

# Legal 500

## Country Comparative Guides 2026

Italy

Public Procurement

Contributor



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This country-specific Q&A provides an overview of public procurement laws and regulations applicable in Italy.

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## Italy: Public Procurement

### 1. Please summarise briefly any relationship between the public procurement / government contracting laws in your jurisdiction and those of any supra-national body (such as WTO GPA, EU, UNCITRAL).

Italian public procurement law is closely integrated with European Union law.

The Italian Legislative Decree 36/2023 ("Public Contracts Code" and/or the "Code") transposes and implements EU directives on procurement and concessions 2014/23/EU (for concessions), 2014/24/EU (for ordinary sectors), and 2014/25/EU (for special sectors, such as water, energy, and transport).

Italy, as one of the EU Member State, is also bound by the WTO Government Procurement Agreement (GPA), through its membership in the European Union, which is an independent party to the GPA.

The GPA does not apply directly as a self-executing international treaty within the Italian legal order; instead, it is implemented via EU public procurement legislation, notably through Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, as transposed by Legislative Decree No. 36/2023.

UNCITRAL principles on transparency, competition, and non-discrimination are not directly binding. However, they have played an indirect and persuasive role, influencing the development of EU procurement principles and best practices.

### 2. What types of public procurement / government contracts are regulated in your jurisdiction and what procurement regimes apply to these types of procurements? In addition to any central government procurement regime please address the following: regulated utilities procurement regime (e.g. water, gas, electricity, coal, oil, postal services, telecoms, ports, airports), military procurements, non-central government (local, state or prefectures) and any other relevant regime. Please provide the titles of

### the statutes/regulations that regulate such procurements.

The Code applies to all national administrations, local authorities (regions, provinces, municipalities), and public law bodies (i.e. public companies, so called "organismi di diritto pubblico" and in house companies).

It regulates both ordinary sectors and special sectors (e.g. water, gas, electricity, coal, oil, postal services, telecoms, ports, airports – see Book III of the Code). Procurement in the special sectors is subject to slightly more flexible rules than in the ordinary sectors, while remaining within the scope of Legislative Decree 36/2023.

Contracts in the military and security sectors are governed by specific legislation that takes into account the need for confidentiality and protection of national interests: Legislative Decree No. 208 of November 15, 2011 ("Decree 208/2011") which transposes Directive 2009/81/EC.

If the public procurement contract does not fall within the scope of the above Decree 208/2011, the Code (Articles 136-139) applies.

Specifically, the Code applies only residually to defense and security procurement where the conditions for the application of Legislative Decree No. 208/2011 are not met, in particular if:

- the contract does not fall within the scope of Directive 2009/81/EC (e.g. non-military supplies or services of a general nature);
- the procurement does not involve classified information or essential security interests; or
- the contract is expressly excluded from the scope of Decree No. 208/2011.

In such cases, Articles 136–139 of Legislative Decree No. 36/2023 govern defense-related procurements, ensuring consistency with EU law.

### 3. Are there specified financial thresholds at which public procurement regulation applies in your jurisdiction? Does the financial threshold

**differ depending on the nature of procurement (i.e. for goods, works or services) and/or the sector (public, utilities, military)? Please provide all relevant current thresholds in your jurisdiction. Please also explain briefly any rules on the valuation of a contract opportunity.**

The public procurement system uses defined financial thresholds to decide whether to use an ordinary or simplified (so called "sotto soglia") tender procedure.

The thresholds stipulated in Article 14 of the Code differ based on the contract's subject matter and the category of the Contracting authority.

The European thresholds are updated every two years by the European Commission. The values currently in force from 1<sup>st</sup> January 2026, due to the approval of EU Regulation 2025/2152 and 2151 are the following:

#### Ordinary sector:

- **Works:** € 5,404,000
- **Services and supplies (central public administration):** € 140,000
- **Services and supplies (other public administrations):** € 216,000

#### Special sectors:

- **Works:** €5,404,000
- **Services and supplies:** € 432,000

**Concessions for works and services:** € 5,404,000

The estimated value is calculated on the maximum total amount of the contract, including renewals, options, and premiums (Art. 14).

**4. Are procurement procedures below the value of the financial thresholds specified above subject to any regulation in your jurisdiction? If so, please summarise the position.**

Contracts with values below the specified threshold are regulated by Articles 48-55 of the Code. These provisions outline distinct procedures based on the contract's estimated value.

For contracts valued below the specified threshold, administrations are not due to utilize standard procedures such as open tenders.

However, they are required to follow the subsequent

procedures:

- **Direct award:**
  - **Works:** up to €150,000.
  - **Services and Supplies:** up to €140,000.
- **Negotiated procedure without the publication of a call for tenders (after consultation with operators):**
  - **Works between €150,000 and €1,000,000:** consultation with at least 5 operators.
  - **Works between €1,000,000 and the EU threshold:** consultation with at least 10 operators.
  - **Services and supplies above €140,000 up to the EU threshold.:** consultation with at least 5 operators.

The core principles of the Code continue to apply also to procedures below the thresholds: legality, competition, rotation, transparency, and proportionality.

**5. For the procurement of complex contracts\*, how are contracts publicised? What publication, journal or other method of publicity is used for these purposes?**

For complex contracts, which usually exceed the European thresholds, advertising is essential to ensure international competition.

The Tender notice is published in the OJEU (Official Journal of the European Union) through the EU Publications Office.

Tender Notices are also published in the ANAC National Public Contracts Database and on the contracting authority's Digital Procurement Platform. Administrations often publish notices on their websites ("Contracting Authority Profile").

**6. For the procurement of complex contracts, where there is an initial selection stage before invitation to tender documents are issued, what are typical grounds for the selection of bidders? If there are differences in methodology between different regulated sectors (for example between how a utility might undertake a regulated procurement procedure and how a government**

## department might do so), please summarise those differences.

In procedures involving so called pre-selection (qualification phase), the contracting authority assesses the candidates' capacity before inviting them to submit a bid or enter into a dialogue.

Typical criteria are the following:

- **Professional capacity requirements:** such as registration with the Chamber of Commerce or other professional associations, or possession of a particular ATECO code.
- **Economic and financial capacity:** minimum annual turnover (often linked to the value of the contract) and/or bank references (best 3 years of the last 5, before the Tender notice).
- **Technical and professional capacity:** list of the main similar services/works provided in recent years (10 years before the Tender notice), quality certifications (ISO), educational qualifications of key personnel.

## 7. Does your jurisdiction mandate that certain bidders are excluded from tendering procedures (e.g. those with convictions for bribery)? If so, what are those grounds of mandatory exclusion? Are there any notable features of how this operates in your jurisdiction e.g. central registers of excluded suppliers? Does your jurisdiction specify discretionary grounds of exclusion? If so, what are those grounds of discretionary exclusion?

The regulations governing exclusions from tenders are principally detailed in Articles 94 through 98 of the Code.

The Code distinguishes between mandatory exclusion grounds and those that are discretionary.

Pursuant to Article 94 of the Code, the contracting authority must exclude the economic operator when conditions for automatic exclusion are met.

The following circumstances result in automatic exclusion:

- conviction by final judgment for serious crimes (e.g. corruption, organized crime, terrorism, fraud);
- serious tax and social security contribution defaults;

- insolvency and compulsory liquidation;
- being the operator subject to an anti-Mafia interdiction order.

In the event of a non-automatic cause for exclusion (Articles 95 and 98 of the Code), the contracting authority shall assess whether the operator is still reliable. In other words, exclusion is not automatic but depends on a case-by-case assessment by the contracting authority.

This includes, inter alia:

- serious professional misconduct: this is the most significant case. The contracting authority must demonstrate, by appropriate means, that the operator is guilty of conduct that undermines its professional integrity;
- conflict of interest and distortion of competition;

Accordingly, automatic grounds are binding as they result from formal verification, whereas non-automatic grounds require an evaluation by the contracting authority.

The checks are carried out by the contracting authority through:

- the Virtual File of the Economic Operator ('FVOE'): a digital folder containing all the documents providing the company's general and special requirements (e.g. Single document certifying contribution compliance, so called "DURC" for general requirements; the last turnover, for special requirements);
- the National Anti-Corruption Authority Register ('ANAC'): a sort of 'black/white book' managed by the National Anti-Corruption Authority.

Exclusion grounds are relevant when the judgment, decree or disqualifying (interdiction) measure has been issued against a set of people to whom is referable to the economic operator.

Specifically:

- the economic operator itself, pursuant to and in accordance with Legislative Decree No. 231 of 8 June 2001;
- the owner or the technical director, in the case of a sole ownership;
- a managing partner or the technical director, in the case of a general partnership (so called "società in nome collettivo");
- the general partners or the technical director, in the case of a limited partnership (so called "società in accomandita semplice");

- the members of the board of directors vested with legal representation powers, including branch managers (institori) and general proxies (so called "procuratori generali");
- the members of bodies with management or supervisory powers, or people vested with powers of representation, management or control;
- the technical director or the sole shareholder;
- the de facto director.

**8. Please describe a typical procurement procedure for a complex contract. Please summarise the rules that are applicable in such procedures. Please include a timeline that includes the key stages of the process, including an estimation for the total length of the procedure.**

The Code lists four procedures which could be defined as 'complex contracts':

**1) Restricted Procedure (Art. 72)**

This procedure is used when clear objectives exist, but complex, sensitive works/services require careful candidate selection. It is based on pre-selection phase. Only operators invited after the pre-selection phase may submit bids.

The procedure is divided into the following stages: 1. Publication of the tender notice; 2. Request for participation (pre-selection); 3. Sending of invitation letters; 4. Submission of bids; 5. Award.

**2) Competitive procedure with negotiation (Art. 73)**

This is the typical procedure for contracts that require an 'adjustment of available solutions' or have a complex financial/legal structure. Its main characteristic is the possibility to negotiate with the administration technical and economic terms of the initial bids.

In fact, the administration negotiates with the economic operators the initial bids to improve their content. The technical specifications are defined, but the methods of execution can be optimized.

The procedure is divided into the following stages: 1. Call for tenders; 2. Pre-selection; 3. Submission of initial bids; 4. Negotiation (on technical/economic aspects); 5. Final bids; 6. Award.

**3) Competitive dialogue (Art. 74)**

This is the procedure that best fits the definition of a 'complex contract': the administration is unable to define the technical specifications or legal structure. A dialogue with the operators is held to identify the best solution for the contracting authority.

Once the dialogue phase has been completed, the contracting authority invites each of the participants in the dialogue to submit their final tender based on the solution(s) identified during the dialogue phase. The evaluation is based solely on the criterion of the most economically advantageous bid.

The procedure is divided into the following stages: 1. Call for tenders; 2. Selection of candidates; 3. Dialogue stage (also in several steps to reduce the number of solutions); 4. Conclusion of the dialogue and invitation to submit final bids; 5. Evaluation of the bids; 6. Award.

**4) Innovation Partnership (Art. 75)**

This procedure applies when the requirement of works/services/supplies cannot be met by existing solutions on the market: it requires research, development, and subsequent supply.

Therefore, it combines the R&D (Research and Development) phase with the commercial phase. It is structured in successive phases based on intermediate objectives (milestones).

The procedure is divided into the following stages: 1. Call for tenders; 2. Selection of partners (R&D capacity); 3. Prototype research and development phase; 4. Verification of results; 5. Purchase of the final product.

The duration of these procedures can generally be estimated at 6-9 months.

**9. If different from the approach for a complex contract, please describe how a relatively low value contract would be procured. (For these purposes, please assume the contract in question exceeds the relevant threshold for application of the procurement regime by less than 50%)**

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For contracts above European thresholds that are not complex and have clear requirements with available solutions on the market, the standard procedure is the

Open Procedure (Art. 71 of the Code).

In the Open procedure, any interested economic operator may submit a bid. There is no pre-selection phase for candidates, but the bids submitted are evaluated directly by the contracting authority.

The award criteria are:

- The most economically advantageous tender : this is the main criterion. The best quality/price ratio is evaluated by the contracting authority (e.g., 70 points for the technical offer and 30 for the price).
- Lowest price: only applicable to supplies or services with standardized characteristics (e.g., purchase of fuel or stationery), where quality does not vary between possible suppliers.

The procedure can be broken down into the following steps:

1) Publication: the Contracting Authority publishes the call for tenders; 2) Submission of bids: The minimum deadline is usually 30 days; 3) Examination of bids: A selection committee evaluates the technical bids and then the financial bids. 4) Award and Verification: Requirements (e.g. criminal record, tax compliance, anti-mafia) are checked through the FVOE. 5) Standstill Period: Before the contract is signed, there is a required 32-day waiting period during which an appeal can be made by unsuccessful bidders.

## 10. What is seen as current best practice in terms of the processes to be adopted over and above ensuring compliance with the relevant regime, taking into account the nature of the procurement concerned?

In addition to formal compliance with the law (i.e. compliance with Legislative Decree 36/2023), the following current best practices apply:

Preliminary market consultations (Article 77 of the Code): consulting the market before publishing the tender allows the contracting authorities to check whether the technical specifications are realistic, whether innovative solutions exist, and whether the estimated budget is appropriate.

Digitization and Building Information Modelling (BIM): this means that for certain thresholds of amount and complexity calls for tenders must provide for the use of specific electronic methods and tools for digital

modelling of buildings (so called BIM). In public tenders and contract execution, BIM supports design, works supervision, testing, and facility management, improving quality, time control, and cost oversight. BIM has become progressively mandatory for public works by value thresholds. From 1 January 2025, the use of digital information management methods and tools (BIM) is, as a rule, mandatory for new public works over 2 million euro or the EU thresholds;

Sustainability: The Minimum Environmental Criteria (CAM), set by Italy's Ministry of the Environment, specify mandatory and bonus environmental standards for procurement categories such as construction, lighting, cleaning, and IT. These criteria must be included in tender documents, with basic requirements being compulsory and bonus standards awarding extra points for higher environmental performance. (Article 57, paragraph 2, of the Code)

Social clauses (so called "clausola sociale": is a provision included in tender documents and contracts that aims to protect employment and social rights when a public contract is awarded to a new contractor. These clauses allow the reallocation of part of the work staff, this often takes the form of an obligation to re-employ or give priority to the existing workforce (Article 57, paragraph 1 of the Code).The social clause also covers gender equality and youth employment.

## 11. Please explain any rules which are specifically applicable to the evaluation of bids.

The award criteria are:

- The most economically advantageous offer: this is the main criterion. The best quality/price ratio is evaluated (e.g., 70 points for the technical aspects of the offer and 30 for the price element).
- Lowest price: only applicable to supplies or services with standardized characteristics (e.g., purchase of fuel or stationery), where quality does not vary between suppliers.

Pursuant to the Article 108 of the Code, some contracts must be awarded only on the basis of the most economically advantageous offer criteria (e.g. contracts relating to social services, as well as hospital, welfare and school catering services, and labour-intensive services; contracts awarded under competitive dialogue or innovation partnership procedures; contracts relating to works characterised by significant technological content or an innovative nature.)

**12. Does your jurisdiction have specific rules for the treatment of bids assessed to be "abnormally low" for the purposes of a particular procurement (i.e. a low priced bid, significantly lower than any other bid or a bid whose pricing raises questions of sustainability/viability over the contract term)? If so, is there a definition of what "abnormally low" means and please can you provide a short summary of the specific rules?**

Article 110 of the Code governs abnormally low bids.

An abnormally low bid is a bid which, in terms of the price or costs indicated, is abnormally low in relation to the work/service required, such as to raise doubts as to its reliability, economic sustainability, or ability to ensure the proper performance of the contract in compliance with regulatory, contractual, social, and environmental obligations.

From a procedural point of view, once the contracting authority identifies one or more bids that appear abnormally low, invite the economic operator who submitted the abnormally low offer to provide, within a reasonable time limit, detailed explanations of the costs and the price offered.

The contracting authority evaluates the explanations of the operator verifying the adequacy, seriousness, and economic sustainability of the bid.

The bid shall be rejected if the justifications provided for by the operator are insufficient or unreliable, or if it appears that the price does not allow the contract to be performed in accordance with the law and the specifications (e.g. personnel costs below minimum salaries).

**13. Please describe any rights that unsuccessful bidders have that enable them to receive the reasons for their score and (where applicable in your jurisdiction) the reasons for the score of the winning bidder. Are regulated procuring bodies required to provide these reasons for their award decision before awarding the contract in question?**

Italian legislation on public contracts grants unsuccessful bidders specific rights to information regarding the outcome of the procedure.

According to Articles 36, par. 1, and 90 of the Code, within

5 days from the awarding the contracting authority must notify all participants that have not been excluded from the public tender procedure, the award decision, including the name of the successful bidder, the tender reports and documents, as well as all data and information describing the reason related to the award.

As to obtain more information related to the public tender procedure, the Code allows the possibility to present access request to tender documents. The request to access tender documents is regulated by a specific framework outlined in Article 35 and 36 of the Public Contracts Code, supplementing the general provisions regarding administrative access under Law 241/1990.

Access is available to parties with a concrete, current interest connected to the documents (typically bidders, prospective bidders, consortium members, subcontractors, and other participants), primarily to safeguard their legal positions (including for potential or pending litigation). The defensive purpose is central: when access is necessary to prepare or support a challenge, the threshold for disclosure is more favorable, subject to confidentiality safeguards.

During an ongoing procedure, access to sensitive items (notably the content of competitors' offers and evaluation documents) is typically deferred to avoid disrupting competition and the integrity of the process. After the award decision, access widens to include most procedural documents, evaluation reports, and competitors' offers, subject to confidentiality limits and redactions.

Disclosable documents generally include tender notices and rules, minutes, communications, evaluation reports and scores, clarification requests and responses, and—post award—the technical and economic offers of competitors, to the extent not covered by secrecy.

Restricted items include:

- Trade and technical secrets, proprietary methodologies, formulas, and know how.
- Security classified information, public order or defense related information.
- Personal data beyond what is necessary for the stated access purpose (with data protection redactions).

However, where access is strictly necessary for defensive needs, the interest in disclosure can prevail over trade secret claims, limited to what is essential. Authorities should apply proportionate measures (e.g., partial access, redactions, viewing without copying, confidentiality

undertakings). In particular Contracting authorities must balance the competing interests and may order partial disclosure with redactions; "Sight only" access, or staged disclosure.

In the Italian system, contracting authorities are not required to provide the reasons for their award decision before the award itself is made. The reasons for the outcome of the procedure are formalized in the award decision and are subsequently made known to the competitors through the award notification provided for in Articles 36 par 1 and 90 of the Code.

#### **14. What remedies are available to unsuccessful bidders in your jurisdiction? In what circumstances (if any) might an awarded contract be terminated due to a court's determination that procurement irregularity has occurred?**

The main remedy is judicial review, within 30 days, before the Regional Administrative Court (TAR) that has territorial jurisdiction, in accordance with the Code of Administrative Procedure.

An appeal may be submitted together with an application for an interim decision intended to suspend the enforceability of the award.

The Administrative Judge may:

- annul unlawful tender documents;
- order the procedure to be repeated or the bids to be re-evaluated.
- award compensation for damages, in specific form or by equivalent, where the conditions are met.

The administrative judge may also declare the contract already entered into by the parties to be "ineffective" (i.e. null and void), taking into account the public interest in the continuity of its execution.

The decisions of the Regional Administrative Court may be appealed before the Council of State within three months from its publication or 30 days if the decision is served by one the parties.

#### **15. Are public procurement law challenges common in your jurisdiction? Is there a perception that bidders that make challenges**

#### **against public bodies suffer reputational harm / harm to their prospects in future procurement competitions? If so, please provide brief comment. Assuming a full hearing is necessary (but there are no appeals), how much would a typical procurement claim cost: (i) for the defendant and (ii) for the claimant?**

Litigation in the field of public procurement are quite common in Italian courts.

There is no widespread perception that economic operators who bring appeals against contracting authorities suffer significant reputational damage or a systematic deterioration in their prospects of participating in future tender procedures.

The cost of an appeal for the appellant (plaintiff) in Italy is influenced by the "Contributo Unificato (CU)", which is a fixed entry fee that varies according to the value of the contract (based on the original value of contract itself). For contracts up to €200,000: €2,000 CU; from €200,000 to €1,000,000: €4,000 CU; over €1,000,000: €6,000 CU

For a complex case, legal fees vary on average between €5,000 and €20,000, depending on the technical nature of the matter and the value of the tender. These costs may vary significantly depending on the technical complexity of the dispute.

The defendant does not have to pay the CU. However, costs generally follow the event of the case, so if the defendant loses, the judge may order them to reimburse the plaintiff's legal fees and CU.

#### **16. Typically, assuming a dispute concerns a complex contract, how long would it take for a procurement dispute to be resolved in your jurisdiction (assuming neither party is willing to settle its case). Please summarise the key stages and typical duration for each stage.**

The timeframes for litigation are the following:

- for interim decision (precautionary phase): 15/20 days from the filing of the application for interim relief.
- for the merits phase: 1.5/2 years.

#### **17. What rights/remedies are given to bidders that are based outside your jurisdiction? Are**

**foreign bidders' rights/remedies the same as those afforded to bidders based within your jurisdiction? To what extent are those rights dependent on whether the host state of the bidder is a member of a particular international organisation (i.e. GPA or EU)?**

The Italian legal system recognizes the rights of economic operators based outside the national jurisdiction to participate and seek judicial protection in line with the obligations arising from European Union law and international agreements.

For economic operators established in EU Member States, the principle of full and unconditional equal treatment with national operators applies. They benefit the same rights of access to tender procedures and the same judicial remedies, including the possibility of appealing before Italian administrative courts.

For economic operators established in third countries (i.e. non -EU countries ), access to procedures and the use of remedies depend on the existence of international agreements binding on Italy. In particular, Article 69 of the Code governs the application of the World Trade Organization's Agreement on Government Procurement (GPA/AAP), as well as other bilateral or multilateral agreements on public procurement.

Operators from countries that are parties to the GPA or from countries linked to the European Union by agreements guaranteeing reciprocal access to public procurement markets benefit from treatment equivalent to that reserved for EU operators, including the availability of judicial remedies.

If there are no such agreements in place, operators from non-EU countries do not have guaranteed access to public Tenders in Italy and may be limited or excluded by the contracting authority, following European Union law and national regulations.

**18. Where an overseas-based bidder has a subsidiary in your territory, what are the applicable rules which determine whether a bid from that bidder would be given guaranteed access to bid for the contract? Would such a subsidiary be afforded the same rights and remedies as a nationally owned company bidding in your jurisdiction?**

If the subsidiary is duly established and operating in Italy

or in another Member State of the European Union (so called "stabile organizzazione"), it benefits from the principle of equal treatment and non-discrimination, with consequent full access to procurement procedures under the same conditions as those applicable to companies governed by national law.

**19. In your jurisdiction is there a specialist court or tribunal with responsibility for dealing with public procurement issues? In what circumstances will it have jurisdiction over a public procurement claim?**

Yes, jurisdiction in this matter is vested in the Regional Administrative Courts (TAR) at first instance and the Council of State at second instance.

Administrative courts have jurisdiction over disputes concerning the tendering procedure (admissions, exclusions etc...) and the award of the contract.

**20. Are post-award contract amendments/variations to publicly procured, regulated contracts subject to regulation in your jurisdiction? Are changes to the identity of the supplier (for example through the disposal of a business unit to a new owner or a sale of assets in an insolvency situation) permitted in your jurisdiction?**

Amendments and variations to public contracts after award are governed by Article 120 of the Code which provides both for objective amendments and subjective changes.

Objective amendments (i.e., those relating to the content, value, or conditions of performance of the contract) are permitted only in cases strictly provided for by law, including (Article 120, paragraph 1, letters a), b), and c)):

- changes expressly provided for by tender documents in clear, precise, and unambiguous revision clauses or options;
- due to the need for additional works, services, or supplies not provided for in the initial contract;
- variations during the course of the work, made necessary by circumstances that were unforeseen and unforeseeable by the contracting authority.

However, changes that result in a substantial alteration of

the contract, are prohibited.

Subjective changes, i.e., those relating to the identity of the successful economic operator, are permitted on an exceptional basis and in the cases provided for in Article 120, paragraph 1, letter d) of the Code, in particular:

- subjective changes involving the replacement of the original contractor are provided for in clear, precise, and unambiguous clauses in the tender documents;
- succession due to death or insolvency or following corporate restructuring (merger, demerger, acquisition, transfer of business unit), provided that the new entity meets the original qualification requirements and this does not involve other substantial changes to the contract.

## 21. How common are direct awards for complex contracts (contract awards without any prior publication or competition)? On what grounds might a procuring entity seek to make a direct award? On what grounds might such a decision be challenged?

Except for contracts below certain financial thresholds (see 4), the Italian legal system treats direct awards—without prior publication of a tender notice or competitive procedure—as exceptional, especially in relation to complex contracts.

Therefore, such awards are allowed only in cases expressly provided by the Code (Article 76); in particular, direct awards by the administration are permitted only under specific circumstances:

- extreme urgency resulting from unforeseeable events not attributable to the contracting authority;
- absence of competition for technical or artistic reasons or for the protection of exclusive rights, duly justified by the contracting authority;
- cases when a previous competitive process failed (no bids submitted) or resulted in irregular or unacceptable bids
- contracts which are necessary for the continuity of essential services, within the limits strictly necessary.

In any case, the contracting authority is required to provide a detailed justification of the existence of the legal requirements and the proportionality of the direct

award.

Where possible, contracting authorities shall identify the economic operators to be consulted by selecting at least three economic operators if they exist on the market.

The decision to proceed with a direct award may be challenged before the administrative court if the legal conditions for recourse to the procedure without competition are not met or are not adequately demonstrated. In such cases, the court may annul the award and, where the conditions are met, declare the contract as “ineffective” (i.e. null and void) or award damages to the plaintiff.

## 22. Have your public procurement rules been sufficiently flexible and/or been adapted to respond to other events impacting the global supply chain (e.g. the war in the Ukraine)?

In view of the serious disruptions to the global supply chain, in particular those resulting from the war in Ukraine and the ensuing energy and inflation crisis, Italian public procurement legislation has been adapted through targeted regulatory measures, which have subsequently been incorporated into the new Public Contracts Code.

The main measures are the following:

the introduction and strengthening of mandatory “price review” mechanisms, now governed by Article 60 of the Code and Annex II.2-bis of the Code, in order to cope with exceptional changes in the costs of raw materials, energy, and transport. It restores economic balance when market costs change significantly. It applies to works, services, and supplies, and must be set out in the tender documents and contract. Adjustments are based on objective indices (e.g., labor, materials, energy).

Only changes beyond a set threshold are recognized, both upwards and downwards. Adjustments affect the part of the contract still to be performed. Reviews are periodic (e.g., quarterly/semi annual) or triggered by exceptional volatility. Ordinary risk below the threshold stays with the contractor; beyond it, prices are revised.

Specifically:

for contracts of works, the “price review” mechanisms applies automatically when specific objective conditions determine a change in the cost of the work, either upward or downward, exceeding 3% of the total amount of the contract. The “price review” mechanisms operate to the extent of 90% of the value exceeding the 3% change

applied to the works to be performed;

for contracts of supplies or services, the "price review" mechanisms applies automatically when specific objective conditions determine a change in the cost of the contract, either upward or downward, exceeding 5% of the total amount of the contract. The "price review" mechanisms operate to the extent of 80% of the value exceeding the 5% change applied to the supplies or services to be performed.

- greater flexibility in the management of contractual changes during execution, to avoid

the termination of contracts and ensure continuity of service (art. 120 of the Code);

- extraordinary measures for the economic and financial rebalancing of contracts for essential works and services.

These measures, initially introduced through sectoral emergency decrees, were implemented in the Code, which strengthened the structural resilience of the public procurement system with respect to geopolitical and economic crises, reducing the risk of blockages in public works and supplies.

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