

SECOND DEPARTMENT
ESTABLISHMENT (ENACTMENT) OF A COMPREHENSIVE LEGISLATIVE
FRAMEWORK FOR PRECONTRACTUAL AUDIT

CHAPTER 53

Conduction of precontractual audit

Article 324

Submission to pre-contractual audit

1. In works, supply and service contracts, as well as in contracts for the purchase of immovable property, which are concluded by the State, local government organizations and the legal persons thereof, other legal persons governed by public law and public corporations (enterprises) or bodies, the budgeted expenditure (expense) of which, net of value-added tax, exceeds the amount of one million (1.000.000,00) euros, there is conducted mandatorily an audit of legality, prior to their conclusion by a jurisdictional Section (*Klimakio*) of the Court of Audit.

2. In works, supply and service contracts, as well as in contracts for the purchase of immovable property, which are concluded by the State, local government organizations and the legal persons thereof, as well as other legal persons governed by public law, the budgeted expenditure (expense) of which, net of value-added tax, exceeds the amount of three hundred thousand (300.000,00) euros, and up to the threshold of paragraph 1, there is conducted mandatorily an audit of legality prior to their conclusion, by the Commissioner of the Court of Audit who is competent for the ex post audit of the accounts of the said services or bodies.

3. Specifically in the contracts referred to in paragraphs 1 and 2, which are co-financed by EU funds, there is conducted mandatorily an audit of legality prior to their conclusion by pre-contractual audit Sections of the Court of Audit, in so far as the budgeted expense, net of value-added tax, exceeds the amount of five million (5.000.000,00) euros.

4. The audit referred to in paragraphs 1 to 3 shall include:

(a) the programming contracts for the study and the execution of works, the implementation of programmes and actions, as well as for the provision of services and the implementation of supplies of all kinds, in so far as the budget of such contracts exceeds the correspondingly provided thresholds,

(b) dynamic purchasing systems, in accordance with Article 33 (11) and Article 270 (11) of Law 4412/2016 (GGI A' 147), (c) framework agreements and their implementing contracts, in accordance with Article 39 (9) and Article 273 (3) of Law 4412/2016,

(d) works, supply and service contracts in the fields of defence and security, governed by Law 3978/2011 (GGI A' 137), the budgeted expenditure (expense) of which exceeds the thresholds of paragraph 1 of this Article, with the exception of contracts under Article 17 (a), (b), (c), (f), (g) and (i) of the aforementioned Law,

(e) contracts for the utilisation of the assets of the Hellenic Republic Asset Development Fund and of the companies whose share capital is wholly owned directly or indirectly by the Fund, in so far as the price or consideration for the utilisation exceeds the amount of one million (1.000.000,00) euros, the stipulations of Article 9 (4) of Law 3986/2011 (GGI A' 152) applied as to the other matters,

(f) contracts concluded by the legal person governed by public law under the name ‘Green Fund’ (former Special Fund for the Implementation of Regulatory and Urban Plans) with beneficiaries for the implementation of financial (financing) programmes, the budgeted expenditure (expense) of which exceeds the thresholds laid down in paragraphs 1 and 2,

(g) contracts for the drafting of studies and the execution of works, as well as for the relevant supplies and works, concluded by the société anonyme under the name ‘Project Helios SA for the Utilisation of Solar Energy” ’ or companies the share capital of which is wholly, directly or indirectly, owned by it, whose budgeted expense exceeds the thresholds laid down in paragraphs 1 and 2.

5. Modifications of the contracts referred to in paragraphs 1 to 4 shall be subject to pre-contractual audit when:

(a) the initial contract has been submitted to audit, in so far as the modification is substantial,

(b) the initial contract was not (has not been) submitted to audit, due to the amount thereof, in so far as the modification increases the financial object, so that the resulting total cost of the contract exceeds the threshold of paragraphs 1 and 2.

6. The competent minister or body may request the conduction of an audit of legality also for individual phases of the relevant procedure which precede the conclusion of the contract subject to audit.

Article 325

Exclusions from pre-contractual audit

1. The following contracts shall be excluded from the audit provided for in Article 324 (1) to (3):

(a) contracts concluded in the framework of the Borrowing and Debt Management Programme of the Hellenic State Article 1 (2) of Law 2628/1998, GGI A ’151),

(b) contracts for the preparation, issue and disposal (disposition) of equity instruments (Article 10 (8) of Law 2642/1998, GGI A ’ 216),

(c) contracts concerning financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments, within the meaning of Laws 3606/2007 (GGI A ’ 195) and 4514/2018 (GGI A ’ 14), central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism, as well as contracts concerning loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments (Article 10 (e) and (f) of Law 4412/2016), with the exception of loan contracts concluded by local government organizations,

(d) contracts concluded by the Greek State for the preparation, issue and disposition of revenue certificates.

2. By way of exception to the provisions of Article 324, public service contracts for operating in maritime cabotage, in accordance with eighth Article (8), (9) and (11) of Law 2932/2001 (GG I A ’ 145), may be concluded without prior submission, to the Court of Audit, of a draft contract with the relevant file for an audit of legality, or before the completion of the abovementioned audit. In such cases, the contract concluded and the

relevant file are submitted to the Court of Audit within fifteen (15) working days of its signature (the signing thereof). If the contract and the relevant file are not submitted within the hereinabove deadline (time limit), or if the audit by the Court of Audit has a negative outcome, the contract is deemed as never concluded.

Article 326

Procedure for conducting pre-contractual audit

1. For the purpose of the audit provided for in this Chapter, a file containing all relevant documents and information shall be submitted to the relevant pre-contractual audit Section or to the Commissioner, by the competent minister or body. The audit shall be completed within thirty (30) days of transmission of the relevant file to the Court of Audit. If the audit finds a lack of information, it shall be requested from the competent body before the expiry of the above deadline, which shall be then interrupted. The publication of a non-final act by the pre-contractual audit Section or the Commissioner according to the above shall be permitted only once.

2. The final act of the pre-contractual audit Section or the Commissioner shall be notified by email to the competent body, which must without delay notify it by email to all the candidates who participated in the audited procedure for the appointment of a contractor. Chief officers or other competent bodies acting in breach of the obligation referred in the previous subparagraph shall be referred to the competent disciplinary proceedings. The notifications mentioned in the first subparagraph may also be made by fax until 31 December 2020.

3. In the context of the audit provided for in this article, the Court of Audit must ensure the confidentiality of the information contained in the file.

4. Cases that are important for the unity of the case law or in which this is indicated due to the subject matter of the contract or due to other important reason, may be introduced directly, by act of the President of the Court of Audit, in the Major Plenum.

Article 327

Consequence of non-exercise of pre contractual control

If the audit provided for in paragraphs 1 to 3 of article 324 is not carried out, the contract concluded shall be null and void.

Article 328

Appeal for revocation

1. An appeal for revocation of the act of the pre-contractual audit Section or the Commissioner of the Court of Audit, by which it is decided that the signature of the audited contract is prohibited, shall be submitted to the secretariat of the competent Chamber in the event of an error of fact or law, by any person having a legitimate interest in doing so or by the Advocate General of the Court of Audit for the sake of the public interest, within fifteen (15) days from the notification of the act of the pre-contractual audit Section or the Commissioner to the competent body and the Advocate General of the Court of Audit.

2. An appeal for revocation shall be notified without undue delay, by the applicant, to anyone with a legitimate interest. The President of the Chamber may order that an appeal for revocation is communicated, by whatever means, to others, who have a legitimate interest in his or her opinion. A second appeal of revocation by the same applicant against the same act is not allowed.
3. Anyone who has a legitimate interest may intervene in writing or orally until the revocation appeal is heard in court.
4. The President of the Chamber shall appoint a rapporteur for the case before it is discussed in court. The parties may submit a memorandum within three (3) days from the hearing of the appeal.
5. A non-final decision may be delivered only once. If a suspensive decision is issued due to lack of information, a time limit is defined. This time limit shall not exceed fifteen (15) days, within which the file must be completed with the missing information. After the expiry of the time limit set, the case is introduced to be heard to the very next day of hearing. The decision on the appeal for revocation shall be issued within thirty (30) days of its hearing.
6. The Chamber may, by a decision based on the opinion of the Advocate General of the Court of Audit, refer a question to the Plenum if during the examination of the appeal for revocation, it considers that a provision of a statute law is contrary to constitutional provision or contrary to any other supranational provision, without this matter having been decided by a prior decision of the Plenum, or if it considers that an issue of major importance or of greater significance arises.

Article 329

Review appeal

1. An appeal for review of the decision of the Chamber rejecting an appeal for revocation shall be submitted to the secretariat of the Court, in the event of an error of fact or law, by the State, the contracting authority or body, the person who intervened during the hearing of the appeal for revocation or by the Advocate General of the Court of Audit.
2. An appeal for review shall be submitted within an exclusive time – limit of fifteen (15) days from the notification, by the secretariat of the Chamber, of the contested decision to the applicant. The review appeal shall be notified, without undue delay, by the applicant, to the State and to those who had participated in the trial of the appeal for revocation. The President of the Court may order the notification, by any means, of the review appeal to others who, in his opinion, have a legitimate interest.
3. A second review appeal by the same applicant against the same decision is not allowed.
4. The review appeal shall be heard during the first public sitting of the Minor Plenum, that is scheduled after the appeal's submission, provided that a period of at least eight (8) days elapses between the date of the review appeal's submission and the date of its hearing. In urgent cases, the Minor Plenum shall be exceptionally convened by the President of the Court. For the hearing of the review appeal the Minor Plenum shall also apply *mutatis mutandis* Article 328 (4) and (5).
5. If the review appeal is accepted, the Minor Plenum shall take a final decision on the audited contract.