



LEGAL COUNCIL
OF THE STATE

Athens, 10/08/2022

ANNOUNCEMENT – CALL FOR EXPRESSION OF INTEREST BY LAW FIRMS / LAW OFFICES ON THE ASSIGNMENT FOR HANDLING AN ARBITRATION CASE (Article 32, law 4831/2021, A' (Government Gazette) 170).

1. With a view to implementing two (2) armament programs of the Hellenic Navy (Submarines or Sub), an “AGREEMENT” was signed, where an arbitration clause was provided for, according to which any dispute arising from the said agreement or related to it, would be resolved under arbitration proceedings, carried out in Athens (Greece), and conducted in Greek and English by three (3) arbitrators pursuant to the procedural regulations of the International Chamber of Commerce / I.C.C.).

2. After the “AGREEMENT” was signed and became effective, disputes emerged between the Hellenic Republic (Hellenic State) and the counterparties companies, for which two (2) Petitions were filed on Requests for Arbitration before the I.C.C.:

One on behalf of the Contractor company of the programs, jointly with companies holding its majority stake, against the Hellenic Republic, and one on behalf of the Hellenic Republic against any one of the counterparties in the “AGREEMENT” and furthermore, against the companies holding the majority stake of the Contractor company. The said two Petitions filed by the Hellenic Republic were not joined.

3. Specifically, the Hellenic Republic (Hellenic State) by its Petition – Application to the I.C.C. against its counterparties companies in the

“AGREEMENT”, as well as against other persons allegedly owning the majority stake of the Contractor, has requested among others for the Court of Arbitration to rule as follows: **a.** the respondents (or some of them as per the case and according to the facts presented in the Application-Request) are liable entirely, under contractual or non-contractual liability, to restore the damage caused to the Hellenic Republic; **b.** transferring the majority stake of the Contracting company to a third person was carried out in violation of the agreement (in this respect it is requested that the corporate “veil” is lifted and the liability of the above third person in its entirety acknowledged); **c.** The contractor has violated its contractual obligations and this resulted to the much delayed delivery of some Subs and to the definite non delivery of 2 from the overall 7 Subs provided in the Programs; **d.** great damages were caused to the Subs due to the lack of the maintenance required, and therefore additional expenses emerged because of that reason as well as further, delays in the delivery; **e.** the value of the above Subs was decreased and their operational ability was limited; **f.** the expenses for the Hellenic Republic were increased due to the delay in delivering the Subs and in their participation in operations; **g.** according to the agreement terms, the Hellenic Republic is entitled to receive the amounts of penal clauses and interests on the advance payment received, as well as all expenses paid until this day in order to continue operating the shipyard and complete the Submarines, which was an obligation on the Contractor; Likewise the Hellenic Republic is entitled to receive any amounts that the it will be compelled to pay upon the decision of the European Court as a fine for not compliance with previous decisions of the European Committee that ruled as illegal and refundable state aids towards that company; **h.** the said Contractor, following acts and/or omissions by other parties, fell into definite financial failure and as a result the Hellenic Republic is not able to pursue effectively the satisfaction of its claims, and therefore is entitled to pursue the satisfaction of the said claims from the other opposing parties as well.

4. Upon procedural orders from the Court of Arbitration, the case that is pending before the I.C.C. and is conducted in English has been separated into the following phases:

-Phase 1: Research on the admissibility of claims and counterclaims;

-Phase 2: Examination of the request from the opposing parties to expedite the hearing/examination of the claims filed by the Hellenic Republic aiming at overruling them entirely.

-Phase 3: Main procedure divided into two separate phases, namely:

-Phase 3A: Filing of memos to support the claims/counterclaims and mutual statement of defense [overall three (3)], conduct a hearing (local inspection to the facilities and the Subs, examine witnesses and legal experts), file memos commenting the hearing and mutual counterclaim [overall two (2)], file statements on the costs, issue a judgment from the Court of Arbitration on the jurisdiction and legal basis of claims/counterclaims (“Jurisdiction and liability”). By way of exception, issues of legal sufficiency (“liability issues”) for which it is required to produce proof or particularly specialized technical data related to technical issues of the Subs (status of the Subs, damages caused to them by the lack of maintenance, decrease of their value as a result of long delays in making and maintaining them operational etc.), or reports by experts specialized in Submarines-related matters, are directly forwarded to the next phase (Phase 3.B., see immediately below).

-Phase 3.B: Quantification of claims/counterclaims that successfully passed Phase 3.A (“Quantum”).

5. The largest part of “Phase 3.A” has already been concluded, and in particular, following conclusion of the hearing that was held in two phases, examining witnesses and experts, two (2) documents –memos were submitted by each group of litigants (“Post Hearing Brief”) and statements concerning costs (“Statement of Costs”) by each litigant party.

The Court of Arbitration ordered several among the opposing parties of the Hellenic State to produce a series of documents while it addressed to them certain questions. These documents- which were not produced by the opposing parties, mainly by invoking grounds of confidentiality and commercial secrecy- are considered essential for the court to decide since it is expected that they would shed light on critical parameters of the case, supporting or even proving crucial claims of the Hellenic State, concerning: **a.** the transfer of the majority stake of the Contractor; **b.** lifting the corporate “veil” between the Contractor and another litigant company; **c.** disrupting and definitely breaking relations between the Contractor and those holding its

majority stake on one side, and on the other side the Main Sub-manufacturer of Programs and the group of companies to which the Main Sub-manufacturer is subject, a fact that led according to the allegations of the Hellenic Republic to a definite dead end as to implementing the “AGREEMENT” and gave rise to most of the claims under question from the Hellenic Republic, and **d.** the financial status of the Contractor for the period between 2009 until this day, and its consequences on implementing the “AGREEMENT”.

The above documents were produced by the litigant parties on 18.07.2022 and the Court of Arbitration already set **05.09.2022** as the date on which a commentary memo on them should be filed.

Said Phase (“Phase E.A.”), will be concluded by a decision by the Court of Arbitration on its jurisdiction as well as on the legal basis of the claims and the counterclaims.

6. Then, “Phase 3.B.” will follow (“Quantum”), namely the quantification of claims/counterclaims, as well as examining technical matters on the Subs, in connection with more particular financial and legal matters of the Hellenic, the European Union as well as the international law.

7. The above case has a particularly high financial subject, while special-original legal matters are raised, emerging from exploiting shipyards and from the construction, modernization and maintenance of submarines between four groups of litigant parties with conflicts of interests, as well as complicated legal issues concerning the Hellenic, foreign, European Union and international law, and specifically in relation with: **a)** the way of transferring the majority stake of the Contractor by using interposed legal entities and entering into contracts on the transfer of shares governed by foreign law; **b)** lifting the corporate “veil” between litigant parties; **c)** the liability of the Contractor’s shareholders as to managing the shipyard and the damage caused to the Hellenic State because of that reason, which is requested to be restored; **d)** revealing any informal financial agreements and relations between opposing parties; **e)** a sub-contract on an armament program concluded between the Contractor of the Programs on Submarines and the Main Sub-manufacturer of Programs; Said sub-contract is governed by Swiss law, its terms were not in compliance with the Main “AGREEMENT” and it was against the interests of the Contractor, and in excess of the powers of its Board of Directors at the

time, as well as **f)** the omission at the time of selling its shares, to reveal crucial information on the Contractor's financial status.

8. For handling this case from the present phase of the arbitration trial until it is fully and finally completed, it was considered necessary according to article 32 of the Organization of the Legal Council of State (N.S.K.) (law 4831/2021), to hire a Law Firm /Law Office specialized on the said matters, so that jointly with the Officials from the Legal Council of State already appointed, to perform in particular the following tasks: i. To file a memo commenting the documents that were filed on 18.07.2022 before the Court of Arbitration by the litigant parties, which has to be filed on 05.09.2022, as well as to cover any other need that might emerge or could be determined by the Court regarding the handling and completing of the Phase 3A

ii To locate crucial documents required for this case and for supporting and proving the claims of the Hellenic Republic, particularly for Phase 3.B., so that the competent Services-Bodies may seek them or request the production thereof by the opposing parties. To file requests for granting access to documents or file objections in case of denial to grant access to them, provide any relevant support or file any relevant memo.

iii. To identify crucial issues for the case that need to be clarified through an expert opinion, technical reports etc., as well as to address the relevant questions to the experts, technical advisors, witnesses etc.; to seek and find said persons in order to assign them to prepare experts reports as per the procedure prescribed by law 4831/2021.

iv. To evaluate, comment and reject documents, expert opinions, witness statements etc., filed during that Phase,

v. To prepare, draft and file the first memo presenting analytically and well-grounded the claims of the Hellenic Republic (Statement of Claim).

vi. To prepare, draft and file the second memo – well-grounded reply –refuting the claims and documents of the opposing parties (Statement of Reply) –

vii. To analytically and justifiably refute the counterclaims raised by the opposing parties (Statement of Defense).

viii. To prepare, draft and file a third document-memo – Rejoinder on the counterclaims from the opposing parties.

ix To prepare the hearing, so that the allegations of the Hellenic Republic are presented – evidenced in full and are fully-documented.

x. To be present and participate during the hearing, the examination of experts, witnesses etc., when presenting the case and allegations of the Hellenic Republic, and in general support its interests.

xi) To check and make the necessary corrections on the minutes of the hearing.

xii) To prepare, draft and file a document –memo (during one of more phases, depending on the instructions from the Court of Arbitration) after completing the hearing (Post Hearing Brief).

xiii) To prepare, draw up and file a document –memo (Statement of Costs) on the costs of this case (in collaboration with the financial office, prepare invoices, courts fees etc) and provide relevant documentation for them.

xiv) To file any memo, written reply or request etc. to the Court of Arbitration, as well as grant any clarification requested by the Court of Arbitration, or file relevant demands for the Hellenic Republic, draw up and forward the correspondence required for handling the case, continuously assessing the progress of the case, propose proper actions in order to satisfy the claims of the Hellenic Republic, and refute counterclaims raised by the opposing parties until a final award is issued by the Court of Arbitration.

xv) To prepare and file any memo on any issue requiring an expert report by the Legal Council of the State, or decision by its President as per law 4831/2021, file a substantiated memo on the accuracy of the final arbitration award, any further possibilities for the Hellenic Republic in order to satisfy its claims, as well as propose on the optimal solution as to its interests.

9. In view of the above, international law firms / law offices with relevant experience in the below fields, interested in undertaking to support the Hellenic Republic, jointly with the Officials from the State Legal Council, are called to file relevant tenders until **19.08.2022 (Time: 3:30 pm local time)** because of a short deadline, to the email address: **hrgent@nsk.gr**.

10. In particular, law firms /law offices should have expertise in international commercial arbitration issues before the I.C.C. and the relevant case-law, preferably on disputes for managing shipyards, technical submarine issues , legal questions related to the Hellenic, foreign (where a foreign law is applied

according to the above), European Union and public international law, on legal assessment and interpretation of contracts on transferring shares and financial claims governed by foreign law, contracts of a principal sub-construction project for shipbuilding of submarines governed by foreign law, as well as contracts of strategic cooperation on submarines, on the basis of multilateral contractual relations and complex factual circumstances with aim to diagnose the necessity to lift the corporate “veil” and analyze and present in detail economic data, under evidenced experience in international commercial arbitrations of relevant kind, size and significance. Furthermore, they should be fluent in English, both in writing as well as in speaking, and in case of foreign law firms, at least one of the basic officials handling the case should be fluent in Greek both in writing as well as in speaking and be aware of the Greek civil law. Firms /offices that would be interested, should be sufficiently staffed in order to become familiar –study the case (very large case files); regarding the memo that **needs to be filed on 05.09.2022** it is required that at least the following documents are inspected : the Application –Request for Arbitration of 23.04.2014 filed by the Hellenic State, the Procedural Order No. 7 Bis from the Court of Arbitration through which the procedural form of claims presented by the Hellenic State has been finalized (as well as counterclaims), its memos that have been filed already (First Written Submissions [Amended], First Written Closing Submissions and Second Written Closing Submissions), Minutes from the hearing of the Court of Arbitration including the statements of witnesses during the hearing that took place between 24.02.2020 and 29.02.2020 included, a significant number of relevant documents and particularly contractual texts, the “Agreement”, the Sub-construction Contract for one of the Programs, as well as the relevant correspondence between the parties involved.

11. Granting evidence from the case file, due to the confidentiality clause that binds the Hellenic Republic, will be only towards the law firm –law office that will be assigned with handling the case.

12. The said tender should include a fee calculation pursuant to the above acts-stages, with maximum payment for each one of them (cap fee), as well as specify the overall fee for handling the case based on a maximum fee (cap fee), without any possibility to exceed them for any reason and cause

whatsoever, or a right on additional fee in case that additional acts (either within the framework of instructions /provisions by the Court of Arbitration, or the needs that may emerge for a more sufficient defense of the interests of the Hellenic Republic) may be required beyond the ones mentioned above, and until a final award is issued and the case is complete as per the procedure prescribed by law 4831/2021.

THE PRESIDENT OF THE LEGAL COUNCIL OF THE STATE

EVGENIA E. VELONI