - Media - Electronic Communications	433
Energy	467
Environment	505
Real estate	571
Food & Beverage	589
Life sciences	597
Consumer protection	605
Personal data	611
Lottery – Games	619
Sports Law	625
Employment	633
Immigration	653
Exports / Imports/ Customs	661
Tax	667
Legal profession in Greece	703
Related information	705

Published under the Auspices of



HELLENIC REPUBLIC
Ministry of Development,
Competitiveness and Shipping





GREEK LAW DIGEST

- **BANKING SYSTEM**
 - **FINANCE**
 - **INVESTMENT**



HELLENIC REPUBLIC
Ministry of Development,
Competitiveness and Shipping



PUBLIC PROCUREMENT & PROJECTS

Constantine Vrettos, *Attorney at Law, LL.M.*
Senior Partner at **Vrettos - Ganiatsos & Associates**

GENERAL FRAMEWORK

What is the legislation applicable to public procurement contracts?

Public procurement law has been harmonized in the EU and therefore Greece follows the provisions and principles set out by EU law. Directives 2004/18/EC and 2004/17/EC have been transposed into Greek law via Presidential Decrees (PD) 60/2007 and 59/2007 respectively. They constitute the general legislative framework and they apply along with more specific national legislation per procurement category. Greek legal order has specific laws regulating public supplies, services and works. Contracts outside the ambit of the Directives (e.g. those below the Directive thresholds or those of Annex II B of Directive 2004/18/EC etc.) are still subject to specific national legislation and to general rules and principles of EU law: free movement of goods (Article 34 of the Treaty on the Functioning of the EU - TFEU), right of establishment (Article 49 TFEU), freedom to provide services (Article 56 TFEU), non-discrimination and equal treatment, transparency, proportionality and mutual recognition. For reasons of brevity we will not analyse aspects of EU law, which are easily accessible through EU institutions sites and many legal publications, but we would rather focus on Greek specific legislation.

Are there any economic areas where special public procurement rules apply?

Defense and security, public health and public – private partnerships (PPPs) are the main areas where specific legislation applies. In principle, those areas are not exempted from the application of EU law; however, there exist certain peculiarities. The award of works, supplies and service contracts in the areas of defense and security is governed by Directive 2009/81/EC, which has been transposed into Greek law via Law 3978/2011. Specific issues regarding the supply of military equipment are governed by Law 3433/2006. Laws 2955/2001, 3580/2007 and 3918/2011 regulate public procurement in the public health sector. Finally, award procedures for PPP contracts are set out by Law 3389/2005. All relevant national legislation is in line with its European counterpart and in any case it is interpreted and applied by the courts accordingly.

Is there a central agency or an electronic registry consolidating information relating to public procurement?

The newly established Public Procurement Agency (Law 4013/2011) supervises and coordinates national policies in the field of public contracts, framework agreements, public works concession agreements and dynamic purchasing systems. The Agency issues recommendations and regulations on technical or other specialized matters as well as standardized tender documentation and contract models. It also evaluates the efficiency of the competent public authorities, carries out sample checks in pending award procedures and publishes information on the regulatory and legislative framework on public procurement and the respective national and European case-law.

Furthermore, a Central Electronic Public Procurement Registry is set up in the Ministry of Development, for the collection, processing and publication of information concerning public contracts.

PUBLIC SUPPLIES CONTRACTS

What is the relevant legislation?

PD 118/2007 («Supplies Regulation for the Public Sector») regulates supplies contracts awarded by the Greek State and public law legal entities with contract value below the Directive threshold (€ 125.000). For those above the threshold, PD 118/2007 supplements PD 60/2007, insofar as it is compatible with the latter's provisions. Public supplies contracts awarded by the regional and local authorities are regulated by Law 3463/2006.

What is a contract notice and what are the types of tendering procedures?

A contract notice contains a description of the supply and invites all interested parties to participate in the selection procedure. Publication varies according to the value of the contract and it involves an announcement of the call for tender to the Publications Office of the European Union and a dispatch of a summary to the S series (supplement to the Official Journal-Public procurement notices, and its electronic version, TED), publication in financial newspapers and posting on the website of the contracting authority.

Technical specifications attached to the notices mainly concern quality and safety standards for the materials, dimensions, testing, packaging, labeling or any other functional characteristics of the products.

The notice may include a clause for the readjustment of prices in case the deadline for the supplies' delivery exceeds a period of 12 months. When the notice includes such a clause, offers should not be based on fixed prices, otherwise they are rejected.

The award procedure may be open to all interested parties or restricted only to a limited number of candidates. A negotiated procedure is possible only under exceptional circumstances, such as in cases of extreme urgency, additional deliveries, when no tenders or no suitable tenders have been submitted, when a certain manufacturer has exclusive rights upon certain goods etc.

What else do I need to know regarding the submission of a tender?

In open and restricted procedures, tenderers are required to submit a technical and financial offer, a letter of guarantee, their legal documents of lawful representation, as well as several documents proving their legal status, their economic and financial standing, their technical equipment and personnel, the suitability of the products in offer as well as product samples or photos. The contracting authorities may ask for clarifications on specific points of the tender.

The contractor submits additional documentation, such as judicial record, certificates issued by the competent Companies Registry, performance bond, insurance policy and proof of non-insolvency.

Two or more tenderers may submit a joint offer, specifying participation percentages. In such a case, each member is jointly and severally liable to the contracting authority.

The prices submitted in the tender must be quoted per unit, including all possible charges for delivery, third party fees or other costs or duties. The country of origin as well as the manufacturer of the final products must be mentioned in the tender.

A letter of guarantee, amounting to 5% of the budgeted price is required by all participating tenders. The contractor submits a performance bond amounting to 10% of the contract value.

What are the award criteria?

The award criteria can be either “the lowest price” or “the most economically advantageous tender”. The latter may be assessed on the basis of the offered price, installation, operation and maintenance costs, compliance with technical specifications, proper operation or preservation guarantee, quality of after-sales services, early date of delivery etc. Each criterion is scored independently and may be weighed differently in the total score. The contract note designates the applicable criteria and the appropriate weighting range.

Other contract execution issues to watch out for

The delivered goods are received by a special committee, set up for this purpose. There follow qualitative and quantitative checks and an official inventory is made and signed by the parties. The goods should be delivered within the time designated in the contract, otherwise penalties may be imposed upon the supplier.

If it is agreed that the goods should be delivered to the buyer FOB-FOT, the latter chooses the means of transport and bears the respective cost. In all other cases, the supplier chooses the means of transport and bears the risk and the cost, under the following restrictions: (a) no transshipment is allowed without the consent of the buyer and (b) if the transport means is a ship, it should be subject to Classification Clauses. In all cases insurance is Warehouse-To-Warehouse and it covers the CIF price of the goods plus 5%.

After loading, the supplier must notify the buyer of all shipping details. If the goods are to be imported, quantitative and qualitative checks can be performed in the country of origin.

Payment can be made: a) upon final receipt of the supply, b) with an advance payment of up to 50% and repayment of the remaining amount upon final receipt, or c) according to a deferred settlement. In case of imported products, the seller must submit additional documents in different number of copies, which in general may contain bills of landing, certificates of origin, invoices, packing lists, certificates of qualitative and quantitative checks, receipt inventory, insurance policy (when required) etc.

PUBLIC SERVICE CONTRACTS

What is the relevant legislation?

PD 60/2007 (or PD 59/2007 if the tendering authority is an entity operating in the water, energy, transport or postal services sector) is the main legislative piece. However, Law 3316/2005 has been enacted in order to regulate specifically the award of contracts for designing, supervision and project management of public works (ie services within the scope of Annex IIA cat. 12 of Directive 2004/18/EC), irrespective of the contract value. For all other types of public services with a contract value under the Directive threshold (€ 125.000) articles 79 – 85 of Law 2362/1995 (Code for Public Accounts) apply. The latter are in line with respective European legislation.

What are the peculiarities of the Greek design, study and other engineer services contracts?

A design contract may refer to the execution of a preliminary or a final design. Other engineer services contracts may refer to drafting of tender documents (tender notes, technical specifications etc) and/or contract documents for other design or public works tendering procedures. The Law defines a closed number of design, study or supervision services categories, such as architectural, urban planning, zoning, social, landscaping, energy, geology etc. Each designer should be specialized in one or more categories and his/her specialization is certified by a special design certificate. The design certificates are classified in different classes according to the years of expertise and the type of designs executed in the past. Contract notes referring to design services designate the specific

design categories sought and the eligible design class certificates. Foreign designers should prove designing experience equivalent to the corresponding design category and certificate designated in the contract notice.

What is the award procedure?

A summary of the contract notice is published in the Bulletin and the website of the Technical Chamber of Greece (www.tee.gr) as well as in the press. When the budgeted contract value is above the Directive threshold, a summary of the notice is dispatched to the Publications Office of the European Union. At the beginning of every fiscal year, contracting authorities dispatch a preliminary notice of all contracts they intend to award. The contract notice contains mainly the following: the object of the contract, the type of procedure (open or restricted), the required design category(ies) and the corresponding class certificate(s), the budgeted price, the conditions of participation, the selection criteria, the details of a suitable economic and technical offer, the deadline for execution etc. Negotiated procedures may be followed, if no tenders –or unsuitable tenders– are submitted in an open procedure. Emergency or technical reasons, especially pertaining to the nature of the services may dictate the recourse to a negotiated procedure. Economic operators with a foreign establishment wishing to take part in a tendering procedure are requested to prove their enrollment in a professional or trade register in their State of origin, or to provide a declaration on oath or a certificate as described in the Directives. On the basis of the principle of mutual recognition, they may also be required to prove that they fulfill possible special qualifications set in their State of origin for the provision of the services concerned. More than one economic operators may submit a joint tender. When the contract value is above the Directive threshold a tenderer may rely on the economic, financial or technical capacities of other entities, regardless of the legal nature of the links which it has with them, insofar as it proves to the tendering authority that it will have at its disposal the necessary resources.

What are the award criteria?

A design contract is awarded only to “the most economically advantageous tender”. The latter is assessed on the basis of (a) the offered price, (b) the completeness and soundness of the evaluation of the design object as resulting from the tenderer’s technical report and the various technical merits of his/her offer and (c) the organizational efficiency of the designing group. Other engineer services contracts are similarly awarded only to “the most economically advantageous tender”, which is assessed on the basis of (a) the offered price, (b) the completeness and soundness of the evaluation of the design object as resulting from the tenderer’s technical report and (c) the completeness, efficiency and credibility of the proposed methodology, the staff and the qualifications of the project manager.

Other contract execution issues to watch out for

The contractor submits a performance bond amounting to 5% of the budgeted fees. The Directing Service of the tendering authority manages, monitors and supervises the execution of the contract and ensures compliance with its terms. There are deadlines to be observed by the contractor and penalties to be inflicted if the deadlines are not met. Additional designs or services not included in the original contract may be awarded to the contractor only if they are due to unforeseen circumstances and deemed absolutely necessary for the completion of the project. In such case, an additional contract is signed. Payments to the contractor are made in installments following the completion of the various stages of the design, upon submission of detailed summarizing accounts.

PUBLIC WORKS CONTRACTS

What is the relevant legislation?

PDs 60/2007 and 59/2007 constitute the legal framework for the public works tendering procedures as well. In addition, Law 3669/2008 ("Public Works Construction Code") codifies the main national legislation specifying all issues pertaining to preparation, conclusion, execution, termination or rescission of public works contracts.

What are the peculiarities of the Greek public works tendering procedures?

Construction of public works is based on pre-approved designs, which set all preconditions and technical standards. Therefore, the award criterion is mainly the lowest price. The tendering procedures are: (a) the open procedure (applied in most cases), where all prospective constructors participate, (b) the pre-selection procedure (applicable only on great scale or very specialized projects), where only short-listed constructors participate in the final selection phase, (c) negotiated procedure with one or a closed number of participants (applicable on very exceptional cases defined by law) and (d) summarized tendering or oral bidding (for very small scale projects).

The law provides for different methods of tendering, i.e. different methods of offering a contract price. These are the following: (a) a general discount percentage on the budgeted project price, (b) diversified discounts on budgeted prices for groups of works, (c) price quotation on groups of works, (d) financial offer covering design and build, (e) underbidding on the constructor's profit on cost calculated works, (f) offer based on real estate development, (g) offer based on self-financing and concession, or (h) combination of the above.

Only those registered in the Construction Businesses Registry are eligible to participate in the tender procedure. Members are classified in different classes according to their expertise, financial magnitude, employed personnel, machinery and technical equipment etc. Their class is certified through a special constructor class certificate. Foreign companies should fulfill the registration and other qualifications of their country of origin. Participation eligibility also depends on the budgeted contract value, which is the determining factor for the required constructor class. Foreign undertakings should prove qualifications equivalent to those required by the constructor class sought.

When the contract value exceeds 1.000.000 € (VAT excluded) and the tenderer is a corporation or a public company limited by shares, the shares should in principle be registered. Joint Ventures may participate, their members being jointly and severally liable.

Tenderers are required to prove their suitability in terms of personal and financial status through a number of documents, similar to those referred above in other procurement types of contracts, although the submission of the constructor class certificate is an adequate proof for most of the requirements.

Other contract execution issues to watch out for

Project management, monitoring and supervision is made jointly by the contractor and the Directing Service of the contracting authority. In projects with contract value above 3 MEuro, an independent engineer as technical adviser may be hired.

Up to 30% in value of the project works may be subcontracted to third entities, fulfilling the appropriate qualifications. The subcontractor agreement should be approved by the contracting authority.

The contractor should prepare and submit for approval to the Directing Service a construction time schedule within 15 days from the date of contract conclusion. The time schedule is based on the final deadline and the various intermediate milestones; penalties are imposed if unjustifiably not followed. There is also a provision for works acceleration against a bonus payment.

There is an escalation method applying on the contract price, so that it may not suffer by inflation due to prolonged construction period.

Additional or new works can be assigned to the contractor by means of supplementary agreement(s) only under the conditions provided for by EU law.

The contract may provide for an advance payment of up to 15%, following the installation of the construction site and the handing over of a same value letter of guarantee. The remainder is paid in installments in accordance with the achievement of the milestones set by the time schedule.

Concession Contracts

Public works or services may be executed in the form of concession contracts, where the consideration for the contractor is the concession of the right to exclusively exploit the constructed works or the provided services, together or not with a payment by the contracting authority. PDs 60/2007 and 59/2007 contain a specific set of basic rules governing concession contracts tendering procedures. There exists no unified legislation on concession contracts. Each concession agreement contains its own set of rules and it is accompanied by a number of annexes, usually encompassing Special and Technical Conditions of Contract, Design and Construction Agreement, Environmental Terms, Independent Engineer Agreement, Loan Agreements, Insurance Requirements, Performance Bonds etc. After their conclusion concession agreements are ratified by the parliament in the form of an Act. This practice has been adopted, so that the contract constitute a prevailing *lex specialis* over ordinary Greek law and also special tax (incentives) provisions be implemented.

VG LAWYERS VRETTOS - GANIATSOS & ASSOCIATES

**48, NIKIS STREET
105 58 ATHENS**

Tel.: +30 210 72 56 046
Fax: +30 210 72 56 047
E-mail: info@vglawyers.gr
Url: www.vglawyers.gr

Languages
English, French

Number of Lawyers: 8

Contact
Constantine Vrettos

AREAS OF PRACTICE

Public Procurement Law

Constantine Vrettos,
Mary Tsagri,
Sofia Tyligada

European Law

Dr. Rebecca - Emmanuela
Papadopoulou,
Mary Tsagri,
Anastassia Papadima

Commercial and Company Law

Constantine Vrettos,
Dimitrios Ganiatsos,
Helena Varvayannis,
Anastassia Papadima,
Sofia Tyligada

Intellectual Property

Constantine Vrettos,
Helena Varvayannis,
Mary Tsagri

Food Law

Constantine Vrettos,
Helena Varvayannis

Administrative Law

Dr. Rebecca - Emmanuela
Papadopoulou,
Anastassia Papadima,
Sofia Tyligada

Civil Law

Dimitrios Ganiatsos,
Mary Tsagri,
Stella Georgili

GREEK LAW DIGEST

The Ultimate Legal Guide
to Investing in Greece

Published under the Auspices of



HELLENIC REPUBLIC
Ministry of Development,
Competitiveness and Shipping



✓ To order a copy of the publication, please visit
www.nb.org/PUBLICATIONS/GREEK_LAW_DIGEST_2012

✓ For more information about Greek Law Digest, please visit
www.greeklawdigest.gr

✓ To purchase books from NOMIKI BIBLIOTHIKI, please visit
www.nb.org



NOMIKI BIBLIOTHIKI

23 Mavromichali street, 106 80 Athens, Greece
T: +30 210 367 8800 (30 lines), F: +30 210 367 8857
E: info@nb.org

