

The first amendment to Italian Public Contracts Code

May 8, 2017

Since one year from the coming into effect of the Legislative Decree no. 50/2016 adopted by the Italian Government to implement the European Directives no. 2014/23/EU, 2014/24/EU and 2014/25/EU (known as the “New Public Contracts Code”), the first amendment to the New Public Contracts Code has been published in the Italian official Gazette dated May, 5, 2017 (hereinafter the “Amendment”).

The Amendment is not just aimed at correcting refusals and coordination typos between the provisions of the New Public Contracts Code, but it has been published with the main scope to boosting the public procurement sector, especially in the construction and large infrastructures field, which represents quite a relevant share in the Country GDP.

Some of the main innovations introduced by the Amendment are listed below:

- the so called reputational rating (i.e. the business qualification system) introduced by the New Public Contracts Code - released by the National Anticorruption Authority (“Anac”) on the basis of qualitative and quantitative criteria capable of demonstrating the structural capacity and reliability of the companies – is no more a mandatory requirement to take part in public tenders. Therefore, the possession of such rating will be optional and will constitute at most a valorization element during the procedure: with all that comes in terms of opening up to competition and eliminating barriers to participation in tendering procedures;
- the requirements to obtain a SOA certification (essential for performing works) have been made more flexible, enabling companies to prove their requirements by choosing the five best years of activity over the last 10 years (or the best exercises within the last 10 years in the case of contracts with an amount exceeding € 20 million);
- the threshold for the use of the lowest price criterion has been raised with the consequence that such an award criterion may be used by the Contracting Authority (instead of the most economically advantageous tender criterion) for the assignment of works with a value equal or lower than Euro 2 million (the previous version of Article 95 of the New Public Contracts Code sets the threshold in Euro 1 million), which makes it possible a more rapid management of the tendering procedures in case of not particularly high value contracts;
- the so called integrated contract (abrogated by the New Public Contracts Code) was re-introduced. The Amendment allows the tender authority to use such instrument not only in relation to all final projects approved on 19 April 2016 (date of entry into force of the New Public Contracts Code) but also in cases of contracts where the technological or innovative element is clearly prevalent in relation to the total amount of the works (see Article 59);
- the Contracting Authority’s power to evaluate, in the invitation to tender, whether to allow subcontracting has been erased. Pursuant to the Amendment, the subcontracting is always permitted within the limit of 30% of the total value of the main contract: this is in line with the community principles which would even imply the abolition of the 30% threshold as the maximum quantity of sub-contracting performances;

- the deadline for the issuance of the payment certificates by the Contracting Authority has been shortened. More specifically, the Amendment introduced Article 113 bis according to which the Public Administrations shall issue the payment certificate within 45 days from the work progress status certification: this with the obvious aim to accelerate the timing of payments borne by the Public Administration and thus prevent companies to face financial difficulties because of payment times.

Moreover, and always in order to encourage the public works market, the Amendment has also reduced the possibility for the Contracting Authorities to use the so called general contractor: this instrument may only be used for works with an amount exceeding 150 million, with the consequent greater opening of the market to all interventions below the above threshold.

Lastly, with reference to the concession instrument and to the PPP, the Amendment has raised the maximum public contribution from 30% to 49%, thus clearly enhancing the implementation through the contractual instruments of those projects which are not able to generate a self-standing cash flow and that would be not attractive for private companies.

Significant room for growth in the relevant market is foreseen in accordance to the strategic implementation of the New Public Contracts Code and its Amendment.

Your Key Contacts



Ilaria Gobbato

Partner, Milan

D +39 02 726 268 00

M +39 33 894 456 67

Ilaria.Gobbato@dentons.com