

*G. Verveniotis & Partners*  
G. VERVENIOTIS & PARTNERS

## Newsletter

Issue 5, November 2012

Recent developments in public procurement law

The material contained in this newsletter is provided for general information purposes only and does not constitute professional advice. Appropriate legal advice should be sought before any action is taken.

© **G. Verveniotis & Partners**. Any further use of the whole or parts of the material contained in this newsletter requires our prior approval.

Should you wish more information or legal advice related to any of the matters contained in this newsletter kindly contact us at:  
[info@verveniotis.com](mailto:info@verveniotis.com)

# Recent developments in public procurement law

## Law 4013/2011 on the Single Public Procurement Authority

Law 4013/2011 introduced the Single Public Procurement Authority (SPPA). The SPPA was provided for in the first review of the Memorandum of Understanding on Specific Economic Conditionality (August 2010) and the Action Plan dated 12.11.2010 entered into between Greece and the European Commission. The latter foresaw the establishment of a new institution that would carry out and attain the objectives of reforming and modernizing the public administration mechanisms in relation to public procurement. The operation of the Authority started in June 2012.

The SPPA is an independent Authority, i.e. its operation is not subject to supervision by any governmental or administrative authority. Its main aim is to develop the national strategy and improve the legislative framework on public contracts and further to ensure transparency and legal conformity in the award and execution thereof.

More particularly, the SPPA, is entrusted with promoting the national strategy in the field of public procurement and with ensuring compliance with the rules and principles of European and national legislation in the field. It must further issue a formal opinion on provisions drafted by the competent Ministries and pertaining to the legislative or regulatory framework on public procurement. In fact, in some cases the SPPA's consent to the draft provisions is required prior to their issuance (*e.g. on ministerial decisions etc.*).

One of the most important authorities of the SPPA is that it must deliver its consent before a decision is issued by any contracting authority to revert to the negotiated procedure for the award of public contracts in accordance with article 40 para. 3 of the Directive 2004/17/EC and articles 30 and 31 of Directive 2004/18/EC respectively, without prejudice to cases of force majeure. It should be noted in this respect that in its five months of operation the Authority has already rejected numerous requests of contracting authorities to award contracts without applying the open or restricted procedure.

The Single Public Procurement Authority has further extensive controlling authorities. More particularly the SPPA may seek from the awarding authorities information, in relation to tender documents, as well as to the award and post-award performance of a public contract. The Authority applies these checks and related actions based on a risk-assessment and giving priority to contracts above the EU thresholds or projects co-financed by EU funds, while it also operates its monitoring and control functions to all cases of tenders under investigation for alleged infringements of European law. In case the SPPA detects any irregularities based on the information made available to it, a contracting authority cannot continue the tendering procedure without receiving the SPPA's prior consent, which has a binding effect on the course of the tendering procedure.

Finally, the SPPA's competences include the issuance of binding regulations and guidelines on the application of public procurement, as well as of standard tender and contract documents.

The material contained in this newsletter is provided for general information purposes only and does not constitute professional advice. Appropriate legal advice should be sought before any action is taken.

© G. Verveniotis & Partners. Any further use of the whole or parts of the material contained in this newsletter requires our prior approval.

Should you wish more information or legal advice related to any of the matters contained in this newsletter kindly contact us at: [info@verveniotis.com](mailto:info@verveniotis.com)

The SPPA drafts and submits to the President of the Hellenic Parliament, in the first quarter of every calendar year, an annual report which is posted on the internet and contains an assessment and overview of the activities of the Authority in accordance with its purposes and competences, proposals and recommendations for improving the legislative and regulatory framework and the administrative procedures for the tender, awarding and performance of public contracts submitted to the competent authorities and bodies, as well as an update on the progress of compliance of said competent entities and bodies with the aforementioned proposals and findings.

As regards the organizational structure of the Authority, its Board consists of 7 members, which are elected by the Hellenic Parliament for a five-year service period that may only be renewed once. The Board Members of the Authority enjoy personal independence during the exercise of their duties and are only bound by the law and their consciousness.

The establishment of the SPPA constitutes a big step forward for the reform of the public procurement system and is expected to contribute

to enhancing transparency and efficacy in the award and execution of public contracts in Greece.

### **Amendments to the legislation on public supply contracts**

Law 4038/2012 added to the existing Code of Public Supplies (Presidential Decree 118/2007) five articles (articles 22a – 22e), which aim at modernizing the procedures for the award of public supply contracts.

Article 22a explicitly provides for the possibility of a contracting authority to conclude framework agreements even when the value of the contract does not exceed the thresholds provided for in Directive 2004/18/EC. The said article also describes the procedure to be followed when the contracting authority decides to conclude such agreements, which is similar to the one provided for in article 32 of Directive 2004/18/EC. Article 22b allows for the use of electronic auctions, while according to articles 22c and 22d the provisions of articles 11 (“Public contracts and framework agreements awarded by central purchasing bodies”), 33 (“Dynamic Purchasing Systems”) and 42 (“Rules applicable to communication”) of Directive 2004/18/EC can also be applied for

the award of contracts below the thresholds of the aforementioned Directive.

Finally, article 22e transposes into the Code of Public Supplies the provision of article 19 of Directive 2004/18/EC on reserved contracts, which provides that Member States may reserve the right to participate in public contract award procedures to sheltered workshops or provide for such contracts to be performed in the context of sheltered employment programmes where most of the employees concerned are persons with disabilities who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions.

### **New provision for down payments in co-financed projects**

According to article 242 of law 4072/2012 in cases of projects co-financed by EU funds, the tender documents must necessarily provide that down payments will be paid to the contractors. This provision aims at facilitating the financing of projects, since banks have restricted the terms, under which they grant loans to public works contractors.

*G. Verveniotis & Partners*  
G. VERVENIOTIS & PARTNERS

**G. VERVENIOTIS & PARTNERS**

LAW OFFICE

9 VALAORITOU STR. • ATHENS 10671 • GREECE

Tel: +30 210 36 11 390

+30 210 36 34 333

Fax: +30 210 36 35 194

WebSite: <http://www.verveniotis.com>

Email: [info@verveniotis.com](mailto:info@verveniotis.com)