

Audit Report 6/2021

Public Procurement pertaining to the Response to the Pandemic: Conclusions from the H.C.A's pre-contractual audit

EXECUTIVE SUMMARY

A total of 246 public procurement draft contracts pertaining to the response to COVID-19 and amounting to 441,192,787.26 euros, have been submitted to the three Judicial Sections (*Klimakia*) of the Hellenic Court of Audit, which conduct pre-contractual audit.

These contracts were awarded only exceptionally by means of the open or restricted procedures provided by articles 26 and 27 of law 4412/2016 (articles 27 and 28 of Directive 2014/24/EU), although in those procedures it is provided for the contracting authorities the possibility of reducing the time limits for the receipt of tenders. So, as a rule, the above-mentioned contracts were awarded using exceptional negotiated procedures without prior publication of a notice (in the Official Journal of the European Union), invoking the unforeseen and urgent need to respond to the pandemic.

During their pre-contractual audit work, the competent Judicial Sections implemented the aforementioned provisions – enacting extraordinary negotiated procedures – complementary to those of (a) article 32 par. 2c of Law 4412/2016 (article 32 par. 2c of Directive 2014/24/EU), regarding the possibility of awarding public contracts via a negotiated procedure without prior publication in extremely urgent circumstances, in which contracting authorities are not able to comply with the time limits for the open or restricted procedures, and (b) article 86 of Law 4412/2016, regarding the public contracts awarding criteria, due to the fact that, according to the aforementioned provisions, the price constitutes the exclusive awarding criterion.

To be more specific, all supplies of medical devices (*in vitro* diagnostic reagents etc) and personal protective equipment (PPE) intended to cover the relevant needs of the Hellenic National Health System Units for their response to COVID-19, were designed by the Central Council of Health Regions (KESYPE), allocated with the competence of determining the quantities required on a case-by-case basis, the technical specifications and the delivery deadlines of the goods to be supplied, according to article 16 of the Legislative Order, dated 11th March 2020, which was ratified by article 2 of Law 4682/2020.

KESYPE approved the technical specifications of all medical devices (*in vitro*

diagnostic reagents, SARS CoV2 detection tests, syringes etc.) and PPE supplied by all contracting authorities supervised by the Ministry of Health in a uniform way for all the competent contracting authorities. These specifications were included in all calls for tenders in view of the extraordinary, negotiated procedures that have been followed.

All needs arising from the outbreak of the coronavirus pandemic were met through the award of public contracts mainly via negotiated procedures or by extending the duration of contracts being already executed, on the ground of the unforeseen and urgent circumstances created thereof.

Those of the above exceptional extraordinary provisions establishing negotiated procurement procedures for the supply of medical devices (*in vitro* diagnostic reagents, diagnostic tests, etc.) and PPE for the needs of the Health Units to respond to the pandemic appear to have contributed to better planning, faster start-up and flexibility of procurement procedures, but also to achieving competition and better prices for the goods to be procured.

However, these provisions did not always result to the acceleration in the completion of the supplying procedures, which was their main purpose, in view of the urgency of the relevant supply needs. This was because there could not be any derogation from the higher-ranking provisions of Law 4412/2016 on preliminary appeals and legal remedies against acts of the relevant awarding procedure.

Nevertheless, awarding the relevant supply contracts uniformly and in large quantities by competent central purchasing bodies through calls for tender allowing the submission of tenders by unlimited economic entities on the basis of uniform time-limits for the delivery of the purchased goods and their uniform technical specifications, increased the relevant competition and – combined with restraint of the prices of the purchased goods finally awarded – ensured that prices would be kept within reasonable limits.

The evolution of prices achieved specifically in the procurement procedures of medical devices (*in vitro* diagnostic reagents, diagnostic tests, etc.) and PPE for the needs of the Health Units to deal with the pandemic was proportional to the international high demand and initially low offer followed by the increased offer of the respective goods.