

HELLENIC SINGLE PUBLIC PROCUREMENT AUTHORITY

PUBLIC PROCUREMENT AUDIT SEMINAR 2018

Athens, 31 May -1 June 2018

***Role of the Hellenic Single
Public Procurement Authority
(henceforth, HSPPA)***

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Established by law 4013/2011

The Hellenic Single Public Procurement Authority (HSPPA), established by Law 4013/2011, is the state's institution aiming to ensure the application of the principles of good governance in the field of public procurement. Its establishment took place due to the widely admitted needs of the public procurement sector in Greece.

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HSPPA's Scope

Purpose of HSPPA (art.1 L.4013/2011):

- develop and promote the national strategy, policy and action in the field of public procurement
- ensure the transparency, effectiveness, consistency and harmonization of public procurement procedures, in accordance with national and European Union law
- follow the continuous improvement of the legal framework of public procurement and monitor the compliance of public and contracting authorities and entities

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Responsibilities

advisory

coordinative

supervisory

audit

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Legal framework – Audit competence

HSPPA shall carry out sample audits, ex officio and / or upon complaints, by requesting information and data from the contracting authorities and entities; these audits are related to procedures under way to tender for, award and perform public contracts (art.2 L.4013/2011)

HSPPA's Audit Department also examines infringement procedures in the area of public contracts, which are under investigation by the EU for alleged infringements of European law (art. 2 L.4013/2011)

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Legal framework -1

- HSPPA has access to the EU Pilot System, the online platform, which Member States and Commission's services use to communicate and clarify the factual and legal background of problems arising in relation to the **conformity** of national law with EU law or the **correct application of EU law**. As a general rule, EU Pilot is used as a **first step to try to resolve problems**, so that, if possible, formal infringement proceedings are avoided
- HSPPA cooperates closely with the Ministry of Foreign Affairs for infringement procedures pending before the EU services
- HSPPA monitors the Greek Authorities on public procurement issues for the purposes of compliance with EU Law

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HSPPA – Auditing Authority

HSPPA's Audit Department is mainly responsible for :

- monitoring and evaluating the efficiency and effectiveness of public procurement bodies' actions
- carrying out sample audits on procuring and contracting procedures by contracting authorities and entities
- detecting whether national or EU law has been infringed
- ensuring the transmission of any findings to the competent courts upon request
- supervising the competent public procurement authorities in performing their tasks in line with the applicable national and EU legislation

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Sample audits

- ex officio, upon complaints
- procedures during the process of tendering, awarding and performing public contracts
- carried out on the basis of a risk assessment approach, when the public contracts fall within the scope of EU law or are co-financed under EU programs

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Audit scope

- ON-GOING PUBLIC CONTRACTS
(products, services, works)
- HSPPA examines procedures under way
to tender for, award and perform procurement
contracts
- below / above EU thresholds
- co-financed EU programs

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PRE-AUDIT

Complaints - Filed - Investigated -
Additional data may be requested
and collected

RISK ASSESSMENT METHOD

Evaluation of the findings based on
the risk assessment method

AUDIT

Findings shall be notified to the
relevant contracting authority – In
case of violations-infringements, the
public contract should be suspended

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AUDIT RESULTS

• **DISCONTINUATION OF THE PROCEDURE**

in case of infringements of national or European public procurement law :

- ❖ The public contract shall be suspended by decision of HSPPA
- ❖ The award procedure cannot continue without a decision by HSPPA granting its consent (art.2 par.2 L.4013/2011)

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AUDIT RESULTS -1

Findings :

- ❖ may be forwarded to the competent courts upon request
- ❖ may be provided by the contracting authority or entity to any interested party who can prove a legitimate interest, in order for the party concerned to exercise its legal rights
- ❖ HSPPA shall likewise immediately advise the competent supervisory and inspection bodies, in order for them to exercise the powers vested in them by law
- ❖ If there has been an infringement of national or EU law, HSPPA shall draft a special report, which it shall post on its website, forward to the President of the Hellenic Parliament and notify to the above competent bodies

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AUDIT RESULTS -2

Results of overall monitoring :

- part of an annual progress report submitted to Parliament
- reporting of the most frequent irregularities
- actions for the prevention, detection and proper reporting of cases of fraud, corruption, conflict of interests
- coordination with other public authorities, e.g. with the Court of Audit

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HSPPA's pre-contractual competence Recourse to negotiated procedure

- Decisions by a contracting authority to take recourse to the negotiated procedure for the award of public contracts, save in cases of force majeure, shall be issued upon HSPPA's prior consent
- Regards procurement above thresholds
- co-financed by EU programs < 10.000.000 €
(which are not subject to pre-contractual audit of the Court of Audit - L.4314/2014, art. 28, Government Gazette A' 265/2014)

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Pre-contractual competence - Court of Audit

Mandatory pre-contractual audit carried out for contracts concerning the supply of goods, the execution of works and the provision of services above certain thresholds

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Pre-contractual competence - Court of Audit

Thresholds :

- above EUR 500,000, if contracted by the State and its legal entities
- above EUR 1,000,000, if contracted by public enterprises or organizations
- Above EUR 200,000, if contracted by regional or local authorities and their legal entities
- above EUR 10,000,000 if contracts are co-financed by EU programs

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Pre-contractual competence - Court of Audit -1

Decisions by contracting authorities/ entities to recourse to the negotiated procedure for the award of public contracts above thresholds, ***save*** in cases of ***force majeure***, shall be issued upon HSPPA's *prior* consent. The ex-ante consent of HSPPA in this case, is prerequisite of the legality of the award procedure. The Court of Audit shall check if the contracting authorities/ entities have asked HSPPA's consent in case of recourse to a negotiated procedure for contracts above EU thresholds, and the opinion of the HSPPA on that matter. Nevertheless, the Court of Audit shall examine the recourse to the negotiated procedure, without being bound by HSPPA's opinion/ consent.

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Moreover, HSPPA :

- participates to the relevant European institutions exchanging views, information and data on the national strategy, legal framework and procurement procedures for the award and execution of public contracts
- represents Greece to international organizations and meetings in the field of public procurement; within the framework of its above-mentioned competences, HSPPA is the central point of communication and coordination between the Greek authorities and EU institutions concerning alleged violations of European public procurement law, without prejudice to the competence of the Special Legal Section of the Ministry of Foreign Affairs for violations of European law and legal representation of the country before the EU's judicial bodies; the results of HSPPA's investigation of alleged infringements must be notified to the European Commission

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***National Strategy for Public Procurement
(adopted by the Government in 2017 and already in
the process of implementation)***

Actions to combat corruption

- Development of Risk assessment tools regarding the detection and handling of threats
- Composition and disclosure of risk management strategies
- Electronic platform development regarding HSPPA competences and (information) data base connectivity

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Actions to combat corruption -1

- Drafting of common review templates, integrity standards and code of ethics regarding supervisory bodies
- Notification/disclosure and training as regards to integrity standards and codes of ethics
- Review practices based on a Risk assessment system in procurement of services and goods procedures
- Review practices based on Risk assessment system in the areas of public works and concession contracts