
CHAMBERS GLOBAL PRACTICE GUIDES

Public Procurement 2024

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Italy: Law & Practice and Trends & Developments

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Law and Practice

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Contents

1. Overview p.5

- 1.1 Public Procurement Legislation p.5
- 1.2 Entities Subject to Procurement Regulation p.5
- 1.3 Types of Contracts Subject to Procurement Regulation p.5
- 1.4 Openness and International Competition p.6
- 1.5 Key Obligations of Awarding Authorities p.6

2. Contract Award Process p.6

- 2.1 Prior Advertisement p.6
- 2.2 Preliminary Market Consultations p.7
- 2.3 Tender Procedure for the Award of a Contract p.7
- 2.4 Choice/Conditions of a Tender Procedure p.8
- 2.5 Direct Contract Awards p.8
- 2.6 Timing for Publication of Documents p.9
- 2.7 Time Limits for Receipt of Expressions of Interest or Submission of Tenders p.9
- 2.8 Eligibility for Participation in a Procurement Process p.9
- 2.9 Restriction of Participation in a Procurement Process p.10
- 2.10 Evaluation Criteria p.10
- 2.11 Exclusion of Tenders p.11

3. General Transparency Obligations p.11

- 3.1 Obligation to Disclose Bidder/Tender Evaluation Methodology p.11
- 3.2 Obligation to Notify Interested Parties Who Have Not Been Selected p.12
- 3.3 Obligation to Notify Bidders of a Contract Award Decision p.12
- 3.4 Obligation to Grant a Prior Hearing p.12
- 3.5 Requirement for a "Standstill Period" p.12

4. Review Procedures p.12

- 4.1 Responsibility for Review of the Awarding Authority's Decisions p.12
- 4.2 Remedies Available for Breach of Procurement Legislation p.13
- 4.3 Interim Measures p.13
- 4.4 Challenging the Awarding Authority's Decisions p.14
- 4.5 Time Limits for Challenging Decisions p.14
- 4.6 Length of Proceedings p.14
- 4.7 Annual Number of Procurement Claims p.15
- 4.8 Costs Involved in Challenging Decisions p.15

5. Miscellaneous p.16

- 5.1 Modification of Contracts After the Award p.16
- 5.2 Termination of Contracts p.16
- 5.3 Prerogatives of the Awarding Authority p.17
- 5.4 Recent Important Court Decisions p.17
- 5.5 Legislative Amendments Under Consideration p.19

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1. Overview

1.1 Public Procurement Legislation

The regulatory source that rules public contract law in Italy is the new Legislative Decree No 36/2023 (the “Code” or PCC), which came into force on 1 July 2023 and applies only to procedures launched after that date. This decree substitutes the preceding public procurement code (Legislative Decree No 50/2016), which is currently applied to tender procedures launched before 1 July 2023.

This Code is the result of an effort to reorganise and simplify the discipline to make it clearer, more streamlined, and easier to navigate for economic operators. The objective is to establish a more stable regulatory framework, despite the continuously evolving nature of contract law, compared to previous years characterised by a series of frequent amendments. Such amendments often led to uncertainty for both economic operators and administrative bodies.

1.2 Entities Subject to Procurement Regulation

To identify the entities subject to procurement regulation, it is useful to refer to Article 13 of the PCC, according to which “The Code applies to all procurement and concession contracts”.

Article 2.1 of Annex I.1 defines procurement contracts as contracts between economic operators and awarding authorities, while concession contracts are those between economic operators and contracting authorities.

Awarding Authorities

As per Article 1.1, Section a) of Annex I.1, awarding authorities encompass all entities, whether private or public, that are required to adhere to the Code. The somewhat tautological and

seemingly unclear definition is intended to be addressed through the qualification process for awarding authorities delegated to the Anti-Bribery Authority, as outlined in Articles 62 and beyond.

Contracting Authorities

The definition includes all state administrations such as local governments, non-economic public entities, the bodies governed by public law and the association among those entities.

Regarding the bodies governed by public law, two significant modifications have been implemented to solve issues discussed in the courts of law (with respect to the previous normative text):

- the expression “legal ability” was used instead of “legal personality”, which is stricter and defined by civil law;
- the absence of “industrial or commercial character” referred to the entities’ activity (and not to the interests for which they were instituted); this underlines the importance of the modality according to which the activity is conducted, in relation to the competitive character of the relevant market.

1.3 Types of Contracts Subject to Procurement Regulation

The PPC pertains to the following.

- *Public procurement contracts*, meaning contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of goods or the provision of services.
- *Public concessions contracts*, meaning contracts for pecuniary interest concluded in

writing under which one or more contracting authorities or one or more contracting entities entrust the execution of works or the supply and operation of services to one or more economic operators, where the consideration consists either solely in the right to exploit the works or services covered by the contracts or in that right together with a price.

Conversely, in accordance with its Article 13, the PCC does not apply to:

- donations;
- the contract types explicitly excluded as per Articles 56 and 181 of the PCC (which mirror the provisions of EU Directive No 24/2014); and
- “active contracts”, naming contracts by which the public authorities receive benefits.

However, if the latter provide opportunities for economic gain, even indirectly, to the public authorities, the principles of the Code must be applied.

1.4 Openness and International Competition

Article 65 of the PCC addresses the participation of economic operators from European Union member states in regulated contract award procedures, allowing unrestricted participation provided they are established in compliance with their country of origin’s laws.

Concerning non-EU states, it is notable to mention a significant legal precedent, ruling number 1110/2021 from the Piedmont Administrative Regional Court – Turin. This ruling highlights that, following Brexit, regarding public procurement procedures not covered by the agreement on service concessions (AAP) signed by the WTO, the EU, the UK, and others, which mandates

equal treatment for operators from participating countries, English economic operators are considered third parties. Consequently, they do not have guaranteed access to public procurement procedures and may face exclusion.

1.5 Key Obligations of Awarding Authorities

The awarding authorities are subject to obligations, which come from the principles stated in Articles 1–12 of the PCC. Said principles include trust between public authority and private operators, in particular in the legitimacy and correctness of public action (Article 2); good faith, which describes the attitude there should be before and during the awarding procedure between the parties (Article 5); conservation of a balance between the parties within the contract, which allows renegotiating the terms of the contract, when the disadvantaged party did not voluntarily take the risk of market fluctuations (Article 9); and the peremptory nature of the grounds for exclusion (Article 10).

Moreover, Article 3 outlines the obligations resulting from principles derived from EU regulations, such as free competition, impartiality, non-discrimination, public access to documentation, transparency, and proportion of public measures, which are fundamental for the functioning of the free market within the European Union.

2. Contract Award Process

2.1 Prior Advertisement

Article 85 of the PCC specifies that all notices, including pre-information notices and notices of awarded contracts, must be published on the Anti-Bribery Authority’s National Public Database and on the official website of the contracting authority or awarding body. Following this

publication, contracting authorities are required to provide access to the tender documents via a hyperlink shared on the Database, ensuring they remain accessible until the completion of the tender process and contract execution. The legal effects of the published acts begin from the date of their publication in the National Public Contracts Database.

Article 87 lists the documents that the contracting authority must publish alongside the notice of the public procurement procedure, including the tender specifications, which outline the rules for the bid selection process, and the special specifications, which detail the future contractual relationship between the successful bidder and the contracting authority.

2.2 Preliminary Market Consultations

Article 77 of the PCC states that contracting authorities have the authority to conduct market consultations for the preparation of tender documents, including selecting competitive bidding procedures, and to notify economic operators about the contracts they intend to undertake and the relevant requirements. For this purpose, public authorities may obtain information, guidance, reports and any other relevant documentation, including technical materials, from experts, market players, independent bodies or other appropriate entities. This documentation can also be utilised in the planning and execution of the procurement process if it does not unfairly impact competition and does not breach the principles of non-discrimination and transparency.

2.3 Tender Procedure for the Award of a Contract

Part IV of the PCC is devoted to procedures for choosing a contractor. More specifically, the following apply.

- Article 71 governs open procedures, namely procedures in which anyone can submit a complete bid.
- Article 72 governs restricted procedures, where anyone can request to participate, but only those who have been pre-selected will be able to submit a bid.
- Article 73 governs the competitive negotiated procedure, where anyone may request to participate but only those who have been pre-selected will be invited to submit an initial bid and negotiate. Procuring entities may use this procedure only when the specific or complex nature of the purchase requires negotiation, while in the defence and security, water, energy, transport and postal services sectors, they may use it as the standard procedure.
- Article 74 regulates competitive dialogue. This procedure can be used with the objective of proposing a method to respond to a need defined by the contracting authority.
- Article 75 governs the innovation partnership. This procedure may be used if there is a need to purchase goods or a service not yet available on the market.
- Article 76 governs the design competition. This procedure is used for the purpose of gathering ideas for a project.
- According to Article 70, negotiation may be used if any of the following conditions are met:
 - (a) when the needs of the contracting authority addressed by the procurement cannot be met by other procedures;
 - (b) when the needs of the contracting authority involve innovative solutions or projects;
 - (c) when the contract cannot be awarded without prior negotiations due to special circumstances concerning the nature, complexity or financial and legal approach of the subject matter of the contract or because of the risks involved;

- (d) when the technical specifications cannot be established with sufficient precision by the contracting authority by reference to a standard, a European technical evaluation, a common technical specification or a technical reference; or
- (e) as a result of an open or restricted procedure, when only ineligible tenders have been submitted.

2.4 Choice/Conditions of a Tender Procedure

Paragraph 1 in Article 70 of the PCC delineates a collective enumeration of the procedures available to contracting authorities for the allocation of public contracts.

The legislature has not deemed it necessary to compel contracting authorities to justify the rationale behind their preference for a specific procedure assessed as better corresponding to their needs, thus enhancing the discretion of the contracting authorities themselves and thus leaving the contracting authorities free to choose, except as indicated in paragraphs 3 (competitive procedure with negotiation or the competitive dialogue) and 5 (innovation partnership).

Under paragraph 3, contracting authorities will employ the competitive procedure with negotiation or competitive dialogue when:

- the procurement's objectives pursued by the contracting authority cannot be fulfilled through other procedures;
- the contracting authority's objectives involve innovative solutions or projects;
- the contract cannot be awarded without prior negotiations due to unique circumstances related to the nature, complexity or financial and legal approach of the contract subject matter, or due to associated risks;

- the technical specifications cannot be established with sufficient precision by the contracting authority by reference to a standard, a European technical evaluation, a common technical specification or a technical reference in accordance with numbers 2) to 5) of Part I of Annex II.5. In the first application of the Code, Annex II.5 will be repealed as of the date of entry into force of a corresponding regulation adopted pursuant to Article 17, paragraph 3, of Law No 400 of 23 August 1988, by decree of the Minister of Infrastructure and Transportation, which also replaces it in its entirety as an annex to the Code; or
- as a result of an open or restricted procedure, when only ineligible bids have been submitted.

In contrast, according to paragraph 5, contracting authorities may opt for the innovation partnership when the need to develop innovative products, services or works and subsequently purchase the resulting supplies, services or works cannot be fulfilled by existing market solutions. This is provided that the resulting supplies, services or works meet the agreed maximum performance levels and costs between contracting authorities and participants.

2.5 Direct Contract Awards

Article 50 of the PCC states that contracting authorities must award contracts for construction projects, services and supplies below the European thresholds in the following manner.

- Directly awarding contracts for projects worth less than EUR150,000, even without seeking bids from multiple economic operators. However, it is required to select parties with documented past experience that is appropriate for conducting the contractual services. This includes individuals or entities identified

among those listed or registered by the contracting authority.

- Directly awarding services and supplies, such as engineering and architectural services and design activities, for less than EUR140,000, even without seeking bids from multiple economic operators. It is essential to select individuals with documented past experience suitable for conducting contractual services, including those identified from among the members of lists or registers established by the contracting authority.

2.6 Timing for Publication of Documents

According to Article 81 of the PCC, awarding authorities must announce their procurement intentions for the following year by December 31st of each year. This announcement should be made by publishing a pre-information notice (*avviso di pre-informazione*) on their institutional website. Additionally, for procurements above the specified thresholds, this document must be published in the OJEU and communicated to the Anti-Bribery Authority.

2.7 Time Limits for Receipt of Expressions of Interest or Submission of Tenders

In accordance with Article 92 of the PCC, the timeframes for submitting bids must be appropriate considering the complexity of the procurement and the necessary preparation time for bid documentation. These timeframes should also allow for on-site inspections and the review of project and technical attachments.

However, these timeframes may be extended under certain circumstances:

- if an economic operator requests additional significant information about the preparation of the bid;

- if there are significant modifications to the tender documents; and
- in the event of malfunctioning e-procurement platforms.

More specifically, for each tender procedure type, minimum terms for bidding are set forth in Articles 71 and following of the PCC.

Concerning *open procedures*, the minimum term is 30 days from the publication of the tender notice. A 15-day term may apply in the event of previous publication of a pre-information notice.

For *restricted procedures*, the minimum timeframe is 30 days from the publication of the invitation to tender, with a 10-day timeframe if a pre-information notice was previously published.

2.8 Eligibility for Participation in a Procurement Process

To participate in a public tender procedure, economic operators must meet certain requirements. According to Article 94 of the PCC, such requirements are divided into:

- “general or subjective requirements”, consisting of moral requisites; and
- “special or objective requirements”, consisting of suitability, technical/professional and economic/financial requirements (as specified in the tender documents), regulated by Articles 100 et seq PCC.

General or Subjective Requirements

Articles 94 and 95 of the PCC list:

- grounds for which the public administration shall mandatorily and automatically exclude the economic operator from participation in a procurement procedure; and

- grounds for which the public administration, through a discretionary assessment regarding the relevance of the offence and/or violation committed by the bidder, may exclude the economic operator from participation in a procurement procedure (see 2.11 **Exclusion of Tenders**).

Special or Objective Requirements

Articles 100 onwards of the PCC set the minimum bar of technical-professional and economic-financial requirements for the bidder participating in a public tender procedure: the meaning is to ensure that contracting authorities choose an economic operator whose capabilities, qualifications and experience are suitable to secure the fulfilment of the public contracts.

Differently from the previous normative text, the PCC sets forth a qualification mechanism valid for works, services and goods provision, the application of which is delegated to a specific regulation.

2.9 Restriction of Participation in a Procurement Process

The PCC provides for the direct awarding of contracts, as provided for by Article 50, and the negotiated procedures, regulated by Article 76.

Direct awarding is an exceptional selection method provided for contracts below the European thresholds, as it is not subject to the dynamics of competition. It is characterised by the lack of comparison with a plurality of operators. Article 50 provides that contracting authorities may proceed with direct awarding “even without consulting several economic operators, ensuring that they have documented past experience suitable for the performance of the contractual services”, always assessing the specific factual situation and the characteristics of the markets involved,

in compliance with the principle of result, trust and access to the market.

The possibilities of using the negotiated procedure without prior publication of a contract notice have been further extended by the PCC, which allows its use regardless of the amount of the contract, but only in the presence of specific and mandatory conditions.

The minimum number of economic operators to be invited is currently set at three operators, as opposed to the five envisaged in the previous code.

2.10 Evaluation Criteria

Pursuant to Articles 107 and subsequent provisions of the PCC, awarding authorities may evaluate a bid/tender according to two different criteria: (i) the most economically advantageous tender (MEAT) and (ii) the lowest price criterion. In addition, for each criterion, the public administration could also provide other sub-criteria or sub-scores.

MEAT is the standard criterion in the tender procedures for selecting the winner of the contract award procedure, which is based on the best price/quality evaluated through objective requirements such as qualitative, environmental and social aspects, related to the subject matter of the contract as set out in the procurement documents. It is mandatorily required for specific types of contracts (such as social services, engineering and infrastructure realisation, provision of goods above EUR140,000 and highly technological or innovative procurement contracts).

Conversely, with the lowest price criterion, the contracting authority compares bids based on the greater price reduction from the auction base. This criterion can be used exclusively in

the context of services and supplies with standardised characteristics or whose conditions are defined by the market, with the exception of labour-intensive services.

It is relevant to underline that Article 109 of the PCC foresees the institution of a system of monitoring the performance of economic operators during the execution phase, which can be used as an element of evaluation in future tenders. Abnormally low offers are subject to strict scrutiny aimed at verifying the possibility of the economic operator justifying the cost structures, according to Article 110 of the PCC.

2.11 Exclusion of Tenders

In contrast to the previous code, which featured a lengthy and complex provision that was frequently debated in courts of law, the current regulatory text has organised the grounds for exclusion into five provisions, resulting in a noticeably more systematic framework.

The provisions involved are as follows.

- Article 94, “Automatic causes of exclusion”, the occurrence of which means that there is no margin of appreciation for the public administration in case of ascertainment of the historical fact (eg, conviction by final judgment or irrevocable criminal decree of conviction for one of the offences referred to in letters a–h of paragraph 1).
- Article 95, “Non-automatic causes of exclusion”, for which, on the other hand, the public administration is granted the power to assess the reliability of the economic operator (these include conflicts of interest or “serious professional offences”).
- Article 96, “Discipline of exclusion”, containing an overall discipline aimed at guiding the awarding authorities in dealing with exclusions.

- Article 97, “Causes of exclusion of participants in groupings”, which specifies that the automatic or non-automatic cause of exclusion or the failure of one of the qualification requirements affecting a participant in a grouping of companies does not extend to the entire grouping (if the fulfilments referred to in the same paragraph have been fulfilled).
- Article 98, “Serious professional misconduct”, underwent numerous changes during its approval process and sparked considerable debate. The significant alterations revolve around two key aspects. Firstly, the provision no longer allows for the assessment of any conduct that could potentially compromise the reliability and integrity of the company. Instead, specific cases are now codified. In addition, due to the “*Cartabia reform*”, plea bargaining no longer covers expulsive relevance. Criticism aimed at this provision stems from what many perceive as a significant regression by the legislature. Notably, offences outlined in Article 98, including those against the public administration, can now be considered as instances of professional misconduct even without a final judgment. In such cases, emphasis is no longer placed on the judgment’s finality but rather on the initiation of criminal prosecution and the decree ordering the trial.

3. General Transparency Obligations

3.1 Obligation to Disclose Bidder/Tender Evaluation Methodology

According to Article 83 of the PCC, the criteria on the basis of which bidders are selected and/or tenders are evaluated shall be included in the prior information notice (*avviso di preinformazione*) or in the tender notice (*bando di gara*), depending on the procedures chosen by the administration.

The information to be included in the tender documents is listed in Annex II.6 to the PCC.

3.2 Obligation to Notify Interested Parties Who Have Not Been Selected

According to Article 90 of the PCC, the administration must notify the excluded candidates and bidders of the exclusion decision. The communication must be made within five days after the decision by certified electronic mail.

3.3 Obligation to Notify Bidders of a Contract Award Decision

According to Article 90 of the PCC, the contract award decision (*decisione di aggiudicazione del contratto*) and the name of the bidder who was awarded the contract must be communicated to all candidates and competitors admitted to the tender procedure and to those who challenged their exclusion decision. The communication must be made within five days after the decision is made by certified electronic mail.

3.4 Obligation to Grant a Prior Hearing

As per Article 101, the administration has the right to request clarification or explanations regarding the technical and/or economic offer. However, it is not obligatory to consult with the bidder before making a decision regarding the contract award. Nevertheless, if the bid is missing any administrative documentation, the administration must notify the bidder of this deficiency and provide a deadline for rectifying the omission(s).

3.5 Requirement for a “Standstill Period”

According to Article 18 of the PCC, no less than 35 days must elapse between the notification of the contract award decision (*decisione di aggiudicazione del contratto*) and the signing of the contract. If an appeal is filed within the standstill period, the contract cannot be entered into until

a judicial decision, either substantive or precautionary, is issued.

4. Review Procedures

4.1 Responsibility for Review of the Awarding Authority’s Decisions

As a general rule, the awarding authority has the power to review its decisions. This power of administrative self-protection is justified by the need for the public administration to allow functional reviews aimed at making the final decision to maintain or remove the act from the system.

In the context of tendering procedures, this power can affect the final contract award decision (so-called external self-protection, since it affects an act that is prodromal and temporally previous to the contract itself) and is most frequently expressed in the institutes of revocation (*revoca* – regulated by Article 21-quinques of Law No 241/1990) and self-annulment (*annullamento d’ufficio*, ruled by Article 21-nonies of Law No 241/1990).

On the other hand, internal self-protection relates to all the powers of unilateral intervention of the public administration in the contract, which can also lead to the termination of the contract itself: for example, termination for convenience (*recesso unilaterale*, regulated by Article 123 of Legislative Decree No 36/2023). In this regard, it is worth noting that the new Code eliminated the revocation from the section relating to concessions. This change was an administrative decision impacting another decision rather than the contract itself. Consequently, its inclusion in the section addressing the execution phase of concession contracts has consistently appeared irrelevant for these reasons. Instead, paragraph 4 of Article 190 introduced the institution of con-

tractual termination, which aligns more closely with the legal framework governing the contractual phase of concessions.

Pursuant to Article 120(5) of the Code of Administrative Procedure (Legislative Decree No 104/2010), these measures may be challenged before the Administrative Court within 30 days from knowledge of the act.

4.2 Remedies Available for Breach of Procurement Legislation

In the event that the public administration adopts an act in breach of public procurement regulations, the aggrieved economic operator may (i) file a petition for administrative self-annulment against the contracting authority that adopted the administrative act, and/or (ii) challenge the act deemed unlawful by filing a judicial appeal with the judicial authority.

Application for Administrative Self-Protection

The aggrieved economic operator is entitled to submit a reasoned request to the administration to reconsider the choices and assessments made in the tender. In such a case, the contracting authority will be called upon to evaluate the application and, in light of the self-assessment carried out, will decide whether to confirm the act/deliberation adopted or, alternatively, to annul it in self-defence (that is, to cancel it from the “legal knowledge”).

The Appeal

The economic operator may appeal to the competent Regional Administrative Court, alleging a violation of procurement regulations. The proceeding must be initiated within 30 days of becoming aware of the grounds for initiating the proceeding. Additionally, the disputing party also has the right to file for precautionary measures to protect its rights and interests.

4.3 Interim Measures

An economic operator assuming a violation of public tender regulations may file a petition for review and, at the same time, apply to the court for interim precautionary measures, to remedy the alleged violation or prevent further damage to the interest of the entitled party. Such measures may consist of the suspension of the challenged measure or, alternatively, the setting of a hearing on the merits of the case.

The application is aimed at imposing interim measures that could be either (i) “monocratic”, issued – without hearing attorneys – until the collegial hearing discussing the interim measures, or (ii) “collegial”. Monocratic interim measures are issued by the President of the Regional Administrative Court with a presidential decree (which may be adopted even a few hours after the application is filed) “in case of extreme gravity and urgency” – such as not to allow a delay until the date the council next meets in chambers. Collegial interim measures postulate the hearing of the defendant, and the discussion takes place orally. The Regional Administrative Court for interim relief, if it considers the grounds favourable, fixes with a collegial order the date of the hearing on the merits, usually a few weeks after the filing of the application, authorising the production of written statements.

Requirements for Taking Precautionary Measures

The conditions for the issuance of interim measures by the court are:

- *fumus boni iuris*, a positive judgment regarding the neither unreasonable nor reckless content of the petition; and
- *periculum in mora*, the reasonable risk to the appellant of suffering “serious and irreparable harm during the time it takes to obtain a decision”.

These requirements are rigorously assessed in the case of monocratic measures, given the absence of any discussion and the extremely short duration of the phase.

4.4 Challenging the Awarding Authority's Decisions

The right to challenge the public administration's decisions stems from the Code of Administrative Procedure (Legislative Decree No 104/2010), which states that the review procedures can be activated by any concerned entity having concrete and current interest. Specifically, within public procedure matters, it may result in:

- the possibility for any economic operator to challenge the tender notice, if it contains “immediately exclusionary clauses” (*Clausole immediatamente escludenti*), namely clauses excluding the competitor from the tender process or, alternatively, that do not provide the severability of a serious and well-weighted bid;
- the possibility to challenge the exclusion decision by the bidder allegedly unlawfully excluded from a procedure – to maintain concrete and current interest, according to case law (except in limited cases such as reports to ANAC, or the calling on of a bid bond/provisional guarantee) it is also necessary to challenge any awarding that occurred to another competitor; and
- the possibility of challenging the award decision.

If the entity is ranked other than second, it is required to justify not only the unlawful scoring of the successful bidder but also with reference to the evaluation of the bids of the competitor who preceded them in the ranking.

4.5 Time Limits for Challenging Decisions

According to Article 120 paragraph 1 of Legislative Decree No 104/2010, “the acts of awarding procedures relating to public works, services or supplies” are subject to the public procurements process, which is a judgment carried out before the Administrative Court and that concerns the overall activity of the public administration aimed at the conclusion of contracts.

To challenge the above-mentioned public procedure acts, the appeal must be brought within the term of 30 days:

- from the awarding communication (regulated by Article 90 of Legislative Decree No 36/2023);
- from the publication of the tender notice or other notices on the public administration website (in the section entitled Transparent Government); or
- in any other case since the act was known.

4.6 Length of Proceedings

The administrative legal enforcement of public contracts is quicker than civil and criminal proceedings, as Legislative Decree No 104/2010 has provided very short deadlines for appeals compared to the ordinary procedure (ie, the deadline for appealing award decisions is 30 days from their communication).

If the economic operator requests the application of interim and precautionary measures (*misura cautelari*), the court must schedule a hearing after the tenth day from the notification and five days from the filing of the application. (It is estimated that the review of interim measures has an average duration of 30 days.)

In such proceedings, judges not only rule on interlocutory orders but, if they find that there is a manifest basis for the claim, they are entitled to rule on the entire proceeding in a simplified judgment. The grounds for the judgment may consist of a brief reference to the point of fact or law deemed decisive or, where appropriate, to a conforming precedent.

According to the [Giustizia Amministrativa website](#), the official web portal of the administrative jurisdictions in Italy, the average duration for the settlement of a new public procurement case is 107 days, while an appeal before the Council of State is decided, on average, in 148 days. Consequently, the time to conclude a public procurement case including two instances could be about 12 months.

4.7 Annual Number of Procurement Claims

It may be useful to highlight that, in Italy, disputes can be resolved by courts of “ordinary jurisdiction” or by courts of “administrative jurisdiction”. The first courts can review every controversy of a civil nature involving the relationship between individuals (such as contract law or corporate law), whereas the second type of courts resolve disputes in which a private entity interacts with a public power.

The following data concerns exclusively the administrative judgments and are provided on the [Giustizia Amministrativa website](#). It may also be appropriate to distinguish between claims to the Regional Administrative Court and appeals to the Administrative Supreme Court. Both challenge the legitimacy of a decision taken by the public administration: the Regional Administrative Court as the first instance court, and the Council of State as the second instance court. With regard to procurement appeals to the

Regional Administrative Court, it is estimated that they amount on average to about 4.9% of all administrative litigation.

4.8 Costs Involved in Challenging Decisions

The typical costs to challenge an award authority’s decision essentially refer to two different kinds of fees: (i) the court registration fee and (ii) the attorney’s fee.

The Court Registration Fee

The court registration fee is a tax that, according to Article 9 of Presidential Decree No 115/2002, any applicant must pay – for any instance and for any type of dispute – for the registration of new litigation. In public procurement, the court registration fee varies in proportion to the value of the tender as indicated in the tender notice. Therefore, concerning proceedings before the court of first instance:

- EUR2,000 if the tender value is less than or equal to EUR200,000;
- EUR4,000 if the tender value is between EUR200,000 and EUR1 million; or
- EUR6,000 if the tender value is above EUR1 million.

In case of appeal before the court of second instance, the court registration fee is increased by 50%.

Attorney’s Fee

Legal assistance from a lawyer is mandatory in the event of an appeal against a decision of the contracting authority: the calculation of this time must be made according to the parameters identified by Ministerial Decree No 55/2014, which provides, in consideration of the value of the dispute, (i) a minimum fee, (ii) an average fee, and (iii) a maximum fee.

In determining the value of the dispute, reference should be made to the “actual gain”, which, according to case law, is an amount not less than 10% of the contract value (see Supreme Administrative Court Opinion No 183/2022). However, sometimes, the effective profit could be specifically indicated within the procurement documents. The attorney’s fee can be increased in relation to particularly complex dispute cases.

5. Miscellaneous

5.1 Modification of Contracts After the Award

Article 120 of the PCC governs the cases, restrictions and prerequisites for both subjective and objective modifications that can be legitimately applied to a contract during its execution, without necessitating a new bidding process. This provision aims to expand the range of permissible alterations during construction compared to previous rules.

Paragraph 1 now specifies four scenarios wherein adjustments to procurement contracts can occur without initiating a new awarding procedure. These include:

- modifications outlined clearly, precisely and unambiguously in the tender documents, ensuring the contract’s structure and economic transaction remain unchanged;
- the emergence of additional works, services or supplies due to unforeseen circumstances, provided changing contractors is not impractical for economic or technical reasons and any price increase does not surpass 50% of the initial value;
- unforeseeable variations during project implementation, as long as the contract structure remains intact and any price alteration stays within a 50% limit; and

- substitution of the successful bidder is only permitted if it is specified in the tender documents or in cases of succession due to death, insolvency or corporate restructuring, or if the contracting authority assumes the primary contractor’s obligations to subcontractors.

A significant addition is found in paragraph 8, which states that the contract can always be amended while upholding the principle of preserving the contractual balance and complying with renegotiation clauses. If such clauses are absent, the request for renegotiation must be directed to the Single Project Manager (RUP), who is tasked with formulating a new agreement proposal within three months. If a new agreement is not reached within a reasonable timeframe, the disadvantaged party may initiate legal action to restore the contract to its original balance.

5.2 Termination of Contracts

The PCC addresses termination and withdrawal in Articles 122 and 123, respectively.

Like the previous code, Article 122 differentiates between optional and mandatory termination cases. However, a new aspect compared to the previous regulations is the contracting authority’s ability to terminate the contract without a set time limit and the implications of such termination. Specifically, paragraph 5 now specifies that the operator’s payments for services rendered may not always be reduced by the costs associated with contract termination, but only in certain circumstances.

Article 123, however, deals with the right of unilateral withdrawal *ad nutum*, which allows the contracting entity to cease the contract at any time. If the contracting entity decides to withdraw from the contract, the contractor will not be held responsible for any adverse consequences

and will have the right to receive payment for the work completed, reimbursement for the value of materials present on site (for construction projects) or in stock (for services and supplies), as well as a payment equal to one-tenth of the value of the remaining incomplete work, services and supplies, as calculated according to the provisions outlined in Article 11 of Annex II.14.

5.3 Prerogatives of the Awarding Authority

An important prerogative of the contracting authority lies in its discretion in the choice of contractor, which is a declination of the result principle, governed by Article 1 of the PCC. The articles dedicated to the new discretionary powers given to the contracting authorities are as follows.

- Article 10 paragraph 3 – contracting authorities may introduce in the specifications and the tender notice additional special requirements of an economic-financial and technical-professional nature.
- Article 14 paragraph 11 – contracting authorities may award individual lots without applying the provisions of the PCC for amounts less than EUR80,000 for supplies and services and EUR100,000 for works.
- Article 41 paragraph 5 – contracting authorities may request additional design documents for each project phase.
- Article 46 paragraph 2 – contracting authorities may decide that the design competition be divided into two phases.
- Article 62 paragraph 1 – contracting authorities may directly award works amounting to EUR500,000 or less.
- Article 95 paragraph 1 – contracting authority may still decide on the exclusion of an economic operator regardless of all the declara-

tions and verifications referred to in Article 94 of the Code.

- Article 107 paragraph 2 – contracting authority may decide not to award the contract to the economic operator that submitted the best offer if it verifies that the offer does not meet environmental, social and labour obligations.
- Article 113 paragraph 1 – contracting authorities may require specific requirements for the performance of the contract.
- Article 119 paragraph 2 – contracting authorities shall decide the percentages and bids that can be subcontracted.
- Article 120 paragraph 2 – variation and supplementary expert reports may provide for an increase of up to 50% of the initial contract amount.

5.4 Recent Important Court Decisions

It is worth highlighting the following significant judicial decisions involving the application of the PCC.

Administrative Courthouse for Sicily, Catania, Section III, 7 February 2024, No 478

Regarding procurement contracts below the European threshold, decision No 478 of 7 February 2024, issued by the Sicily Regional Administrative Court – Catania, achieved an interesting balance between public interests and principles, thereby giving effect to their inclusion in the PCC (Legislative Decree No 36 of 31 March 2023).

In this case, the claimant disputed the public administration's decision not to exclude an economic operator from a public tender procedure due to their submission of a bid significantly lower than others, thus circumventing the application of provisions regarding the abnormality of the economic offer.

According to the appellant, one of the bidders' offers clearly could not cover the expenditures of the services outlined in the contract, specifically the cleaning and de-pollution of port waterways.

First and foremost, the judges affirmed that, in this specific context, no grounds exist for the automatic exclusion of abnormal economic offers (as stipulated in Article 54 of Legislative Decree No 36 of 31 March 2023); in fact, for this type of public tender, the assessment of the fairness of a bid is a specific manifestation of the administrative discretionary power of the contracting authority. The said authority is not obligated to provide specific reasoning for its decision, which can only be contested on grounds of unreasonableness or manifest lack of logic.

Despite what was said, in this decision, the judges observed "the existence of certain elements that could legitimately raise doubt" regarding the assessment conducted by the contracting authority, which failed to ensure the best possible price-performance ratio in compliance with principles of legality, transparency and competition. The admission of the abnormally low offer was due to the significant importance placed on the criterion of the best price, but in this instance, the contracting authority should have considered a different balance with quality and efficiency to better serve the public interest. For these reasons, the judges agreed with the claimant's opinion and excluded the abnormally low bid from the procurement.

Lazio Regional Administrative Court, Rome, Section II-bis, 3 January 2024, No 140

The PCC has articulated the set of principles that have been consolidated over the years through various regulatory sources and case law. In fulfilling this objective, certain trends in case law are reconciling diverse principles in line with the legislative intent.

A clear example of this can be found in decision No 140 of 3 January 2024, issued by the Lazio Regional Administrative Court in Rome, where the judges' reasoning enlightened the significance of the "binding nature of the law" principle. This decision upheld the annulment of an exclusion order from a public tender due to failure to comply with a condition stipulated in the tender notice rather than by law.

In contrast to the previous code, the new one "By situating the principle of the binding nature of the law within the general principles... and recognizing the instrumental role of legal certainty in relation to the fundamental principle of market access, outlined in Article 3 of Legislative Decree No. 36/23, it becomes evident that, under the PCC, exceptions to the obligatory nature of the law principle should be construed in a more restrictive and stringent manner compared to the previous regulations."

The judges then recall that Article 10 of the PCC stipulates that the exclusion criteria delineated in Articles 94 and 95 are both imperative and exclusive. Furthermore, it clarifies that any provisions introducing additional exclusion criteria beyond those in Articles 94 and 95 are null and void and are deemed as if they were never implemented. As a result, Legislative Decree No 36/2023 imposes a stricter regulation compared to the previous Article 83, paragraph 8, in Legislative Decree No 50/2016 regarding exclusion grounds in the public procurement sector.

In conclusion, this case also represents the predominance of the principle of free access to the market for companies (as pointed out in Article 3 of Legislative Decree No 36/23), in the sense that no causes of exclusion can be added from a tender notice, except for those provided by the law.

5.5 Legislative Amendments Under Consideration

Currently, no substantial revision of the PCC is programmed. However, historically slight modifications of the texts have followed the publication of new codes, to correct formal mistakes or to incorporate particularly relevant interpretative issues noted by the case law or academia.

Trends and Developments

Contributed by:

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Studio Legale VILDE – Villata, Degli Esposti, Tarabini e Associati is a leading firm in administrative law with offices in Milan, Rome, Bologna, Padua and Sondrio. The firm's extensive experience in providing consulting and assistance, both judicial and extrajudicial, across various areas of administrative law, has enabled the firm to play a significant role in the public legal landscape. This includes expertise in public procurement and project financing for infrastructure development, energy facilities, urban

renovation plans and service provision contracts. VILDE prides itself on its meticulous and punctual approach. The firm is structured to ensure its professionals can promptly and accurately address client needs. Now, 25 years since its establishment, the firm is strengthening and expanding its expertise, with the entry of a new equity partner, Domenico Dodaro, along with three new partners: Giuseppe Cordedda, Daniele Vagnozzi and Serena Cianciullo.

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Introduction

The application of the principles of “result” and “trust”

The Italian public procurement framework has recently undergone restructuring following the publication of a new Code (Legislative Decree No 36/2023). This code intends to solve several endemic problems repeatedly highlighted by practitioners and the European Commission, such as the complexity of the regulations, the number of contracting authorities, the lack of transparency in the publication of certain procedures, and the inconsistent application of the norms on exclusions.

The Code came into effect on 1 April 2023 and its rules became effective on 1 July 2023. All the tender procedures which fall within the scope of the Code after that date are subject to its application.

The normative text has been generally well-received as it is characterised by:

- autonomy, meaning that it does not require any additional applicative decree for enforcement;
- simplicity in the language structure – many norms have been merged and summarised; and
- flexibility in its discretionary application by the awarding authorities, based on the essential principles expressed in the first norms of the Code.

Among those principles, the most controversial one is the “principle of result”, embedded in Article 1 of the new Code. It emphasises that fostering competition in public tenders is not the primary aim of the procurement process. Instead, the ultimate goal is to complete public works and provide services and goods to the

community and/or public authorities. Therefore, the tender procedure should not be viewed as a restrictive mechanism driven by formalities. Instead, it should be seen as an instrument that enables the authority to achieve the best outcome, benefiting both the authority and, ultimately, the general public.

This is also linked to the second principle outlined in the Code, referred to as “trust”, which invokes the necessity to set forth a common basis of mutual trust between awarding authorities and economic operators, mainly to avoid the stagnation that was provoked by a general sense of illegitimacy in the sector. The aim is to defend the responsible and sound decisions of the public officers governing the tender towards its final goal, even towards the supervisory bodies.

A first application of the described principle is seen in the judgment of the Sicily Regional Administrative Court, Catania, 12 December 2023, No 3738, which concerned the economic operator’s request to belatedly carry out a mandatory inspection required by the tender rules.

The administrative courthouse, in agreement with the administration’s actions, ruled that linking the bid formulation to the prior completion of an inspection was appropriate and reasonable in this specific case, which concerned the safety verification services for a hospital institution, “a requirement ‘pertinent’ and ‘proportionate’ to the object of the contract”.

Therefore, since the deadline set in the tender specifications for the completion of the inspection was not “manifestly illogical and unreasonable”, the decision of the awarding authority was considered sound. This was also defended based on the principles of trust and result, given

that the best possible result “is also achieved by selecting operators who demonstrate, from the earliest stages of the tender, diligence, and professionalism, as ‘symptoms’ of a reliability that will have to be placed on them at the time when... they will perform the service to be entrusted”.

As this case demonstrates, despite being agreeable in its intrinsic meaning, the administrative judges have applied the principles to defend the activity of the awarding authorities even in cases where the interpretation of the law and the tender rules was debatable. This may reduce the chances of economic operators to successfully question the decisions of awarding authorities within tender procedures.

In the following paragraphs, a selection of particularly relevant aspects of the new Public Contracts Code will be described, considering the main modification from the previous regime, and the first applications under case law.

Part I – Participation

The grounds for exclusion – serious professional misconducts and self-cleaning measures

One of the most relevant changes introduced by Legislative Decree No 36/2023 relates to the grounds for excluding economic operators. The decree provides a more streamlined framework compared to the previous code (Legislative Decree No 50/2016). This streamlined approach is designed to facilitate easier navigation for operators and contracting stations.

Two particularly noteworthy aspects that require consideration are serious professional misconduct, regulated by Article 98 of Legislative Decree No 36/2023, and the self-cleaning process, addressed in Article 96, paragraph 6, and sub-section (e) of paragraph 1 of Article

95. These articles stipulate that the contracting authority must exclude an economic operator from participating in the procedure if it determines that the tenderer has engaged in serious professional misconduct, such as casting doubt on its integrity or reliability, verified by the contracting authority through appropriate means. Article 98 then provides detailed guidance on the nature of professional misconduct and the suitable methods for establishing it, incorporating the guidelines of ANAC Resolution No 397 of 6 September 2023.

On the other hand, notable progress has been made concerning self-cleaning, now regulated by Article 96, which has notably expanded the application scope of the institution compared to the previous code. Paragraph 4 of the aforementioned article deserves special mention as it closely aligns with the rulings of the Court of Justice and national courts, stipulating that if the grounds for exclusion arise after the submission of the tender, the economic operator must implement and communicate the measures taken. It is important to note that the adoption of these measures by the economic operator should not lead to the termination of the procedure.

Focus – the regularisation procedure

According to Article 101 of the Public Contracts Code (henceforth PCC), when the tender documents contain formal irregularities such as omissions or inaccuracies, the contracting authority assigns the bidder a deadline (not less than five days and not more than ten days) to provide the relevant documentation or to amend the inaccuracy; if the bidder does not regularise the offer by the deadline, it is excluded from the tender procedure.

This mechanism is called *soccorso istruttorio* and is aimed at ensuring the selection of the best economic and technical offer, even if affected

by mere irregularities. There are four types of *soccorso istruttorio* aimed at amending different irregularities.

- *The supplementary procedure* (Article 101 lett. a) – if the offer lacks part of the administrative documentation, the bidder is required to supplement the omission(s) by the provided deadline. If the missing documentation is publicly available, or otherwise in the possession of the contracting authority, the administration shall automatically supplement the omission. The supplementary procedure can be used, inter alia, to amend the lack of the provisional guarantee and the agreement governing the RTI. Since the procedure can be used only to amend formal irregularities of the bid, the provisional guarantee and/or the RTI agreement shall have certain date prior to the deadline to submit the bids.
- *The remedial procedure* (Article 101 lett. b) – if the bid contains any other omission, inaccuracy or irregularity, the operator is required to regularise its offer by the deadline provided. The procedure cannot be used if the documentation provided does not allow precise identification of the operator.
- *The clarification procedure* (Article 101 para. 3) – the contracting authority can always request any necessary clarification or explanations regarding the technical and/or economic offer.
- *The corrective procedure* (Article 101 para. 4) – the bidder can correct material errors in the technical and/or economic offer until the opening of the offers. The corrections shall be made in the same manner as the application and must ensure the anonymity of the operator.

The first three types of regularisation procedures are mandatory for the contracting authority;

therefore, whenever a remediable irregularity is discovered, the administration shall activate the relevant procedure.

In any case, since Article 101 is aimed at balancing the principle of the *favor participationis* with the “equal condition” of the bidders, the *soccorso istruttorio* cannot be used to supplement elements of the technical and economic offer. Similarly, required clarifications cannot be used to modify such elements.

The virtual dossier

Among the tools for the simplification of public procurement introduced by the 2023 Code is the process of digitisation of procedures, which is also a valid expedient to implementing transparency, efficiency and cost-effectiveness of actions implemented by contracting authorities. Worthy of mention is the Virtual Economic Operator’s File, referred to in Article 24, which is a digital service that operates within the National Public Contracts Database. It is aimed at simplifying verification of possession of the requisites for participation in tender procedures for the award of public contracts. It is, in short, a digital archive, allowing consultation of the documents necessary to verify requirements. Moreover, this archive does not only contain documents from economic operators but also gathers data, documentation and certifications provided by administrations.

Administrative documentation

Article 91 of the 2023 Code makes provision in relation to documents that must be submitted by economic operators in order to participate in contract award procedures. The documents, to be submitted via the digital procurement platform, as outlined in the first paragraph of Article 91, are:

- the application to participate;
- the single European tender document;
- the tender; and
- any other necessary documents for participation in the tender procedure.

The following paragraphs go on to specify the content of the documents to be published on the platform. Specifically, the second paragraph decrees that the application to participate, besides being in electronic format with a digital signature, must also specify the legal form of participation, any declaration regarding outsourcing, and data/documents related to special participation requirements. Furthermore, according to paragraphs 3 and 4, the single European tender document must also be in digital form, and, through it, the auxiliary enterprises declare that they are in possession of the general and special-order requirements.

Participation in tender procedures in temporary associations

Article 68 of Legislative Decree No 36/2021 addresses the participation of temporary groupings and ordinary consortia in tender procedures, introducing changes to existing legislation following the ruling of the EU Court of Justice on 28 April 2022 (C-642/20, Caruter) and infringement procedure No 2018/2273.

A significant alteration, compared to the previous Code, involves (i) eliminating the distinction between vertical and horizontal groupings and (ii) requiring the mandated operator to possess the majority of the necessary requirements.

Another new development pertains to the following option available to contracting authorities:

- requiring temporary groupings of companies (RTIs) to adopt a specific legal form after the conclusion of the contract;

- specifying, during the drafting of the tender notice, the manner in which RTIs must be in possession of and be able to prove the special requirements; and
- establishing unique conditions for the extension of the contract applicable to groupings (excluding consortia).

The economic, financial and/or technical expertise criteria must be met collectively by the entire group. Emphasising the principle established by the Council of State in Plenary Assembly (decision No 6/2019), there is a reaffirmation of the correspondence between the performance quota and the qualification requirements. This holds true regardless of whether the contract pertains to works, services or supplies.

Furthermore, the economic operator is allowed to participate simultaneously in the same tender both as a part of a group and as an individual competitor. In such instances, the contracting authority can only exclude competitors under specific circumstances.

The RTI can be terminated at will, even during the ongoing contract, provided that the remaining companies (even if a single entity) meet the qualification requirements to perform the awarded service.

According to Article 97, the RTI has the option of preventing exclusion from the tender by utilising substitution and/or removal (downward modification) of the company affected by an automatic or non-automatic exclusion cause or the loss of a qualification requirement.

Lastly, it is worth noting that these regulations apply to both regular consortia and, where feasible, to collaborations among companies that are members of the network contract.

Another significant development regarding “multiple participation” is the concept of “bulk accumulation”. In gaining eligibility for the admission to award procedures, applicable to both services and supplies, as well as works, established consortia have the option to demonstrate their technical and financial capacity by combining those possessed by their consortium members, whether or not identified in the tender as contract executors. However, the general requirements must be met by both executing and performing consortia.

Part II – Tender Management, Subcontracting and Remedies

The new single project manager/officer

Legislative Decree No 36/2023 introduced the new “single project manager” figure, with different functions and roles compared to the outdated “single procedure manager” (henceforth the RUP) under the General Law on Administrative Procedure, Law No 241/1990.

The two figures differ in several respects. First, the General Law on Administrative Procedure requires the identification of the RUP both as an organisational unit and as an individual person. Differently, the new Public Contracts Code establishes the same obligation to identify the single project manager uniquely as an individual person, regardless of the identification of a reference office.

Even the actual role played by the RUP changes in the two regulatory texts. The administrative procedure is a single process, and at most it can be divided into sub-processes. However, it always ends with the issuance of a single measure by the public administration. In contrast, the public procurement procedure is composed of several phases that are themselves qualifiable as procedures, which, consequently, it brings to the

adoption of individual measures or acts. For this reason, as well as to avoid an excessive concentration of tasks and responsibilities under the same person, the new Public Contracts Code has provided the option of naming the so-called phase manager, with technical expertise for the planning, design and execution phases, and with legal-administrative skills for the public contract award phase. Alongside, discretionally for the procuring station, the phase managers can be supported by a structure in order to co-ordinate the different procedures phases. However, even the General Law on Administrative Procedure regulates the establishment of a stable structure supporting the RUP but with other purposes, since there is indeed no need to co-ordinate the sequential sub-procedures.

Subcontracting

Article 119, paragraph 2c of Legislative Decree No 36/2023 defines subcontracting as “the contract where the contractor entrusts third parties with the performance of part of the services or work covered by the contract, with organization of means and risks borne by the subcontractor”.

Contracting authorities have the option to limit subcontracting by providing valid reasons in the tender documents. Subcontracting is permissible provided that the services to be subcontracted are clearly outlined during the bid, and, additionally, approval is granted by the contracting authority. This authorisation must be updated if there are any alterations to the subject and/or amount changes.

The contracting authority grants permission for subcontracting after confirming that the subcontractor (i) meets the general requirements and (ii) possesses the necessary qualifications to perform the services. Not all subcontracts qualify as subcontracts (continuous co-operation

contracts, subcontracting of ancillary services, subcontracting of secondary activities to self-employed workers).

Both the contractor and subcontractor share joint and several liability: (i) to the contracting authority for the proper execution of services outlined in the subcontract and (ii) for meeting wage and contribution obligations.

In case of delay in the payment of wages due to the subcontractor's personnel, as well as in case of failure to pay contributions, the contracting authority exercises the power of substitution.

Subcontractors, subject to the authorisation of the contracting authority, may be substituted.

The main novelty of Article 119 is the admissibility of so-called cascade subcontracting (in keeping with the indications of the Court of Justice and the EU Commission): any limits must be specific and justified because of “the... characteristics of the contract and the need... to strengthen the control... of workplaces or to ensure a more intense protection of working conditions and the health and safety of workers or to prevent the risk of criminal infiltration”.

To prevent the risk of criminal infiltration and ensure effective control of service quality and workplaces, it is crucial to adopt an Organisational Model under Law No 231/2001. This model should define roles, operational responsibilities, control principles, and behaviour in the relationship between the contractor and subcontractor. This includes predetermining criteria for selecting subcontractors to ensure reliability and qualification, as well as verifying collective agreements and salary levels applied by both parties. A best practice is to incorporate “231” clauses into the contract, requiring subcontractors

to commit to adhering to principles and standards in the Code of Ethics and compliance programmes accepted by the contractor.

Remedies

One of the main purposes of the reform implemented via the PCC is to reduce the amount of public procurement judicial proceedings and to make their decision faster. In order to achieve these objectives, Legislative Decree No 36/2023 intervened in two ways: firstly, by providing pre-litigation remedies; and, secondly, by partially modifying Article 120 of the Administrative Procedure Code and by making the tender documentation immediately accessible at the time of the adjudication, avoiding the initiation of proceedings without all the information.

For example, two remedies to avoid any potential judicial conflict are: the Technical Advisory Board (TAB) (*Collegio Consultivo tecnico*) and the National Anti-Corruption Agency (ANAC) Pre-litigation Opinions (*Pareri Precontenzioso ANAC*).

The TAB was provided also by the Code of 2016, but right after it was abrogated. In 2020, it was temporarily introduced, and it is now confirmed by Articles 215–220 of the New PPC. Its effectiveness is assured by the fact that, if the public administration does not comply with its decision, the competent public official incurs fiscal responsibility. Moreover, it is worthwhile to note that its activation is compulsory whenever the work for a public project with a value exceeding the European threshold is suspended.

As for the Pre-litigation Opinions, they were already provided in the previous PPC, but the new PPC has introduced a few modifications. For example, now they are not binding for all parties that have already consented to them, but

they can be challenged by both the economic operator and the awarding authority on different grounds.

Furthermore, Article 220 allows ANAC to give an opinion any time an awarding authority has adopted acts contrary to the law, obliging the first one to comply within a term. Lastly, as said, Article 120 of the Administrative Procedure Code has been modified, erasing the compulsory payment of a court fee for the integration of the appeal.

Moreover, an important change involves the accessibility of the tender documentation, which is now available with the adjudication on the online platform used for the procedure. Records containing technical or trade secrets may be excluded from publication, but the documents of the first five contenders will be immediately accessible to each other.

If some documents are not available it is possible to appeal to the Administrative Regional Court within a short new term (ten days) from the communication of the tender adjudication, allowing the judge to publish a simplified sentence within two weeks.

Conclusion

The sector's reform requires careful and professional handling, with consultancy provided to both private and public operators based on extensive experience in regulatory evolution and legal precedents. The new Code aims to amend some of the difficulties that fatigue the public contracts market, and it does so by setting forth some general lines of interpretation, which should be handled with care to avoid additional burdens on the private economic operator and to allow the functioning of the system overall. In this regard, the first application of the reformed norms opens up extremely fascinating ambits of legal reasoning.

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