



The new Italian Public Procurement Code: A (missed) revolution?

On 1 April 2023, [Legislative Decree 31 March 2023](#), No. 36 entered into force in Italy as the new Public Procurement Code (the **Code**) which will apply to new public tenders from 1 July 2023 onwards.

The Code aims at introducing a much more flexible regime that speeds up or reduces public tenders, by removing some of the constraints that have complicated and burdened the regulatory landscape on public procurement, and that have often delayed the completion of public works and discouraged medium and small businesses, hindered by uncertainty and bureaucracy. The Code does not represent a revolution, however it provides some significant innovations to speed up the tenders, confirming certain temporary exemptions granted in the past years to cope with the pandemic or to reflect the principles and rules established by national and supra-national case law.

Now the main challenges for Italian public administrations and contracting entities will be to effectively implement digitalisation, ensure adequate training of the personnel involved in the tenders and a selective requalification of the contracting entities.

Below is an overview of the main innovations provided by the Code.

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Why the Code?

Simplification and digitisation are the main drivers of the new Italian Public Procurement Code. So far, the rules on public awards, partly aimed at preventing corruption, have dictated a rigid and detailed discipline, with little room for manoeuvre for the contracting entities, who, faced with a stratification of rules and bureaucracy, moreover not always coordinated with each other, have often been blocked by uncertainty. This has resulted in delays and inefficiencies. Therefore, this is a long-awaited reform and an essential tool to implement the objectives of the [National Recovery and Resilience Plan](#) (*Piano Nazionale di Ripresa e Resilienza – NRRP*) and ensure the recovery of the Italian economy after the pandemic.

In addition, a new Code was required also to align the regulations on public procurements with European law, as well as with the numerous domestic and supranational case law, trying to avoid the so-called “gold plating” (ie the presence of rules that are more burdensome than EU law). Think, for example, of the limit of 30% for subcontracting or of further subcontracting, which made the previous Code in contrast with the European Union law.

A new structure

The lawmakers had in mind a “*self-executing*” Code, meaning that the Code does not need further regulations to be applied, to avoid the delays and confusion that the issuing of the implementing rules and the overlap of rules from different sources have caused for the parties involved. From a formal perspective, the **structure is more streamlined** than the previous code. In addition, the new Italian Public Procurement Code begins with 12 articles laying down the **principles** that must guide public procurements: innovative features are, for example, the “**principle of result**” and the “**principle of trust**”.

The main innovations at a glance

Here are some of the main innovations provided by the Code.

Topic	Key changes
Direct awards	Allowed direct awards for: <ul style="list-style-type: none">– works of an amount lower than EUR150,000; and– services and supplies, including engineering and architecture services and design activities, of an amount lower than EUR140,000, even without consulting more than one economic operator.
Negotiated procedures	Allowed negotiated procedure without prior publication of the call for tender: (with derogation to the “rotation” principle): <ul style="list-style-type: none">– after consulting at least five economic operators, for works of an amount equal to or higher than EUR150,000 and lower than EUR1 million;– after consulting at least ten economic operators for works of an amount equal to or higher than EUR1m and up to the European thresholds (EUR5,382,000); and– after consulting at least five economic operators for the award of services and supplies, including engineering and architecture services and design activities, of an amount equal to or higher than EUR140,000 and up to the EU thresholds.
Digitisation	By 1 January 2024, create a national e-procurement ecosystem that includes the platforms and digital services needed to manage the life cycle of public contracts, following the “ once only principle ”.
Price revision clauses	Mandatory inclusion of price revision clauses: the revision of prices will be triggered if the variation of the costs of the work will be higher than 5% of the total amount and will cover 80% of the variation.

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Renegotiation	Inclusion of renegotiation clauses in the public contracts are favored, although only in the event of extraordinary and unforeseeable circumstances and, in line with the EU Directives, limited to restoring the original economic balance of the contract.
Exclusion from tenders	The new Code, among other things: <ul style="list-style-type: none"> – defines the serious professional misconducts that could lead to (but not necessarily result in) the exclusion from the tender; – broadens the “self-cleaning”; – clarifies the subjective scope of application of the general tender requirements; and – confirms that the exclusion does not apply in case of admission to the anti-mafia judicial supervision by the date of the award.
Subcontracting	Elimination of any threshold for subcontracts has been confirmed, and subcontractors may in turn entrust other subcontractors with part of the work (“ <i>subappalto a cascata</i> ”). The contracting authority may limit this practice by stating the reasons in the tender documents.
Single Project Manager (RUP)	The acronym “RUP” now stands for the “Single Project Manager” instead of the “Single Manager of the Procedure”. This is to affirm that the contracting entity shall appoint a sole responsible person, regardless of the various sub-procedures for all the phases of planning, design, award and execution characterising public contracts.
Reintroduction of the integrated contract (“ <i>appalto integrato</i> ”)	The integrated contract, a scheme that combines the technical and economic feasibility project and the executive project, makes a comeback (even though its ban was either recently suspended or partially enabled for the NRRP). The third level consisting in the definitive project has been eliminated.
Acceleration bonus (“ <i>premio di accelerazione</i> ”)	The contracting authority may provide in the notice or the invitation to tender that, if the completion of the works occurs in advance of the contractual deadline, an acceleration bonus is granted for each day of advance (also in case of extension of the contract).
Justified dissent (“ <i>dissenso costruttivo</i> ”)	In the context of the public steering committee , the entity that expresses its dissent, not only will have to justify it, but also provide an alternative solution, to overcome the blockages of public contracts when multiple parties are involved.
Qualification for works, services and supplies	The qualification system, which already existed for works contracts, now applies to service and supply contracts as well. The SOA also faces a novelty, as the qualification certificate will be issued by private law bodies authorized by the National Anti-Corruption Authority.
Technical advisory board (“ <i>collegio tecnico consultivo</i> ”)	The technical advisory board, introduced by the pandemic legislation, is confirmed as a general remedy to settle the possible disputes between the contracting authority and the contractor that would risk compromising the timely and proper execution of the public works contract.





What are the next steps?

It is early to foresee how these rules will be effectively translated from paper to practice, and how they will be interpreted and applied by contracting entities.

One of the most critical aspects is whether the contracting entities will successfully implement digitisation, one of the drivers of the Code, by the end of the year. This, along with adequate training of their personnel who will apply the Code, requires a lot of effort and resources and is essential not only to speed up the tender process, but also to ensure transparency and prevent corruption. This is especially important in light of the criticism that the Code has received from the National Anti-Corruption Authority for raising the threshold for direct awards.

In the meantime, operators interested in public procurements, but especially public administrations and contracting authorities have about three months to being prepared before the Code become fully applicable to the new public tenders launched starting from 1 July 2023.

How A&O can help

It is now the right time to prepare for the main changes that the Code has introduced. A&O would be happy to assist you in this process and to provide any clarifications and in-depth analysis of the changes.

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