Administrative Law Briefing: Special Edition

Amendments to Unsolicited Proposals in Public Procurement Framework Under Law 5290/2026

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A. Unsolicited Proposals in Public Procurement Under Law 4903/2022

1. Law 4903/2022 (the **Law**) introduced the institution of Unsolicited Proposals (**USPs** - *πρότυπες προτάσεις*) for infrastructure projects as an alternative to the traditional method of project inception and development into the Greek legal framework. The Law enables the private sector to take the initiative in identifying and developing an infrastructure project, thereby complementing State planning with a view to accelerating the development, tendering and implementation of infrastructure works.
2. A USP is a written proposal submitted by an economic operator regarding the tendering and construction of an infrastructure project or the provision of related services, with a view to initiating a procedure for the award of a public works contract, a works concession or a Public-Private Partnership (**PPP**) agreement.
3. The Law establishes the procedure for submitting USPs, as well as the rules governing their evaluation and approval by the competent Evaluation Committee. To qualify, a USP must:
   a. concern an infrastructure project within the competence of the Ministry of Infrastructure and Transport or the Ministry of Environment and Energy;
   b. display characteristics of innovation or complexity;
   c. have a budgeted value exceeding €200m (excluding VAT);
   d. not have been definitively included in the contracting authority's investment plan; and
   e. promote regional development or contribute to the National economy as a whole.

4. Upon approval of a USP by the Governmental Committee on Contracts of Strategic Importance, the proposer acquires a right of claim (*δικαίωμα διεκδίκησης*). This is the right to submit an improved economic offer so as to compete for the contract on equal terms if not ranked first in a concession or PPP award procedure.

B. Amendments to Law 4903/2022 Under Law 5290/2026

1. Law 5290/2026 (the **New Law**) introduces three amendments to Law 4903/2022:
   a. Submission period: The New Law abolishes the restriction requiring proposals to be submitted during the first fifteen days of each calendar quarter and permits submissions at any time following the commencement of the electronic platform's operation.
   b. Composition of the Evaluation Committee: The amendment transfers the chairmanship of the Committee from the competent Minister to the Secretary-General for Infrastructure or to the Special Secretary for Hydraulic Works and Buildings of the Ministry of Infrastructure and Transport, depending on the nature of the project. It also replaces the member representing PPPs with the Head of the Public-Private Partnerships Unit of the Ministry of National Economy and Finance.
   c. Order of evaluation and preparation costs: The current requirement to evaluate proposals in strict chronological order is amended by the New Law, and the Evaluation Committee is vested with discretion to prioritize proposals as it deems appropriate. The amendment also converts the current cap of 3% of the budgeted project value for preparation costs into a floor, ensuring that the proposer, upon approval of a proposal, receives at least that amount by way of reimbursement.

C. The ECJ Ruling on the Italian Pre-emption Right (Case C-810/24, *Urban Vision SpA v Comune di Milano*)

1. The Italian public procurement framework includes a project financing procedure[1] which is structurally analogous to the Greek USPs regime. Under the Italian framework, a promoter who submits a works concession proposal that is approved and put out to tender is granted a pre-emption right: if the promoter is not awarded the contract at the end of the competitive procedure, it may adjust its offer to match that of the highest-ranked tenderer within 15 days and in this way be awarded the contract, subject to reimbursing the tenderer's bid preparation costs.
2. On 5 February 2026 in Case C-810/24, *Urban Vision SpA v Comune di Milano*[2], the Court of Justice of the European Union ruled that such a pre-emption right is incompatible with EU law.

[1] Article 183(15) of Legislative Decree No. 50 of 2016.
[2] delivered on a reference from the Italian Council of State (*Consiglio di Stato*).

Specifically, the Court held that Article 3(1) of Directive 2014/23/EU on the award of concession contracts, read in conjunction with Article 49 TFEU and Articles 30 and 41 of that Directive, precludes a Member State from granting the promoter of a project financing procedure a pre-emption right as described above.

3. The Court reasoned that the pre-emption right infringes the principle of equal treatment guaranteed by Article 3(1) of Directive 2014/23, because it enables the promoter to amend the price indicated in its tender after bids have been submitted, a practice which is, as a general rule, prohibited by that principle. By allowing the promoter to match the conditions of the initial successful tenderer, the pre-emption right disturbs the ranking established at the end of the competitive procedure and gives the promoter an advantage over its competitors, thereby distorting healthy and effective competition.
4. The ruling is relevant to the Greek USPs regime under the Law, which confers on the proposer a right of claim (*δικαίωμα διεκδίκησης*) enabling it to submit an improved offer in concession and PPP procedures where it has not been ranked first (cf A. above). However, there are differences, as Greek Law:
    a. does not provide for a priority clause as found in the Italian framework, but for a claim clause; and
    b. provides that the first-ranked bidder and all bidders ranked between them, as well as the proposer, are invited to submit improved financial bids.
5. The compatibility of the right of claim and generally Greek Law on USPs with EU law and in particular with the principles articulated in the *Urban Vision* judgment, is a question of material importance for the implementation of the Greek framework.



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