

ITALIAN PUBLIC CONTRACT CODE (LEGISLATIVE DECREE 50/2016, as modified by legislative decree n. 57/2017)

Part I

Scope, Principles, Definitions and Exclusions

Title I

General Principles and Definitions

Art. 1

(Subject-matter and scope)

1. This Code establishes rules on public procurement contracts and concession contracts by contracting authorities and contracting entities of services, supplies, works as well as on design contests.

2. This Code definitions apply as well to the awarding of the following contracts as well:

(a) works contracts which are subsidized directly by contracting authorities by more than 50 % and the estimated value of which is equal to or greater than EUR 1 000 000, where those contracts involve one of the following activities:

(i) civil engineering activities as listed in Annex I,

(ii) building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for public purposes;

(b) service contracts which are subsidized directly by contracting authorities by more than 50% and the estimated value of which is equal to or greater than the thresholds provided at Article 35 and which are connected to a works contract as referred to in point (a).

(c) works contracts awarded by works concessionaires which are not contracting authorities

(d) works contracts awarded by services concessionaires whereby they are strictly functional to the management of the service and the public works are transferred to the contracting authority.

(e) works contracts to be performed by private entities holders of building permit or other title, which directly assume the execution of the planning works as total or partial deduction to the fee requested for the release of the building permit, as provided at Article 16, par. 2, decree of the President of the Republic 6 June 2001, n. 380 and Article 28, par. 5, law 17 August 1942, n. 1150, or they realized the work under a conventional framework. The authority which releases the building permit may establish that, with regard to the realization of the planning works, who is entitled to ask the release of the permit discloses to the authority itself, while applying for the permit, a technical and economical feasibility study of the works to be realized, with the due indication of the deadlines, and by attaching the scheme of the related procurement contract. The authority, on the basis of the technical and economical feasibility study runs a public tender according to the procedures provided at Article 60 or at Article 61. Objects of the contract, subject to acquisition of the final project at the offer phase, are the final design and the realization of works. The offer shall distinguish the prices for the final design, for the realization for the works and for occupational safety.

3. With regard to subjects at par. 2, letters a), b), d) and e), Article 21, as much as the planning of public works is concerned, and Articles 70 and 113 do not apply. With regard to the execution

phase of the contacts only the provisions about the acceptance shall apply. Publicly held companies, even whereas not fully owned, which nonetheless are not bodies governed by public law, whose activity is the realization of works, or the production of goods and services which are not meant to be placed in the market under competition law, are subjected to the rules provided by the Regulation on local public services of general economic interest and, with regard to company law, by the Regulation on public held companies. To the same companies and to the contracting entities which award works, services, supplies, of which at Article 3, par. 1, letter (e), number 1, if, according to Article 28, rules of Part II, but for Title VI, Chapter I, shall apply, Article 21, as much as the planning of public works is concerned, and Articles 70 and 113 do not apply. With regard to the execution phase of the contacts only the provisions about the acceptance shall apply.

4. Contracting authorities that grant the subsidies of which at par. 2, letters (a) and (b) ensure the compliance with the rules of the Code whereas they do not award the procurement contracts subsidized by themselves or when they award procurement contracts in the name and on behalf of other entities.

5. The measure ensuring the subsidy of which at par. 2, letters (a) and (b) must contain a conditional clause that submits the subsidy to the recipient's compliance with the rules of the Code. The 50 per cent of the subsidies might be given only once the award of the procurement has been done, subject to verify by the granting entity that the award itself has been carried out in compliance with the Code, without prejudice to what provided by any law regulating the subsidies. The lack of compliance with the Code is a ground for the forfeiture of the subsidy.

6. The Code applies to the public contracts in the fields of defense and security, save for:
a) contracts falling within the scope of application of legislative decree 15 November 2011, n. 208;
b) which are not subjected to the legislative decree 15 November 2011, n. 208 thanks to Article 6 of the same decree.

7. The Minister for Foreign Affairs and for International Cooperation adopts, subject to an agreement with ANAC, general directives for ruling the tender procedure for the selection of tenderers and execution of the contract to be performed abroad, with due account of the fundamental principles of the Code and of the procedures applied by the European Union and by the international organizations which Italy is part of. The application of the Code to the award procedure realized in Italy shall apply. Until the aforementioned general directives shall not be adopted, Article 216, par. 26 will apply.

8. Any references to nomenclatures in the context of public procurement and of the awarding of concession contracts shall be made using the Common Procurement Vocabulary (CPV) of which at Article 3, par. 1, lett. tttt).

Art. 2

(State, Regions and Autonomous Provinces legislative competences)

1. This Code rules are adopted within the exercise of the State exclusive competence within the

fields of safeguard of competition, ordinary jurisdiction and in the other fields to which the specific contract could be brought back too.

2. The Regions with ordinary statutes exercise their functions within the fields of regional competences according to Article 117 of the Constitution.

3. The Regions with special statutes and the Autonomous Provinces of Trento and Bolzano adapt their legislations according to the regulations provided within the statutes and the related implementing rules.

Art. 3

(Definitions)

1. For the purposes of this Directive, the following definitions apply:

(a) 'contracting authorities' means the State public administrations; the local public authorities; the other non-economic public authorities; the bodies governed by public law; the associations, the unions, the consortia, whatever called, formed by one or more such authorities

(b) 'central government authorities' means the contracting authorities listed in Annex III and their successor entities;

(c) 'sub-central contracting authorities' means all contracting authorities which are not central government authorities;

(d) 'bodies governed by public law' any body, even of corporate law, whose non-mandatory list is contained in Annex IV:

1) it is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(2) it has legal personality;

(3) its activity is financed, for the most part, by the State, by other public local authorities, or by other bodies governed by public law; or it is subject to management supervision by those authorities or bodies; or it has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, or local public authorities, or by other bodies governed by public law;

(e) 'contracting entities', for the purposes of the rules:

1) Part II of the Code, the entities which:

1.1. they are contracting authorities or publicly held companies which carry out an activity of which at Articles 115-121;

1.2. even if they are not contracting authorities nor publicly held companies, they carry out one or more of those activities listed at Articles 115-121 and they work thanks to special or exclusive rights granted by the competent authority;

2) Part III of the Code, the entities which carry out an activity of which at Annex II and they award a concession for the realization of one of those activity, such as:

2.1 the State administrations, the local public authorities, the bodies governed by public law, the associations, the unions, the consortia, whatever called, formed by one or more such authorities;

2.2 the publicly held companies of which at letter t) of this paragraph;

2.3 other entities from those ones indicated at points 2.1 and 2.2 but working thanks to special or exclusive rights for the purposes of one or more of those activities of which at Annex II. The entities which are entitled of special or exclusive rights through a procedure wherein an adequate

publicity has been ensured and the entitlement of these rights is founded on objective criteria are not considered as contracting entities for the purposes of the point 2.3;

(f) 'contacting subjects' only for the purposes of Parts IV and V are the contracting authorities of which at letter a), the contracting entities of which at letter e) and the other public or private subjects financed of which at the aforementioned Parts IV and V;

(g) 'other contracting subjects', the private subjects which have to comply with the rules of the Code;

(h) 'joint venture', the associations among two or more entities, for the purpose of the implementation of a project or a series of projects or of certain agreements of commercial or financial kind;

(i) 'central purchasing body', a contracting authority or a contracting entity providing centralized purchasing activities and, possibly, ancillary purchasing activities;

(l) 'centralized purchasing activities' means activities conducted on a permanent basis, in one of the following forms:

(1) the acquisition of supplies and/or services intended for contracting authorities,

(2) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;

(m) 'ancillary purchasing activities' means activities consisting in the provision of support to purchasing activities, in particular in the following forms:

(1) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;

(2) advice on the conduct or design of public procurement procedures;

(3) preparation of procurement in the name and on behalf of the contracting authority concerned;

(4) management of procurement in the name and on behalf and for the account of the contracting authority concerned;

(n) 'aggregator body', the central purchasing bodies in the list established according to Article 9, par. 1, law-decree 24 April 2014, n. 66, converted, with amendments, in the law 23 June 2014, n. 89;

(o) 'contracting body', the contracting authorities of which at letter a), the contracting entities of which at letter e), the contracting subjects of which at letter f) and the other contracting subjects of which at letter g);

(p) 'economic operator', any natural or legal person, public entity, group of such persons and/or entities, including any temporary association of undertakings, entity without legal personality, including the European Economic Interest Grouping (EEIG), established according to the legislative decree 23 July 1991, n. 240, which offers the execution of works and/or a work, the supply of products or the provision of services on the market;

(q) 'concessionaire', an economic operator which has been awarded a concession;

(r) 'promoter', an economic operator which participates to a public-private partnership;

(s) 'procurement service provider', a public or private body which offers ancillary purchasing activities on the market for ensuring the development of the purchasing activities of the subjects at letters a), b), c), d) and e);

(t) 'publicly held companies', the companies on which contracting authorities may exercise, directly or indirectly, a dominant influence because they own the, or because they have a financial participation in them, or thanks to rules which govern them. The dominant influence is presumed whenever the contracting authorities, directly or indirectly, alternatively or cumulatively:

- 1) they have the majority of the subscribed capital;
- 2) they control the majority of the votes given by the shared issues;
- 3) they can appoint the majority of the members of the board of directors, of the governing board or of the supervisory body;
- (u) 'temporary association of undertakings', an association of undertakings, suppliers, or service providers, established, even through a private agreement, for the purpose of participating to a procurement procedure of a specific public contract, through the submission of a single offer;
- (v) 'consortia', the consortia established by the legal order, with or without legal personality;
- (z) 'affiliated undertaking', any undertaking whose annual accounts are consolidated with the contracting authority ones, according to Article 25 and subsequent of legislative decree 9 April 1991, n. 127 and following amendments. In case of entities to which the aforementioned legislative decree does not apply, alternatively, 'affiliated undertaking means any undertaking:
 - 1) on which the contracting authority may exercise, directly or indirectly, a dominant influence; or which may exercise a dominant influence on the contracting authority;
 - 2) that, as the contracting authority, is subjected to the dominant influence of another undertaking because of ownership assets, or because of financial participation or because of internal rules;
- aa) 'micro, small and medium enterprise', enterprises as defined in Commission Recommendation 2003/361/EC of 6 May 2003. Particularly, medium enterprises are those ones with less of 250 employees and an annual turnover not greater than 50 million EUR, or a global annual budget not greater than 43 million EUR; small enterprises are those ones with less of 50 employees and an annual turnover or a global annual budget not greater than 10 million EUR; micro enterprises are those one with less of 10 employees and an annual turnover of a global annual budget not greater than 2 million EUR.
- bb) 'candidate', an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation, in a negotiated procedure without prior publication, in a competitive dialogue, in an innovation partnership or in a concession procedure;
- cc) 'tenderer', an economic operator that has submitted a tender;
- dd) 'contracts' or 'public contracts', procurement or concession 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 products or the provision of services;
- ee) 'contracts of European relevance', public contracts with a value net of value-added tax (VAT) estimated to be equal to or greater than the thresholds at Article 35 and which do not fall within the excluded contracts;
- ff) 'under-threshold contracts', public contracts with a value net of value-added tax (VAT) estimated to be inferior to the thresholds at Article 35;
- gg) 'ordinary sectors', the sectors of public contracts, other than water, energy, transport and postal services sectors, geographical exploitation, as regulated by Part II of Code, wherein the contracting authorities work;
- hh) 'special sectors', sector of public contracts of water, energy, transport and postal services sectors, geographical exploitation, as regulated by Part II of Code, wherein the contracting authorities work;
- ii) 'public procurement', procurement 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 products or the provision of services;

ll) 'public procurement of works', contracts concluded in writing having as their object one of the following:

1) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I;

2) the execution, or both the design and execution, of a work;

3) the realization, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;

mm) 'written' or 'in writing', any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronically means;

nn) 'works' of which at Annex I, the building, demolition, recovery, urban and construction renovation, restoration, maintenance of buildings;

oo) 'complex works' works which overcomes the threshold of 15 million EUR and which are characterized by particular complexity due to the typology of the works, to the use of innovative materials and items, to the execution in areas which produce logistic difficulties or particular geotechnical, hydraulic or environmental criticalities;

oo-bis) 'works of prevalent category' the category of works, general or specific, of greater value among the categories constituting the work and listed in the tender documents;

oo-ter) 'work of deductible category', the category of works, identified by the procuring authority within the tender documents, which does not belong to the prevalent category and, in any case, of value greater than 10 percent of the total value of the work, or of value greater than 150.000 EUR or belonging to the category of which at Article 89, par. 11;

oo-quarter) 'ordinary maintenance', without prejudice to what provided by the President of Republic decree 6 June 2001, n. 380 and by the legislative decree 22 January 2004, n. 42, the works of reparation, renovation, and substitution needed for eliminating the decay of manufactures and related pertinences, for the purpose of conserving the status and the usability of the related works, by keeping them in good conditions of functioning and security, without depriving them of their solidity, safeguarding the value of the good and its functionality;

oo-quinquies) 'extraordinary maintenance', without prejudice to what provided by the President of Republic decree 6 June 2001, n. 380 and by the legislative decree 22 January 2004, n. 42, the works and the needed modification for renovating and substituting parts even structural of manufactures and related pertinences, for fixing the components, the items and the works connected to the use and to the current regulations and with the purpose of remedying to the relevant decay due to the loos of structural characteristics, technological and design, eve to the end of improving the performances, the structural characteristics, energetic and of typology efficiency, and even for increasing the value of the good and its functionality;

pp) 'work', the result of a series of works, which exploits by its own an economic or technical function. A work means both the result of a series of building works or of civil engineering, the defense and environmental protection buildings, of agricultural and forestall protection, of landscape and naturalistic engineering;

qq) 'functional lot', a specific object of a procurement to be awarded even throughout a separate and autonomous procedure or parts of works or general service whose project and development may ensure functionality, usability and feasibility independently from the development of the other parties;

rr) 'public works uncompleted', public works uncompleted of which at Article 44-bis of the law-decree 6 December 2011, n. 201, converted, with amendments, by law 22 December 2011, n. 214, and of which Ministry of Transport and Infrastructure decree 13 March 2013, n. 42, published

on the Official Journal 24 April 2013, n. 96;

ss) 'public service procurements', public procurement between one or more procuring entity and one or more economic operators having as their object the provision of services other than those ones referred at letter ll);

tt) 'public supply procurements', public procurement between one or more procuring entity and one or more economic operators having as their object the purchase, the lease, the rental or hire-purchase, with or without an option to buy, of products, A public supply procurement may include, as an incidental matter, siting and installation operations;

uu) 'public works concession', a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the execution of works or the executive project and execution, or the final project, or the executive project and the execution of works to one or more economic operators the consideration for which consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment;

vv) 'public service concession', contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the provision and the management of services other than the execution of works referred to in point (a) to one or more economic operators, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment.

zz) 'operating risk', the risk related to the exploitation of works or services on the side of the demand or of the supply or on both side, transferred to the economic operator in cases referred to in Article 180. The economic operator in cases referred to in Article 180 takes the operating risk whenever, under normal operating conditions, that mean the absence of unforeseeable events, it will not recoup the investments made and the costs incurred in operating the works or services awarded thought the concession. The part of the risk transferred to the economic operator means a real exposition to market fluctuations serious enough that any potential loss suffered by the economic operator shall be neither merely nominal nor insignificant;

aaa) 'construction risk', the risk related to delay in delivering, to the non compliance with the project standards, to the increasing of costs, to technical inconvenient and to the non-completion of the work;

bbb) 'availability risk', the risk related to the concessionaire capacity to deliver the performances provided within the contract, both with regard to quantity and quality standards;

ccc) 'demand-side risk', the risk related to the different demand volumes of the service that the concessionaire has to satisfy, or the risk related to the lack of users and then of cash flows;

ddd) 'design contests', those procedures which enable the contracting authority, in the sectors of architecture, engineering, renovation and protection of cultural and archeological heritage, urban planning as well as territorial, environmental, naturalistic, geological, urban green and forestall agronomical landscape, and of securization and mitigation of hydrological and hydraulic impact and elaboration of data, a plan or a design selected by a jury after being put out to competition with or without the award of prizes;

eee) 'public-private partnership', a contract for pecuniary interest concluded in writing by means of which one or more procuring entities confer to one or more economic operator for a fixed period determined by the time needed for the amortization of the investment or of the financing modalities determined, a series of activities consistent in the realization, transformation, maintenance and operating use of a work in return of its use, or its economic exploitation, or the supply of a service related to the use of the work itself, while the economic operator assuming the risk as determined by the contract. Without prejudice to the obligations provided by Article

44, par. 1-bis, of law-decree 31 December 2007, n. 248, converted, with amendments, by the law 28 February 2009, n. 31, the content of Eurostat decision, for the sole purpose of public finances protection, shall apply.

fff) 'economical-financial equilibrium', the simultaneous presence of the conditions of economic convenience and financial sustainability. Economic convenience means the capacity of the project to create value within the duration of the contract and to produce a level of profitability adequate to the invested capital; financial sustainability means the capacity of the project to generate enough cash flows to ensure the reimbursement of the financing;

ggg) 'leasing of public works or of public utility' , the contract having as a object the performance of financial services and the execution of works;

hhh) 'contract of availability', the contract through which the building and the making of availability of a private work destined to the public function in favor to the contracting authority are conferred to an economic operator at its own risk and costs, in return of a payment. The making of availability means the task assumed to its own risk by the economic operator awarded to ensure to the contracting authority the constant use of the work, in compliance with the parameter of functionality provided within the contract, guaranteeing thus the perfect maintenance and the amendment of all the potential defects, even if subsequent;

iii) 'framework agreement', the agreement concluded between one or more procuring entity and one or more economic operator whose is to establish the clauses related to the procurement to be awarded during a certain period of time, particularly with regard to the prices and, eventually, of the quantities requested;

lll) 'exclusive right', a right granted by a competent authority by means of any law, regulation or published administrative provision which is compatible with the Treaties the effect of which is to limit the exercise of an activity to a single economic operator and which substantially affects the ability of other economic operators to carry out such an activity;

mmm) 'special right', a right granted by a competent authority by means of any law, regulation or published administrative provision which is compatible with the Treaties the effect of which is to limit the exercise of an activity to two or more economic operators and which substantially affects the ability of other economic operators to carry out such an activity;

nnn) 'contracting profile', a procuring entity website, whereof all the tender documents and the information requested by the Code and by the Annex V are published as well,

ooo) 'tender document', any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, the proposed conditions of contract, the formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;

ppp) 'concession document' any document produced or referred to by the contracting authority to describe or determine elements of the concession or the procedure, including the concession notice, the technical and functional, the descriptive document, the proposed conditions of contract, the formats for the presentation of documents by candidates and tenderers, the information on generally applicable obligations and any additional documents;

qqq) 'social clauses', clause which oblige the employer to comply with certain standard of social security and workers protection as conditions for carrying out an economic activity within a procurement or a concession or to get the benefits provided by the law and financial facilitations;

rrr) 'awarding procedure' and 'award', the award of works, services or supplies or design projects through procurement; the award of works or services through concession; the award of design

contest and design competition;

sss) 'open procedures', award procedures wherein any interested economic operator may submit a tender;

ttt) 'restricted procedures', award procedures wherein any interested economic operator may ask to participate and wherein only economic operators invited by the contracting authorities according to the modalities provided by the Code may submit a tender;

uuu) 'negotiated procedures', award procedures wherein the procuring entities consult the economic operators chosen by themselves and negotiate with one or more of them the procurement conditions;

vvv) 'competitive dialogue', an award procedure wherein the procuring entity start a dialogue with the candidates admitted to this procedure, for the purpose of elaborating one or more solutions apt to satisfy its needed and on the basis of which the selected candidates are invited to submit tenders; any economic operator may submit a request to participate;

zzz) 'electronic system', a system constituted by informatics solution and telecommunications, which allow the development of the procedures of the Code;

aaaa) 'dynamic purchasing system', an award procedure entirely electronic, for commonly used purchases, which characteristics, as generally available on the market, meet the requirements of a contracting authority, open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria;

bbbb) 'electronic market', a procuring and negotiating tool which allows electronic purchases for values inferiors to the thresholds of European significance based on a system which realized entirely electronic selection procedure of tenders;

cccc) 'purchasing tool', purchasing tools which do not require to recur to the competitive market. Among them:

the framework convention of which Article 26 of law 23 December 1999, n. 488, signed, according to the law currently in force, by Consip S.p.a. and by the aggregating bodies;

the framework agreement signed by central purchasing bodies when the specific procurements are awarded without reopening the competition;

the electronic market realized by central purchasing bodies where the purchased made through a catalogue;

dddd) 'negotiation tool', purchasing tools which requires to recur to the competitive market. Among them:

the framework agreements signed by central purchasing bodies wherein the specific procurement are awarded by reopening the competition;

the dynamic purchasing system realized by central purchasing bodies;

the electronic market realized by central purchasing bodies wherein purchases made by recurring to the competitive market

the system realized by central purchasing bodies which allow the development of procedures in compliance with the Code:

eeee) 'purchasing electronic tools' and 'negotiations electronic tools', purchasing and negotiating tools managed by an electronic system;

ffff) 'electronic auctions', a procedure per following phases based on an electronic format which of new prices, revised downwards, and/or new values concerning certain elements of tenders are presented, which intervene after a first complete evaluation of the tenders by allowing that their classification may be realized on an automatic base;

gggg) 'direct administration', the purchases made by procuring entities with their own means and materials or specifically acquired or leased and by own or specifically employed workers, under

the direction of the responsible of the procedure;

hhhh) ‘life cycle’, all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilization;

iiii) ‘label’, any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;

llll) ‘label requirements’, the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned;

mmmm) ‘media services supplier’, the natural or legal person who takes the editorial responsibility of the choice of the content of the media service and determines the formats of management;

nnnn) ‘innovation’, the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organizational method in business practices, workplace organization or external relations;

oooo) ‘program’, a series of animated imagines, with or without sound, which constitute a single item within a show schedule or a catalogue established by a media services supplier which form and content are comparable to the form and content of the media diffusion. Radio programs and related materials are included too. Transmission merely repetitive or with fixed imagines are not instead included.

pppp) ‘electronic mean’, electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

qqqq) ‘electronic communications network’, a network of electronic communications used entirely or mostly for providing electronic communications services open to the public which allows the transfer of information among the hubs of the network;

rrrr) ‘electronic communications service’, the services provided, in return of a payment, which entirely or mostly are constituted by the transfer of signals on electronic communications network, included the media service and the information service used for the radio television transmission, but for the services which provide content transmitted by using network and electronic communications services or which exercise an editorial control on their contents; the service of the society of information oh which at Article 2, par. 1, lett. a) of legislative decree 9 April 2003, n. 70, not consistent entirely or mostly in the transfer of signals on electronic communications services are excluded;

ssss) ‘AAP’, the agreement on public procurement established within the framework of the Uruguay Round negotiations;

tttt) ‘Common Procurement Vocabulary’, CPV (Common Procurement Vocabulary), the framework of reference of public procurement as adopted by Regulation (EC) No 2195/2002, by ensuring at the same time the correspondence with the current nomenclatures;

uuuu) ‘Code’, the present decree, which regulate the public, contracts of works, services and supplies;

vvvv) ‘architecture and engineering and other technical services’, the services reserved to economic operators which exercise a professional work regulated by Article 3 of Directive 2005/36/CE;

zzzz) ‘general works category’, the works and the buildings characterized of a series of works

necessary for delivering the work or the buildings ended;

aaaaa) ‘specialized works category’, the works and the buildings which, in their development, need of performances characterized by a particular specialization or professionalization;

bbbbb) ‘single and specific works’, those ones that interested a limited area;

ccccc) ‘network model works’, those ones, which, destined to the transport of persons and goods material and immaterial, have mostly a one-dimensional development and they interest large areas;

ddddd) ‘fixed price procurement’, whenever the contractual fixed payment refers to the whole performance as executed and provided within the contract;

eeeee) ‘tailor-made procurement’, whenever the contractual fixed payment is determined by applying to the unit of measure of the single parties of the work executed the unitary price provided within the contract;

fffff) ‘aggregation’, the agreement between one or more contracting authorities or contracting entities for the common management of one or all activities of programming, projecting, award, execution, and control for the purchase of goods, services and works;

ggggg) ‘performance lot’, a specific object of a procurement to be awarded even with separate and autonomous procedure, defined on qualitative basis, according to the various categories and specializations available or according to the different phases of the project;

ggggg-bis) ‘principle of unity of the dispatch’, the principle according to which any data is furnished once and to one and only information system, cannot be requested by other system or other data banks, but it is available by the receiving information system. This principle applies to the data related to the programming of work, works, services, and supplies, and to all the awarding and execution public contract procedures which follow the rules of the Code and to those one excluded, entirely or in part, any time the Code subject them to the communication obligation to a data bank;

ggggg-ter) ‘project unit’, the maintenance, in the three phases of the project, of the original spatial, esthetical, functional and technological characteristic of the project;

ggggg-quarter) ‘feasibility study of the project alternatives’, the document wherein the possible project alternatives are identified and analyzed and wherein any alternative evaluation is noted, under the qualitative profile, also under an environmental perspective, and under the technical and economical perspectives too;

ggggg-quinquies) ‘two-years program of the purchase of goods and services’, the document which the public administration adopt to identify the purchases of supply and services needed in two years, needed to satisfy the needs revealed and evaluated by the competent authority;

ggggg-sexies) ‘three-years program of the public works’, the document which the public administration adopt to identify the works needed in three years, needed to satisfy the needs revealed and evaluated by the competent authority;

ggggg-septies) ‘one year catalogue of the works’, the catalogue of the works provided within the three-years program of the public works, to be started in the first year of the program itself;

ggggg-octies) ‘one year of the purchase of supplies and services’, the catalogue of the purchase of supplies and services provided within the two-years program, to be started in the first year of the program itself;

ggggg-nonies) ‘framework of needs’, the document which is written and approved by the public administration in the phase before the program of the purchase and which identifies, on the basis of the data available, in relation to the typology of the work or the purchase to be realized the general objectives to be pursued through the realization of the purchase, the need of the collectivity at the basis of the purchase, the specific qualitative and quantitative needs which have

to be satisfied through the purchase, even in relation to the specific typology of users to which the purchase are made for;

ggggg-decies) 'performance specification', the document which indicates, in detail, the technical and functional characteristics, even in regard to the building profiles, infrastructural and environmental, which has to ensure the building work and which put into the effect the framework of needs in requirements and performances which the work has to satisfy, by establishing the quality minimum threshold to be ensure in the project and realization;

ggggg-undercies) 'piecework', the award of the execution only related to the category to be sub-procured to a sub-contractor which has the qualification requirements needed in relation to the total value of the works awarded to the contractor and not to the value of the contract, which may result of lesser value due to the possible directly supply, entirely or in in part, of materials, devices and means by the awarding subject.

TITLE II

CONTRACTS TOTALLY OR PARTIALLY EXCLUDED FROM THE SCOPE OF APPLICATION

Art. 4

(Principles relating to the award of excluded public contracts)

1.The award of public contracts having as their subject-matter works, services and supplies, active contracts, excluded, in whole or in part, from the objective scope of application of this Code, shall take place in accordance with the principles of cost-effectiveness, efficacy, impartiality, equal treatment, transparency, proportionality, publicity, safeguard of the environment and energy efficiency.

Art. 5

(Common principles relating to exclusion for concessions, public contracts and agreements between contracting entities and authorities within the public sector)

1. A concession or a public contract, in the ordinary or special sectors, awarded by a contracting authority or a contracting entity to a legal person governed by private or public law shall fall outside the scope of this Code where all of the following conditions are fulfilled:

- a) the contracting authority or contracting entity exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;
- b) more than 80 % of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or contracting entity or by other legal persons controlled by that contracting authority or contracting entity;
- c) in the controlled legal person there is no direct private capital participation, with the exception of non- controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

2. A contracting authority or contracting entity exercises over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first

subparagraph of this paragraph, where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. That control may also be exercised by another legal person, which is itself controlled in the same way by the contracting authority or contracting entity.

3. This Code does not apply where a controlled legal person which is a contracting authority or contracting entity awards a contract or a concession to its controlling contracting authority or contracting entity, or to another legal person controlled by the same contracting authority or contracting entity, provided that there is no direct private capital participation in the legal person being awarded the public contract with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

4. A contracting authority or a contracting entity may award a concession without applying this Directive where all of the conditions referred to in paragraph 1 are met, also in case of joint control.

5. Contracting authorities or contracting entities exercise joint control over a legal person where all of the following conditions are fulfilled:

- a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities or contracting entities. Individual representatives may represent several or all of the participating contracting authorities or contracting entities;
- b) those contracting authorities or contracting entities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;
- c) the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities or contracting entities.

6. An agreement concluded exclusively between two or more contracting authorities shall fall outside the scope of this Code where all of the following conditions are fulfilled:

- a) the contract establishes or implements a cooperation between the participating contracting authorities or contracting entities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
- b) the implementation of that cooperation is governed solely by considerations relating to the public interest;
- c) the participating contracting authorities or contracting entities perform on the open market less than 20 % of the activities concerned by the cooperation.

7. For the determination of the percentage of activities referred to in paragraph 1, letter (b) and to paragraph 6, letter (c), the average total turnover or an appropriate alternative activity based measure such as costs incurred by the relevant legal person, contracting authority or contracting entity in the services, supplies and works sectors for the three years preceding the concession award shall be taken into consideration.

8. Where, because of the date on which the relevant legal person, contracting authority or contracting entity was created or commenced activities or because of a reorganisation of its activities, the turnover, or alternative activity based measure such as costs, are either not available for the preceding three years or no longer relevant, it shall be sufficient to show that

the measurement of activity is credible, particularly by means of business projections.

Art. 6

(Contracts and concessions awarded in the special sectors to a joint venture or to a contracting entity part to a joint venture)

1. Notwithstanding Article 5 and provided that the joint venture has been set up in order to carry out the activity concerned by the contract over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, this Code shall not apply to contracts in the special sectors and to concessions awarded by:

- a) a joint venture, as well as an association or a consortium or a common undertaking having legal personality formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 115 to 121 and of Annex II with an undertaking that is affiliated one of those contracting entities;
- b) a contracting entity to a joint venture of which it forms part.

2. Contracting entities shall notify the European Commission, upon request, the following information relating to the undertakings referred to in Article 3, paragraph 1, letter (z), second period:

- a) the name of the undertakings or the joint venture concerned;
- b) the nature and value of the contracts and concessions concerned.

3. The elements that the European Commission requires in order to prove that the relationships between the contracting entity and the undertaking or joint venture to whom contracts and concessions have been awarded meet the requirements set out in this Article and in Article 7.

Art. 7

(Contracts and concessions awarded to an affiliated undertaking)

1. Notwithstanding Article 5 and provided that the conditions in paragraph 2 are met, this Code shall not apply to concessions and contracts awarded in the special sectors by a contracting entity to an affiliated undertaking or to a joint venture, formed exclusively by a number of contracting entities for the performance of activities described in Articles from 115 to 121 and in Annex II to an undertaking that is affiliated to one of those contracting entities.

2. Paragraph 1 shall apply to services and works contracts and concessions, as well as to supplies contracts, provided that at least 80% of the average total turnover of the affiliated undertaking over the preceeding three years, taking into account all the services, works and supplies provided by that undertaking, derives from provisions to the contracting entity or to other undertakings to which it is affiliated.

3. Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it shall show by means of business projections that the turnover referred to in of paragraph 2 is credible.

4. Se più imprese collegate all'ente aggiudicatore con il quale formano un gruppo economico forniscono gli stessi o simili servizi, forniture o lavori, le percentuali sono calcolate tenendo conto del fatturato totale derivante dalla prestazione dei servizi o l'esecuzione dei lavori, per ciascuna di tali imprese collegate.

4. Where more than one undertaking affiliated with the contracting entity with which they form an economic group provides the same or similar services, supplies or works, the percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by each of those affiliated undertakings.

Art. 8

(Exclusion of activities directly exposed to competition)

1. Contracts intended to enable an activity mentioned in Articles 115 to 121, the design contests organized for the performance of such activity, as well as the concessions awarded by the contracting entity shall not be subject to this Code if the activity is directly exposed to competition on markets to which access is not restricted. The activity concerned may form a part of a larger sector or be exercised only in certain parts of the national territory. The competition assessment for the purposes of this Code shall be made by the European Commission taking into account the market for the activities in question and the geographical reference market, pursuant to paragraphs 2 and 3. This without prejudice to the application of competition law.

2. For the purposes of paragraph 1 in order to determine whether an activity is directly exposed to competition it is possible to take into account criteria that are in conformity with the provisions on competition of the Treaty on the Functioning of the European Union, including the characteristics of the products or services concerned, the existence of alternative products or services considered to be substitutable on the supply side or demand side, the prices and the actual or potential presence of more than one supplier of the products or provider of the services in question.

3. The geographical reference market, on the basis of which exposure to competition is assessed, shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different from those prevailing in those areas. That assessment shall take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, as well as of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas or of substantial price differences.

4. For the purposes of paragraph 1, markets with unrestricted access shall be considered as those indicated in Annex VI for whom the implementing provisions have been adopted. If free access to a given market cannot be presumed on the basis of the previous period, it must be demonstrated that access to the market in question is free de facto and de jure. Where it is not possible to presume the free access to a market on the basis of the previous period, it has to be demonstrated that the access to the market in question is free de facto and de jure.

5. Where on the basis of the conditions laid out in paragraphs 2, 3 and 4 it is believed that a given activity is directly exposed to competition in market whose access is not restricted, the President of the Council of Ministers, in accordance with the competent Ministry for the sector, may request to the European Commission to establish that the provisions in this Code do not apply to the award of contracts or the organisation of design contests for the pursuit of that activity, as well as to concessions awarded by contracting entities, by informing the European Commission of all the relevant circumstances, in particular of the legislative, regulatory or administrative provisions or agreements relating to the respect of requirements referred to in paragraph 1, as well as of the potential decisions taken in that regard by the competent independent Authorities. The request may concern activities which are a part of a larger sector or which are exercised only in certain parts of the national territory, where appropriate by attaching the position adopted by the competent independent Authority.

6. Contracting entities may ask to the European Commission to establish the applicability of paragraph 1 to a certain activity. Unless a request coming from a contracting entity is accompanied by a reasoned and substantiated position, adopted by a competent independent Authority, which thoroughly analyses the conditions for the possible applicability of the abovementioned paragraph 1, after information given by the Commission in relation to that request, the Authority referred to in paragraph 5 shall notify the Commissions all the circumstances referred to in the abovementioned paragraph.

7. Contracts intended to enable the performance of the activity referred to in paragraph 1 and design contests that are organised for the pursuit of such an activity and concessions awarded by contracting entities shall cease to be subject to this Code if the European Commission:

- a) has adopted the implementing act establishing the applicability of paragraph 1 within the period provided for in Annex VII;
- (b) has not adopted the implementing act within the period provided for in letter (a) of the Annex referred to in letter (a) of this paragraph.

8. The request presented according to paragraphs 5 and 6 may be modified, with the approval of the European Commission, in particular in reference to the activities or geographical areas concerned. In that case, for the adoption of the implementing act referred to in paragraph 7, a new period shall apply, calculated in accordance with paragraph 1 of Annex VII, unless the European Commission agrees on a shorter period with the Authority or contracting entity which has presented the request.

9. Where an activity is already the subject of a procedure under paragraphs 5, 6 and 8, further requests concerning the same activity brought to the European Commission before the expiry of the period opened in respect of the first request shall not be considered as new procedures and shall be treated in the context of the first request.

Art. 9

(Service contracts awarded on the basis of an exclusive right)

1. The provisions in this Code relating to ordinary sectors and special sectors shall not apply to

public services contracts awarded by a contracting authority, to another contracting authority, to an entity that is a contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to legislative, regulatory or published administrative provisions that are compatible with the Treaty on the Functioning of the European Union.

2. This code shall not apply to service concessions awarded to a contracting authority or a contracting entity within the meaning of Article 3, paragraph 1, letter (e), number 1, point 1.1 or to an association thereof on the basis of an exclusive right. The present code shall not apply to service concessions awarded to an economic operator on the basis of an exclusive right granted on the basis of the TFEU, of EU juridical acts and national norms providing common norms on the access to the market applicable to activities referred to in Annex II.

3. By way of derogation from paragraph 2, second period, where the sectorial legislation recalled shall not provide for specific transparency obligations, provisions in Article 29 shall apply. Where, according to paragraph 2, an exclusive right is granted to an economic operator for the exercise of one of the activities referred to in Annex II, the "Cabina di Regia" referred to in Article 212 shall inform the European Commission on the matter within one month following the concession of such exclusive right.

Art. 10

(Contracts awarded in the water, energy, transport and postal services sectors)

1. Provisions in this code relating to ordinary sectors shall not apply to public contracts and design contests in the special sectors which are awarded or organized by contracting authorities exercising one or more of the activities referred to in Articles 115 to 121 and are awarded for the exercise of those activities, nor to public contracts excluded from the field of application of the provisions relating to special sectors, pursuant to Articles 8, 13 and 15, nor to contracts awarded by a contracting authority which provides postal services, within the meaning of Article 120(2), letter (b) for the pursuit of the following activities:

- a) special services linked to and provided entirely by electronic means, including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail;
- b) financial services which are covered by CPV codes 66100000-1 to 66720000-3 and falling within the scope of Article 17(1), letter (e), including in particular postal money orders and postal giro transfers;
- c) philatelic services;
- d) logistics services, that is services combining physical delivery and/or warehousing with other non-postal functions.

Art. 11

(Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy)

1. The provisions in this Code shall not apply:

- (a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities relating to drinking water referred to in Article 117, paragraph 1;
- (b) to contracts awarded by contracting entities themselves being active in the energy sector by being engaged in an activity referred to in Articles 115, paragraph 1, 116 and 121 for the supply of:
 - 1) energy
 - 2) fuels for the production of energy.

Art. 12

(Specific exclusions for concessions in the water sector)

1. The dispositions in this Code shall not apply to concessions awarded for:
 - a) providing or operating fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water;
 - b) supplying drinking water to such networks;
2. The disposition in this Code shall not apply to concessions with one, or both of the following subject-matters when they are connected with an activity referred to in paragraph 1:
 - a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations;
 - b) the disposal or treatment of sewage.

Art. 13

(Contracts awarded for purposes of resale or lease to third parties)

1. The provisions in this Code shall not apply to contracts awarded in the special sectors for purposes of resale or lease to third parties, where the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.
2. The contracting entities shall notify the European Commission if so requested, of all the categories of products or activities which they regard as excluded under paragraph 1, in the terms thereby indicated, by emphasizing in the notification which information shall have sensitive commercial character.
3. The provisions in this Code relating to special sectors shall not apply to the categories of products or activities constituting the subject-matter of contracts in Article 1 and considered to be excluded by the European Commission by means of an act published on the Official Journal of the European Union.

Art. 14

(Contracts and design contests awarded or organised for purposes other than the pursuit of

a covered activity or for the pursuit of such an activity in a third country)

1. The provisions in this Code shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 115 to 121 or for the exercise of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the European Union nor shall it apply to design contests organised for such purposes.
2. The contracting entities shall notify the European Commission, if so requested, of any category of activities which they regard as excluded under paragraph 1, within the terms thereby indicated, emphasizing in the notification which information have a sensitive commercial character.
3. The provisions in this Code relating to special sectors shall not apply to the categories of products or activities constituting the subject-matter of contracts in Article 1 and considered to be excluded by the European Commission by means of an act published on the Official Journal of the European Union.

Art. 15

(Exclusions in the sector of electronic communications)

1. Provisions in this Code shall not apply to public contracts and design contests in the ordinary sectors and to concessions for the principal purpose of permitting the contracting authorities to provide or exploit public communication networks or to provide to the public one or more electronic communications services.

For the purposes of this Article, definitions of "public network" and "electronic communications service" shall be defined as referred to in Article 1 of Legislative Decree n. 259 of 1 August 2003, and subsequent modifications.

Art. 16

(Contracts awarded and design contests organised pursuant to international rules)

1. The provisions in this Code shall not apply to public contracts, design contests and concessions that the contracting authorities or contracting entities are obliged to award or organize in accordance with procedures other than those laid down in this Code and established by:

- (a) a legal instrument creating international law obligations, such as an international agreement, concluded in accordance with the Treaties of the European Union, between a Member State and one or more third countries or subdivisions thereof and covering works, supplies or services intended for the joint implementation or exploitation of a project by their signatories;
- (b) an international organisation.

2. This Code shall not apply to public contracts, design contests and concessions which the contracting authorities or entities award in accordance with procurement rules provided by an international organisation or international financing institution, where the contracts, design

contests or concessions concerned are fully financed by that organisation or institution; in the case of contracts, design contests or concessions co-financed the most part by an international organisation or international financing institution the parties shall agree on applicable procurement award procedures.

3. Without prejudice to what provided for in Article 161, paragraphs 1 and 2 shall not apply to contracts, design contests and concessions involving defence or security aspects pursuant to Legislative Decree n. 208 of 15 November 2011.

4. The "Cabina di Regia" referred to in Article 212, shall notify to the European Commission the legal instruments indicated in paragraph 1, letter (a).

Art. 17

(Specific exclusions for service contracts and concessions)

1. The provisions in this Code shall not apply to services contracts and concessions:

(a) having as their subject-matter the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;

(b) having as their object the purchase, development, production or co-production of programmes intended for audiovisual or radio media services that are awarded to audiovisual or radio media service providers, as well as contracts, also in the special sectors, and the concessions concerning the broadcasting time or the provision of programmes awarded to audiovisual and radio service providers.. For the purposes of this provision, ‘material associated to programmes’ shall have the same meaning as “programme”.

(c) concerning arbitration and conciliation services;

(d) concerning any of the following legal services:

(1) legal representation of a client by a lawyer within the meaning of Article 1 of law n. 31 of 9 February 1982 and subsequent modifications:

1.1) in an arbitration or conciliation held in a Member State of the European Union, a third country or before an international arbitration or conciliation instance;

1.2) in judicial proceedings before the courts, tribunals or public authorities of a Member State of the European Union or a third country or before international courts, tribunals or institutions;

2) legal advice given in preparation of any of the proceedings referred to in point (1.1) or where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of law n. 31 of 9 February 1982 and subsequent modifications;

3) document certification and authentication services which must be provided by notaries;

4) legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a jurisdictional body of the State or are designated by law to carry out specific tasks under the supervision of such jurisdictional bodies;

5) other legal services which are connected, even occasionally, with the exercise of official authority;

(e) concerning financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of legislative decree n. 58 of 24 February 1998 and subsequent modifications, services delivered by central banks and operations concluded with the European Financial Stability Facility and the European Stability Mechanism;

- (f) concerning loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
- (g) concerning employment contracts;
- (h) concerning civil defence, civil protection, and danger prevention that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8; 98113100-9 and 85143000-3 except patient transport ambulance services;
- (i) concerning public passenger transport services by rail or metro;
- (l) concerning services connected to political campaigns, identified by CPV codes 79341400-0, 92111230-3 e 92111240-6, where awarded by a political party in the framework of an electoral campaign for contracts relating to ordinary sectors and concessions.

Art. 17-bis

(Other excluded contracts)

1. The provisions in this Code shall not apply to contracts having as their subject-matter the purchase of agricultural products and foodstuffs for an amount not exceeding €10,000 per year for each undertaking, by individual or associated agricultural undertakings in towns classified as totally mountain municipalities as referred in the list of Italian municipalities drawn up by the National Institute of Statistics (ISTAT), or covered by the Circular of the Ministry of Finances n. 9 of 14 June 1993, published in the ordinary supplement n. 53 of the Official Journal of the Italian Republic n. 141 of 18 June 1993, as well as in the municipalities in minor islands as referred to in Annex A to law n. 448 of 28 December 2001.

Art. 18

(Specific exclusions for concession contracts)

1. The provisions of this Code shall not apply to:

- a) concessions for air transport services based on the granting of an operating licence within the meaning of Regulation (EC) No 1008/2008 of the European Parliament and of the Council or to concessions for public passenger transport services within the meaning of Regulation (EC) No 1370/2007.
- b) concessions for lottery services, which are covered by CPV code 92351100-7, awarded to an economic operator on the basis of an exclusive right. For the purpose of this letter, the notion of exclusive right does not cover exclusive rights as referred to in Article 3(1), letter (e), n. 2.3. The concession of such an exclusive right is subject to publication in the Official Journal of the European Union;
- c) concessions awarded by contracting entities for the pursuit of their activities in a third country, in conditions not involving the physical use of a network or geographical area within the European Union.

Art. 19

(Sponsorship contracts)

1. The award of sponsorship contracts of works, services, or supplies for amounts exceeding €40,000, by means of bestowal of money or assumption of debt, or other forms of assumption of payment for due compensations, shall be exclusively subject to the previous publication on the website of the contracting authority or entity, for at least 30 days, of appropriate notice through which the research of sponsors for specific interventions is notified, or the receipt of a sponsorship proposal is communicated, by synthetically indicating the content of the proposed contract. Once the period of publication of the notice has expired, the contract can be freely negotiated, provided that the principles of impartiality and equal treatment among economic operators that have shown their interest is respected, without prejudice to the respect of Article 80.

Art. 20

(Public work realised at private expenses)

1. This Code shall not apply to cases in which the public authority concludes an agreement through which a public or private entity commits itself to the realisation, at its total care and expense and after having obtained the necessary authorisation, of a public work or a functional lot thereof or part of the work provided for in the framework of town planning tools or programmes, without prejudice to what provided for in Article 80.

2. The administration, before concluding the agreement, shall evaluate that the project of feasibility for the works to be executed with the indication of the maximum time frame within which they have to be concluded and the scheme of the relevant procurement contracts presented by the counterpart shall respond to the realisation of public works as referred to in paragraph 1.

3. The agreement shall also regulate the consequences in case of failure to comply, also including any penalty clause or substitutive power.

TITLE III PLANNING, PROGRAMMING AND DESIGN

Art. 21

(Purchasing program and public works schedule)

1. Contracting authorities shall adopt the biennial programme of purchase of goods and services and the triennial programme of public works, as well as the relevant annual updates. The programmes shall be approved in accordance with the programming documents and in coherence with the budget and, for local authorities, in accordance with the norms regulating the economic and financial programming of those subjects.

2. Unfinished public works shall be included in the triennial programme referred to in paragraph 1, for the purpose of their completion or for the identification of alternative solutions such as the reuse, also downscaling, the sale made as compensation for the realisation of another public work, the sale or demolition.

3. The triennial programme of public works and the relevant annual updates shall include the works whose estimated amount is equal to or exceeds €100,000 and shall indicate, after the attribution of the unique project code provided for in Article 11 of law n. 3 of 16 January 2003, the works to be commenced within the first year, for whom indication of the financial means allocated in the estimates or in the budget, or otherwise available on the basis of contribution or resources of the State, regions with ordinary statute or other public entities shall be indicated. For works whose amount is equal to or exceeds € 1 million, for the purposes of the inclusion in the annual list, contracting authorities shall previously approve the project of technical and economic feasibility. For the purposes of the inclusion in the triennial programme, contracting authorities shall previously approve, where appropriate, the document of feasibility of alternative designs as referred to in Article 23, paragraph 5.

4. In the framework of the programme referred to in paragraph 3, contracting authorities shall identify also complex works and interventions capable of being realised through concession contracts or public-private partnership.

5. When listing the sources of financing, also the immovable goods that may be the object of a sale shall be indicated. Immovable goods at disposal granted in right to use, by way of contribution, whose use is instrumental and technically connected to the work to be awarded in concession shall be also indicated.

6. The biennial programme of supplies and services and the relevant annual updates shall include the purchases of goods and services whose unitary estimated value is equal to or exceeds €40,000. In the framework of the programme, contracting authorities identify the needs that can be met through private capitals. Public administrations shall notify, within the month of October, the list of acquisitions of supplies and services whose amount exceeds € 1 million that they provide to include in the biennial programme, to the Technical board of the subjects referred to in Article 9, paragraph 2 of law n. 66 of 24 April 2014, converted with modifications by law n. 89 of 23 June 2014, which shall make use of them for the purpose of delivering the tasks and activities attributed to it. For the acquisition of informatics and connectivity goods and services contracting authorities shall take into account what provided for in Article 1, paragraph 513 of law n. 208 of 28 December 2015.

7. The biennial programme of purchases of goods and services and the triennial programme of public works, as well as the relevant annual updates, shall be published on the buyer's profile, on the website of the Ministry of Infrastructures and Transports and of the Observatory referred to in Article 213, also by means of the digital systems of the regions and autonomous provinces referred to in Article 29, paragraph 4.

8. By means of a decree of the Minister of Infrastructures and Transports, in accordance with the Minister of Economics and Finances, to be adopted within 90 days from the entry into force of this Decree, after having obtained the opinion of the CIPE, in agreement with the Unified Conference, shall be defined:

- a) the modalities of updating the programmes and relevant annual lists;
- b) the criteria for the definition of the priority orders, for the possible subdivision in functional lots, as well as for the recognition of the conditions allowing for the modification of the

programme and the realisation of an intervention or a purchase not provided for in the annual list;

c) the criteria and modalities to favour the completion of unfinished works;

d) the criteria for the inclusion of works in the programme and the minimum level of design required for each typology and class of amount;

e) the model schemes and minimum information to be contained therein, also identified in coherence with the standards of informative and publicity obligations relating to contracts;

f) the modalities of connection with the planning of the activities of the aggregating subjects and the central purchasing bodies to whom the contracting authority or entity delegate the award procedure.

8-bis. The provisions in this Article shall not apply to the planning of the activities of the aggregating subjects and of the central purchasing bodies.

9. Until the adoption of the decree referred to in paragraph 8, Article 216, paragraph 3 shall apply.

Art. 22

(Trasparenza in the participation of stakeholders and public debate)

1. Contracting authorities and contracting entities shall publish, on their buyer's profile, the feasibility projects relating to the great infrastructural works and architecture of social relevance, having an impact on the environment, as well as the results of the public consultation, including the transcripts of the meeting and debates with the stakeholders. The contributions and transcripts shall be published, with equal evidence, together with the documents drawn up by the administration and relating to those same works.

2. By means of a decree of the President of the Council of Ministers, to be adopted within one year from the entry into force of this Code, upon proposal of the Minister of Infrastructures and Transports, having heard the Minister of the Environment and the Safeguard of Land and Sea and the Minister for Cultural Heritage and Activities, after having obtained the opinion of the competent Parliamentary Commissions, with reference to the new interventions commenced after the entry into force of that same decree, the criteria for the identification of the works in paragraph 1, divided by typology and dimensional thresholds, for whom it is mandatory the recourse to the procedure of public debate shall be fixed, and shall also be defined the modalities of carrying out and the timeline for conclusion of that same procedure. By means of that same decree the modalities for monitoring the implementation of the institute of the public debate shall also be established. For that purpose, a Commission shall be set up at the Ministry of Infrastructures and Transports, without further expenses for public finances, with the task of gathering and publishing information on ongoing or concluded public debates and of proposing recommendations for the unwinding of the public debate on the basis of the experiences gained. For the participation to the activities of the Commission shall not be provided compensations, attendance fees, emoluments, indemnities or reimbursements of expenses however described.

3. The contracting authority or the contracting entity proposing the work object of public debate shall hold and manage the unwinding of the procedure exclusively on the basis of the modalities identified by the decree referred to in paragraph 2.

4. The outcomes of the public debate and the observations gathered shall be assessed while preparing the final project and shall be discussed within the Conferences of services relating to the work object of public debate.

Art. 23

(Levels of planning for contracts, work concessions as well as services)

1. Planning of public works shall be articulated, according to three successive levels of technical insights, in technical and economic feasibility project, final project and executive project, and shall be aimed at ensuring:

- a) the fulfilment of the needs of the collectivity;
- b) the architectonic, technical, functional and relational quality in the framework of the work;
- c) the conformity with norms on environment, town-planning and safeguard of cultural heritage and landscapes, as well as the respect of the legislation on health and security;
- d) a limited consumption of soil;
- e) the respect of the hydro-geological, seismic and forestry constraints as well as other existing constraints;
- f) energy saving, efficiency and recovering in the realisation and in the life-cycle of the work as well as the evaluation of the life-cycle and maintainability of the works;
- g) the compatibility with archaeological pre-existences;
- h) the realisation of the planning activities and the connected verifications through the progressive use of specific electronic methods and tools such as modelling for building and infrastructures;
- i) geologic, geo-morphologic, hydro-geologic compatibility of the work;
- l) accessibility and adaptability according to what provided for by existing provision on architectonic barriers.

2. For the planning of works of particular relevance under the architectonic, environmental, landscape, agronomic and forestry, historic and artistic, conservationist, as well as technological standpoint, contracting authorities or entities shall make use of the internal professionalism, provided that they possess adequate competence in the subject-matter of the project or make use of the design contest procedure or contest of ideas as referred to in Articles 152, 153, 154, 155 and 156. For other typologies of works, what provided for in Article 24 shall apply.

3. By means of a decree of the Minister of Infrastructures and Transports, upon proposal of the Superior Council of Public Works, in accordance with the Minister of Environment and the Safeguard of Land and Sea and the Minister of Cultural Heritage and Activities and Tourism, the contents of planning in the three design stages shall be defined. By means of the decree in the first period, shall also be determined the minimum content of the framework of the needs to be provided by contracting authorities or entities. Until the date of entry into force of that decree, Article 216, paragraph 4 shall apply.

3-bis. By means of a further decree by the Minister of Infrastructures and Transports, upon proposal of the Superior Council of Public Works, having heard the Unified Conference, a simplified planning of the interventions of ordinary maintenance up to a maximum of €2,500,000 shall be regulated. That decree shall identify the modalities and criteria of simplification with reference to the provided interventions.

4. The contracting authority or entity, with reference to the specific typology and dimension of the intervention shall identify the characteristics, requirements and design documents necessary for the definition of each stage of the planning. It is, also, allowed the omission of one or both the first two levels of planning, provided that the subsequent level contains all the elements provided for the omitted level, in order to safeguard the quality of the planning.

5. The project of technical and economic feasibility shall identify, among several solutions, the one presenting the best costs/benefits ratio for the collectivity, in relation to the specific exigencies to be satisfied and performances to be provided. For the exclusive purposes of the activities of triennial programme of public works and the completion of the procedures of public debate in Article 22 as well as of design contests and contests of ideas in Article 152, the feasibility project may be articulated into two subsequent stages of elaboration. In all other cases, the feasibility project shall also be drawn up in a single stage of elaboration. In case of elaboration in two subsequent stages, in the first phase the designer shall identify and analyse the possible alternative design solutions, where existing, on the basis of the principles set out in Article 1, and draws up the document of feasibility of the design alternatives according to the modalities identified in the decree referred to in paragraph 3. In the second stage of elaboration, as well as in the single stage, where it is not drawn up in two stages, the designer in charge shall develop, in accordance with the contents of the design address document and according to the modalities indicated in the decree referred to in paragraph 3, all the enquiries and studies necessary for the definition of the aspects in paragraph 1, as well as the graphic documents for the identification of the dimensional, volumetric, typological, functional and technological characteristics of the works to be realised and the relevant economic estimates, including the choice on the possible subdivision into functional lots. The feasibility project shall allow, where necessary, the initiation of the expropriation procedure.

5-bis. For the works proposed as a town-planning variant within the meaning of Article 19 of the Presidential Decree n. 327 of 8 June 2001, the technical and economic feasibility project shall substitute the preliminary project as referred to in paragraph 2 of the abovementioned Article 19 and shall be drawn up in accordance with paragraph 5.

6. The feasibility project shall be drawn up on the basis of the geologic, hydro-geologic, hydrologic, hydraulic, geo-technical, seismic, historical, landscape and urban planning enquiries carried out, of preventive verifications on the archaeological interest, of preliminary studies on the environmental impact and shall emphasise, by means of specific and adequate cartographic elaboration, the occupied areas, any relevant buffer zones and the occurring safeguard measures; it shall also comprise any evaluation as well as possible energetic diagnosis of the projected work, with reference to the containment of energetic consumptions and any possible measure for the production and recovery of energy, also with reference to the impact on the economic and financial plan of the work; it shall, furthermore, indicate the performance characteristics, the functional specifications, the exigencies for compensation and mitigation of the environmental

impact, as well as the limits of expenses, calculated according to the modalities indicated in the decree referred to in paragraph 3, of the infrastructure to be realised to a level that allows, already when approving that same project, unless unforeseeable circumstances, the identification of the localisation or route of the infrastructure as well as of the necessary compensating or mitigating works for environmental and social impact.

7. The final project shall thoroughly identify the works to be realised, in accordance with the exigencies, criteria, constraints, addresses and indications established by the contracting authority or entity and, where appropriate, of the feasibility project; the final project shall also contain all the elements necessary for the issuance of the prescribed authorisations and approvals, as well as the final quantification of the limit of expense for the realisation and the relevant timescale, through the use, where existing, of price lists prepared by the regions and the autonomous provinces competent for territory, in accordance with the territorial articulations of the Ministry of Infrastructures and Transports, pursuant to paragraph 16.

8. The executive project, drawn up in conformity with the final project, shall determine in any detail the works to be realised, the relevant expected cost, the timescale coherent with that of the final project, and which shall be developed at a level of definition by which any element may be identified by form, typology, quality, dimension and price. The executive project shall also be accompanied by a specific maintenance plan of the work and parts thereof with reference to the life-cycle.

9. With reference to the characteristics and importance of the work, the responsible official, according to what provided for in Article 26, shall establish criteria, contents and moments of technical verification of the different levels of design.

10. Access to concerned areas and to the enquiries and researches necessary for the activity of design shall be subject to the authorisation set out in Article 15 of the Presidential Decree n. 327 of 8 June 2001. That same authorisation shall also be extended to archaeological researches, remediation of warships and reclamation of polluted sites. Archaeological researches are performed under the vigilance of the competent supervision bodies.

11. The expenses relating to design, including those relating to public debate, direction of works, vigilance, testing, studies and connected researches, redaction of plans of security and coordination, where provided by Legislative decree n. 81 of 9 April 2008, to professional and specialised performances, necessary for the redaction of a complete executive project may rely on the funding of the contracting authority or entity to whom that same design is connected. For the purposes of the identification of the estimated amount the calculation shall include all the services, including the direction of works, in case of award at the same external designer.

12. The final and executive project shall, preferably, be carried out by the same subject, in a way to ensure homogeneity and coherency to the process. In case of justified reasons for disconnected award, the new designer shall accept the design activity previously carried out. In case of external award of the design, including both levels of planning, the initiation of the executive design is subject to the determination by the contracting authorities or entities on the final project. When verifying the coherency between the different stages of the planning, Article 26, paragraph 3 shall apply.

13. Contracting authorities or entities may require for new works as well as recovery works, re-qualification or variants, primarily for complex works, the use of specific electronic methods and tools as referred in paragraph 1, letter (h). Those tools shall make use of interoperable platforms by means of open, non-proprietary means, for the purpose of not limiting competition between technology providers and the involvement of specific planning among designers. The use of electronic methods and instruments shall be required only by contracting authorities or entities with adequately trained staff. By means of a decree of the Minister of Infrastructures and Transports to be adopted by 31 July 2016, also relying on a Commission specifically appointed by that same Ministry, without additional charges for public finances, the modalities and timeframe for the progressive introduction of the mandatory nature of that abovementioned methods for contracting authorities and entities, conceding administrations and economic operators, assessed with reference to the typology of the works to be awarded and the strategy of digitalisation of public administrations and building sector shall be defined. The use of those methodologies shall constitute a parameter for the evaluation of the rewarding requirements set out in Article 38.

14. The design of services and supplies shall be articulated, as a general rule, in a single level and shall be prepared by contracting authorities or entities, as a general rule, through their own staff in service. In case of design contest related to contracts, the contracting authority or entity may envisage that the project shall be divided in one or more levels of insight for whom the same contracting authority or entity shall identify the requirements and characteristics.

15. With reference to service contracts, the project shall contain: the technical-illustrative report of the context in which the service is included; the indication and disposition for the drafting of the documents relating to the security as referred to in Article 26, paragraph 3 of legislative decree n. 81 of 2008; the calculation of the amounts for the acquisition of services, with indication of the security charges not subject to downward; the economic prospect of the total charges necessary for the acquisition of services; the special descriptive and performance specification, including technical specifications, the indication of the minimum requirements that the tenders shall ensure and the aspects that can be object of improvement variants and, by consequence, the rewarding criteria to be applied to the evaluation of tenders during the competition, the indication of other circumstances that may determine the modifications of negotiating conditions during the period of validity, without prejudice to the ban on substantial modification. With reference to services of management of immovable properties, including those referred to the maintenance and energetic sustainability, projects shall also refer to what provided for in the relevant technical norms.

16. For works, services, and supplies contracts, the cost of the work shall be determined by the Ministry of Labour and Social Policies on the basis of the economic values defined by the national collective agreement between trade unions and organisations of employers comparatively more representative, of the norms on social security and assistance, of the different product markets and of the different territorial areas. In absence of an applicable collective agreement, the cost of work shall be determined with reference to the collective agreement of the closest product market to that taken into consideration. For contracts relating to works, the cost of products, equipments and manufactures shall be determined on the basis of the regional price lists updated yearly. Those price lists cease to have effect on 31 December of

each year and shall be transiently used until 30 June of the following year, for competitive projects whose approval has intervened by that date. In case of failure by the Regions in complying, the price lists are updated, within the following 30 days, by the competent territorial articulations of the Ministry of Infrastructures and Transports, having heard the concerned regions. Until the adoption of the tables referred to in this paragraph, Article 216, paragraph 4 shall apply. In the work and service contracts the contracting authority or entity, in order to determine the amount fixed as a basis for tender, shall identify in the tender documents the costs of manpower on the basis of what provided for in this paragraph. Security costs are excluded from the sum subject to downward.

Art. 24

(Internal and external planning to contracting authorities in the field of public works)

1. Provisions relating to the planning of technical and economic feasibility, final and executive, with reference to testing, coordination of security and planning as well as to the direction of works and to technical and administrative supporting tasks to the activity of the responsible for the process and of the manager competent for the planning of public works shall be carried out:

- a) by technical divisions of contracting authorities or entities;
- b) by consortium divisions for planning and direction of works that the municipalities, the relevant consortia and union thereof, the mountain communities, the local health authorities, consortia, industrialisation and remediation authorities may establish;
- c) by bodies of other public administration on whom contracting authorities or entities may rely by law;
- d) by subjects referred to in Article 46.

2. By means of a decree of the Minister of Infrastructures and Transports, to be adopted within 90 days from the entry into force of this Code, after having obtained the opinion by ANAC, the requirements to be possessed by subjects referred to in Article 46, paragraph 1, shall be defined. Until the entry into force of that decree, Article 216, paragraph 4 shall apply.

3. Projects drawn up by subjects referred to in paragraph 1, letters (a), (b) and (c), are signed by employees of the public administrations qualified to pursue the relevant profession. Public employees with a part-time work contract shall not perform, in the territorial ambit of their offices, professional tasks on behalf of public administrations referred to in Article 1, paragraph 2 of legislative decree n. 165 of 30 March 2001, and subsequent modifications, where not consequent to work relationships.

4. Contracting authorities or entities shall borne the charge for insurance policies covering professional risks for employees charged with planning. In case of award of the planning to external subjects, policies shall be borne to those same subjects.

5. Irrespective of the juridical nature of the contractor, the tasks shall be carried out by professionals enrolled in the specific registers provided by the currently existing professional bodies, individually responsible and nominally indicated already at the moment of the presentation of the tender, with specification of the relevant professional qualifications. In the

tender shall also be indicated the natural person in charge of the integration among the different specialised performances. The decree referred to in paragraph 2 shall also identify the criteria in order to ensure the presence of young professionals, individually or in association, in groups competing for calls relating to tasks for planning, design contests and contests of ideas, which contracting authorities take into account for the purpose of the award. When finally awarding the task, the entrusted subjects shall demonstrate not to be in the conditions referred to in Article 80, as well as to possess the requirements and capacities set out in Article 83, paragraph 1,

6. Where a complex service consists of the sum of different services, including some reserved to professionals enrolled in registers of bodies or associations, the contract notice or invitation shall explicitly require that the responsible for that part of the service shall be indicated. That subject shall possess the requirements in case the service is tendered separately.

7. Without prejudice to what provided for in Article 59, paragraph 1, fourth period, the contractors for planning tasks regarding tendered projects shall not be awardees of contracts, or concessions of public works, as well as of any subcontract or piecework, for which they carried out planning activities. To those same contracts, concessions of public works, subcontracts and piecework shall not take part a subject that is controlled, controls or is connected to the contractor for planning activities. Situations of control and connection shall be determined with reference to what provided for in Article 2359 of the Civil Code. The prohibitions in this paragraph shall be extended to the employees of the contractor for planning activities, to its associates in the performance of the task and to their staff, as well as to contractors for planning supporting activities and their employees. Those prohibitions shall not apply where the abovementioned subjects can demonstrate that the experience gained in the performance of the activities of planning is not such as to determine an advantage capable of falsifying competition with other economic operators.

8. The Minister of Justice, in accordance with the Minister of Infrastructures and Transports shall approve, by means of a decree, to be adopted not later than 60 days after the entry into force of this Code, the table of compensations, to be commensurate to the qualitative level of provisions and activities referred to in this Article and in Article 31, paragraph 8. The abovementioned compensations shall be used by contracting authorities or entities as a criterion or baseline for the purpose of identifying the amount to be tendered for the award. Until the entry into force of this Code, Article 216 paragraph 6 shall apply.

8-bis. Contracting authorities or entities shall not make subject the payment of compensations relating to planning activities and technical and administrative connected activities to the financing of the projected work. In the agreement concluded with the contractor the conditions and modalities for the payment of compensations shall be provided with reference to Articles 9 and 10 of law n. 143 of 2 March 1949, and subsequent modifications.

8-ter. In contracts having as their subject-matter services of engineering and architecture the contracting authority or entity shall not provide as a compensation forms of sponsorship or reimbursement, except for contracts relating to cultural heritage in accordance with what provided for in Article 151.

Art. 25
(Preliminary verification of the archaeological interest)

1. For the purposes of the implementation of Article 28, paragraph 4 of the Cultural Heritage and Landscape Code included in legislative decree n. 42 of 22 January 2004, for works subjected to the implementation of provisions in this Code, contracting authorities or entities shall submit to the territorially competent supervisor, a copy of the feasibility project of the intervention or an excerpt thereof sufficient for archaeological purposes, including the results of geologic and archaeological preliminary enquiries, with particular attention to the available bibliographic and repository data, to the results of scouting aimed at land observation, as well as, for works in network, to photo-interpretations. Contracting authorities or entities shall gather and elaborate this documentation through archaeological departments of Universities, or through subjects possessing a Master's Degree and Specialisation in Archaeology or a PhD in Archaeology. The submission of the abovementioned documentation is not required for interventions not involving a new construction or digs at different levels than those already occupied by existing artefacts.

2. At the Ministry of Cultural Heritage and Activities and Tourism shall be established a specific list, accessible to all interested parties, of the academic archaeological institutes and subjects possessing the required qualification. By means of a decree of the Ministry of Cultural Heritage and Activities and Tourism, having heard a representation of the academic archaeological departments, the criteria for the maintenance of that decree shall be determined, however providing for modalities of participation for all the concerned subjects. Until the date of entry into force of this Code, Article 216, paragraph 7 shall apply.

3. Where, on the basis of the submitted elements and other available information, the supervisor detects the existence of an archaeological in the areas subject to planning, may justifiably require, within 30 days from the reception of the project of feasibility or excerpt thereof referred to in paragraph 1, the submission of the intervention to the procedure provided in paragraphs 8 and ff. For projects of great infrastructural works or works in network, the time limit for the request of the procedure of preliminary verification of the archaeological interest shall be of 60 days.

4. In case of incompleteness of the submitted documentation or need of further preliminary insights, the supervisor, also by digital means, shall require documentary integration or convene the official responsible of the procedure in order to gather the necessary integrative information. The request of integration and information shall suspend the time limit referred to in paragraph 3, until they are submitted.

5. Against the request referred to in paragraph 3 the administrative appeal referred to in Article 16 of the Cultural Heritage and Landscape Code may be lodged.

6. Where the supervisor has not requested the activation of the procedure referred to in paragraphs 8 and ff. within the time limits set out in paragraph 3, or that procedure is concluded with a negative result, the execution of archaeological tests shall be only possible in case of subsequent acquisition of new information or of emersion, during the works, of new archaeologically relevant elements which may lead to the conclusion that the subsistence of an archaeological site is likely. In that case the Minister of Cultural Heritage and Activities and

Tourism simultaneously proceeds to the request of preliminary tests, the communication of the initiation of the process of verification or the declaration of cultural interest within the meaning of Articles 12 and 13 of the Code of Cultural Heritage and Landscape.

7. Paragraphs 1 to 6 shall not apply to archaeological areas and parks referred to in Article 101 of the Code of Cultural Heritage and Landscape, for whom the authorisation and precautionary powers thereby provided remain unaffected, including the entitlement to prescribe the execution, at the expense of the awarding authority for the public work, of archaeological tests. This is also without prejudice to the powers provided for in Article 28, paragraph 2, of the Code of Cultural Heritage and Landscape as well as the authorisation and precautionary powers provided for the zones of archaeological interest, within the meaning of Article 142, paragraph 1, letter (m) of the same Code.

8. The procedure of preliminary verification of archaeological interest shall be articulated in phases constituting progressive levels of insight of the archaeological enquire. The execution of the subsequent phase of the enquire shall be subjected to the emergence of significant archaeological elements as a result of the previous phase. The procedure of preliminary verification of archaeological interest shall consist of the completion of the following enquires and on the redaction of the documents integrating the feasibility project:

- a) execution of core drillings;
- b) geophysical and geochemical explorations;
- c) archaeological tests and, where necessary, execution of surveys and digs, also to an extent that ensures a sufficient sampling of the area concerned by the works.

9. The procedure shall be concluded within a time limit set by the supervisor in relation to the extension of the concerned area, with the redaction of the final archaeological report, approved by the supervisor territorially competent. The report shall contain an analytic description of the enquiries that have been carried out, with the following relevant results, and shall lay down the following requirements:

- a) contests in which the stratigraphical dig directly exhausts the exigency of safeguard;
- b) contests not emphasising exhibits constituting an unitary structural complex, with a scarce level of conservation for whom interventions of burial, dis-installation, removal, reassembling and musealisation, in another site with respect to the site of discovery;
- c) complexes whose conservation cannot otherwise be ensured that in contextualised form through the integral in-site maintenance.

10. For the execution of archaeological tests and digs in the framework of the procedure referred to in the previous paragraph, the official responsible of the procedure may justifiably reduce, after having reached an agreement with the territorially competent archaeological supervisory body, the levels of planning, as well as the contents of the planning, with particular reference to data, scripts and design documents already exhibited during the procedure.

11. In the hypotheses referred to in paragraph 9, letter (a), the procedure of preliminary verification of archaeological interest shall be considered to be concluded with negative outcome and the lack of archaeological interest in the area concerned by the works shall be ascertained. In the hypotheses referred to in paragraph 9, letter (b), the supervisory body shall determine the measures necessary to ensure the knowledge, conservation and protection of the

archaeologically relevant exhibits, without prejudice to any safeguard measures to be adopted pursuant to the Code of Cultural Heritage and Landscape, in relation to individual findings or their contest. In cases referred to in paragraph 9, letter (c), the requirements shall be included in the dispositions of subjection to safeguard in the area concerned by the findings and the Ministry for Cultural Heritage and Activities and Tourism shall initiate the procedure of declaration within the meaning of Articles 12 and 13 of the abovementioned Code of Cultural Heritage and Landscape.

12. The procedure of preliminary verification of archaeological interest shall be conducted under the direction of the archaeological supervisory body territorially competent. Any expense shall be borne by the contracting authority or entity.

13. By means of a decree of the President of the Council of Ministers, upon proposal of the Minister for Cultural Heritage and Activities and Tourism, in accordance with the Minister for Infrastructures and Transports, by 31 December 2017, the guidelines aimed at ensuring the speed, effectiveness and efficacy of the procedure set out in this Article shall be adopted. By means of that same decree the simplified procedures, with clear timelines, shall be identified in order to ensure the safeguard of the archaeological heritage, taking into account the public interest underlying the realisation of the work.

14. For the interventions subject to the procedure set out in this Article, the supervisor, within 30 days from the request in Article 3, shall conclude a specific agreement with the contracting authority or entity in order to regulate the forms of coordination and cooperation with the official responsible of the procedure and the offices of the contracting authority or entity. In the agreement, the contracting authorities may graduate the complexity of the procedure set out in this Article, with reference to the typology and entity of the works to be executed, also by reducing the phases and contents of the procedure. The agreement shall also regulate the forms of documentation and divulgation of the results of the enquiry, through the digitalisation of gathered data, the production of scientific and didactic publications, possible virtual reconstructions aimed at the functional comprehension of ancient complexes, possible displays and exhibitions aimed at the diffusion and publicity of the enquiries that have been carried out.

15. Contracting authorities or entities, in case of significant production centres, works of significant impact for the territory or initiation of business activities capable of producing positive effects on the economy or employment, already included in the triennial programme referred to in Article 21, may recur to the procedure referred to in the regulation adopted in implementation of Article 4 of law n. 124 of 7 August 2015, in case of excessive expected duration of the procedure in paragraphs 8 and ff. or when the time limits fixed in the agreement in paragraph 14 have not been respected.

16. Regions and the autonomous provinces of Trento and Bolzano shall regulate the procedure of preliminary verification of archaeological interest for the works within their competences on the basis of what provided for in this Article.

Art. 26
(Preliminary verification of the planning)

1. The contracting authority or entity, in contracts relating to work, shall verify the correspondance of the design scripts to the documents referred to in Article 23, as well as the conformity to the legislation currently in force.
2. The verification referred to in paragraph 1 shall occur before the initiation of the award procedures; in cases in which it is possible to jointly award design and execution, the verification of the design drawn up by the contractor shall take place before the initiation of the works.
3. In order to ascertain the design unity, the subjects referred to in paragraph 6, before the approval and in contradictory with the designer, shall verify the conformity of the executive or final project respectively with the final project or feasibility project. To the contradictory shall also take part the designer author of the project constituting the base of the tender, which shall comment on that conformity.
4. The verification shall ascertain, in particular:
 - a) the completeness of the design;
 - b) the coherency and completeness of the economic framework in all its aspects;
 - c) the possibility that the chosen design solutions may be object of a tender;
 - d) the preconditions for the duration of the work over time;
 - e) the minimisation of the risks of introduction of variants and litigation;
 - f) the possibility to finalise the works within the provided time limits;
 - g) the security for manpower and users;
 - h) the adequacy of the unitary prices that have been used;
 - i) the possibility for the works to be maintained, where required.
5. The charges deriving from the ascertainment of the correspondance to the design scripts shall be included in the resources allocated for the realisation of the works.
6. The activity of verification shall be carried out by the following subjects:
 - a) for works whose amount is equal to or exceeds € 20 million, by accredited control bodies pursuant to European norm UNI CEI EN ISO/IEC 17020;
 - b) for works whose amount is less than € 20 million and up to the threshold set out in Article 35, by subjects referred to in letter (a) and in Article 46, paragraph 1, which possess an internal system for quality control;
 - c) for works whose amount is less than the threshold set out in Article 35 and up to € 1 million, the verification may be carried out by the technical offices of the contracting authorities or entities where the project has been drawn up by external designers or the same contracting authorities or entities have an internal system of quality control at their disposal where the project has been drawn up by internal designers;
 - d) for the works whose amount is less than € 1 million, the verification shall be carried out by the official responsible of the procedure, also relying on the structure referred to in Article 31, paragraph 9.
7. The execution of the activity of verification shall be incompatible with the execution, for the same project, of activities of design, coordination of security, direction of works and testing.

8. The validation of the project constituting the basis for a tender is the formal act reporting on the outcomes of the verification. The validation shall be subscribed by the responsible of the proceeding and shall make explicit reference to the final report of the subject responsible for the verification and to any counter-deduction by the designer. The notice and letter of invitation for the award of contracts shall contain the data of the validation of the project constituting the basis for a tender.

8-bis. In cases of contracts having as their subject-matter the design and execution of works, the executive project and, where appropriate, the final project presented by the contractor shall be subjected, before the approval of each level of planning, to the activity of verification.

Art. 27
(Procedure of approval for projects relating to works)

1. The approval of projects by the contracting authorities shall be made according to law n. 241 of 7 August 1990 and subsequent modifications, and to State and regional norms regulating the matter. Dispositions on the conference of services set out in Articles 14-bis and ff. of the abovementioned law n. 241 of 1990 shall apply.

1-bis. In cases of contracts subsequent to the withdrawal, revocation or annulment of a previous contract, based on projects for which opinions result to be expired, authorisations and agreements acquired, but variants in the project or in the field of environmental, landscape or anti-seismic regulation or town-planning regulation have not intervened, the abovementioned opinions, authorisation and agreements already given by the different administrations are confirmed, for a period however not exceeding five years. The absence of variants referred to in the first period shall be object of specific evaluation and attestation by the official responsible of the procedure. Hypotheses in which the withdrawal, revocation or annulment of the previous contracts depend on vices and circumstances however relating to the opinions, authorisations or agreements referred to in the first period shall be excluded.

2. Contracting authorities and contracting entities may subject to the procedure of approval of projects a design level of greater detail, in order to obtain also the approval specific to precedent design phases that have not been given. The declaration of public utility referred to in Articles 12 and ff. of the Presidential decree n. 327 of 8 June 2001, and subsequent modifications, may also be disposed when the expropriating authority approves to that end the executive project of the public or public utility work.

3. During the conference of services referred to in Article 14-bis of law n. 241 of 1990 on the project of feasibility, with exclusion of ordinary maintenance works, all administrations and subjects invited, including entities operating public network services for whom interferences with the project may result, shall be obliged to give their opinion on the localisation and route of the work, also presenting proposals of modification, as well as to communicate the possible necessity of works mitigating or compensating the impact. In that phase, the entities operating network public services shall deliver, simultaneously to their opinion, the timetable of resolution of interferences. Unless unforeseeable circumstances, the conclusions adopted by the conference on the localisation or route, as well as to the project of resolution of interferences, to the

mitigating and compensating works, without prejudice to the procedure for dissent referred to in Article 14-bis, paragraph 3-bis and Article 14-quater, paragraph 3 of the abovementioned law n. 241 of 1990, shall not be modified when approving the subsequent design levels, unless a new feasibility project is withdrawn or re-presented.

4. With reference to the procedure of approval of the feasibility project referred to in paragraph 3, entities managing already known or foreseeable interferences shall have the obligation to verify and notify to the contracting authority or entity the subsistence of the interferences not detected within the premises of the infrastructure or production centres, and to elaborate, at the expenses of the contracting authority or entity, the project of resolution of interferences falling within their competence. The contracting authority or entity shall be subject to preliminary verification of suitability the costs of planning for the resolution of interferences indicated by the managing entity. The violation of those obligations that is a reason for delayed initiation or anomalous evolution of works shall involve for the managing entity pecuniary responsibility for the damages suffered by the contracting authority or entity.

5. The final project shall be accompanied by the indication of interferences, also not detected within the meaning of paragraph 4, identified by the contracting authority or entity or, in absence, by the managing entities within 60 days from the reception of the project, as well as by the programme of movements and crossings and whatever necessary to the resolution of interferences.

6. Entities operating networks or works intended for public service shall respect the programme of resolution of interferences referred to in paragraph 5 approved together with the final project, also independently from the conclusion of any agreement regulating the resolution of interferences, provided that the contracting authority or entity commits itself to make the resources needed available in advance. The lack of respect for the abovementioned programme of resolution of interferences, which has been the cause of delayed initiation or anomalous evolution of works, shall imply for the managing entity pecuniary responsibility for damages suffered by the contracting authority or entity.

7. Existing provisions regulating the effects of the approval of projects for town-planning and expropriating purposes, as well as the implementation of the existing norms on environmental impact assessment shall remain unaffected.

TITLE IV MODALITIES FOR THE AWARD COMMON PRINCIPLES

Art. 28 (Mixed procurement contract)

1. Contracts, in ordinary sectors or special sectors, or concessions, having in each relevant ambit, as an object two or more kinds of provisions, are awarded according to the dispositions applicable to the kind of contract characterizing the main object of the contract concerned. In the case of mixed contracts, consisting partly of services within the meaning of Part II, Title VI,

Cape II, and partly of other services, or of mixed contracts consisting partly of services and partly of supplies, the main subject shall be determined in accordance with which of the estimated values of the respective services or supplies is the highest. The economic operator concurring to the award procedure of a mixed contract must possess the qualification and capacity requirements prescribed by this Code for each of the provisions of works, services, supplies foreseen by the contract.

2. To mixed contracts, in the ordinary sectors and special sectors, having as their subject-matter contracts contained in this Code and in other legal regimes, paragraphs from 3 to 8 shall apply.

3. Where the different parts of a given contract are objectively separable, paragraphs 5, 6 and 7 shall apply. Where the different parts of a given contract are objectively not separable, paragraph 9 shall apply.

4. Where part of a given contract is covered by Article 346 of the Treaty on the Functioning of the European Union or Legislative Decree n. 208 of 15 November 2011, Article 160 shall apply.

5. In the case of contracts having as their subject-matter procurement covered by this Code as well as procurement not falling within the scope of this decree, contracting authorities or contracting entities may choose to award separate contracts for the separate parts or to award a single contract. Where contracting authorities or contracting entities choose to award separate contracts for separate parts, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

6. Where contracting authorities or contracting entities choose to award a single contract, this Code shall, unless otherwise provided in Article 160, apply to the ensuing mixed contract, irrespective of the value of the parts that would fall under a different legal regime and of which legal regime those parts would otherwise have been subject to.

7. In the case of mixed contracts containing elements of supplies, works and services contracts and of concessions, the mixed contract shall be awarded in accordance with this provisions of this Code regulating contracts in the ordinary sectors, provided that the estimated value of the part of the contract which constitutes a contract covered by this Code, calculated in accordance with Article 167, is equal to or greater than the relevant threshold set out in Article 35.

8. In case of contracts having as their subject-matter both contracts in the ordinary sectors and contracts in the special sectors, applicable norms shall be determined, without prejudice to paragraphs 5, 6 and 7, according to paragraphs 1 to 12.

9. Where the different parts of a given contract are objectively not separable, the applicable legal regime shall be determined on the basis of the main subject-matter of the contract in question.

10. In special sectors, in the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for each separate activity or to award a single contract. Where contracting entities choose to award separate contracts, the decision on the applicable legal regime to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned. Notwithstanding paragraphs from 1 to 9, for

contracts in special sectors, where contracting entities choose to award a single contract, paragraphs 11 and 12 shall apply. However, where one of the activities concerned is covered by Article 346 of the Treaty on the Functioning of the European Union or Legislative Decree n. 208 of 15 November 2011, Article 160 shall apply. The choice between awarding a single contract or awarding several separate contracts shall not, however, be made with the objective of excluding the contract or contracts from the scope of application of this Code.

11. To a contract which is intended to cover several activities in the special sectors, the rules applicable to the activity for which it is principally intended shall be applied.

12. In the case of contracts in special sectors for which it is objectively impossible to determine for which activity they are principally intended, the applicable rules shall be determined as follows:

(a) the contract shall be awarded in accordance with the provisions in this Code regulating contracts in the ordinary sectors, if one of the activities for which the contract is intended is subject to the provisions applicable to the award of contracts in the ordinary sectors and the other to the provisions applicable to the award of contracts in the special sectors;

(b) the contract shall be awarded in accordance with the provisions in this Code regulating contracts in the special sectors, if one of the activities for which the contract is intended is subject to the provisions applicable for the award of contracts in the special sectors and the other to the provisions applicable to the award of concessions;

(c) the contract shall be awarded in accordance with this Code, if one of the activities for which the contract is intended is subject to the provisions applicable to the award of contracts in the special sectors and the other is not subject neither to those provisions, nor to those applicable to the award of contracts in the ordinary sectors or the provisions applicable for the award of concessions.

12-bis. In case of mixed contracts containing elements of supply, work and service contracts in the special sectors and of concessions, the mixed contract shall be awarded in accordance with the provisions in this Code regulating contracts in the special sectors, provided that the estimated value of the part of the contract constituting a contract regulated by those provisions, calculated on the basis of Article 35, is equal to or exceeds the relevant threshold set out in Article 35.

Art. 29 **(Principles on transparency)**

1. All acts by contracting authorities and contracting entities relating to the planning of works, services and supplies, as well as to the procedures for the award of public contracts of services, supplies and works, of public design contests, contests of ideas and concessions including those among entities in the framework of the public sector as referred in Article 5, to the composition of the jury and to the curricula of its members, where not considered relevant within the meaning of Article 53 or secret within the meaning of Article 162, shall be published and updated on the buyer's profile, in the section "Transparent Administration" with the implementation of the provisions referred to in legislative decree n.33 of 14 March 2013. For the purpose of allowing the possible proposition of the appeal within the meaning of Article 120, paragraph 2-bis, of the Code of Administrative Procedure shall also be published within 2 days

from the date of adoption of the relevant acts, the provision determining the exclusions from the award procedure and the admissions to the result of the verification of the documentation testifying the absence of the reasons of exclusion set out in Article 80, as well as the subsistence of the economic and financial requirements and of the technical and professional requirements. Within that same time limit of 2 days, notice shall be given to candidates and tenderers, through the modalities set out in Article 5-bis of legislative decree n. 82 of 7 March 2005, Code of Digital Administration or similar instrument in other Member State, of such a provision, by indicating the office or digital link with reserved access where the relevant acts are available. The time limit for appeal set out in the abovementioned Article 120, paragraph 2-bis, shall run from the moment in which the acts referred to in the second period are made concretely available, accompanied by the justification. In the same section shall also be published also the transcripts of the financial management of the contracts at the end of their execution with the modalities provided for in legislative decree n. 33 of 14 March 2013. The acts referred to in this paragraph shall state, in the header or at the bottom, the date of publication on the buyer's profile. This without prejudice to the acts to which Article 73, paragraph 5 shall apply, the time limit to which the legal effects of the publication are connected shall run from the publication on the buyer's profile.

2. The acts referred to in Article 1, in accordance with what provided for in Article 53 shall also published on the website of the Ministry of Infrastructures and Transports and on the digital platform established at the ANAC, also by means of the regional digital systems, within the meaning of paragraph 4, and the regional e-procurement platforms interconnected by means of applicative cooperation.

3. Regions and the autonomous provinces of Trento and Bolzano shall cooperate with State bodies for the safeguard of transparency and legality in the public procurement sector. In particular, they shall act in the territories by supporting contracting authorities or entities in the implementation of this Code and in the monitoring of the different phases of planning, award and execution of the contracts.

4. For contracts and public investments of regional or local entities' competence, contracting authorities or entities shall fulfil their duties of information and publicity provided for in this Code, by means of regional digital systems and interconnected computerised platforms of e-procurement, ensuring the interchange of information and interoperability, with databases from ANAC, the Ministry of Economics and Finances and the Ministry of Infrastructures and Transports.

4-bis. The Ministry of Economics and Finances, the Ministry of Infrastructures and Transports, ANAC and the Conference of Regions and autonomous provinces for those systems referred to in paragraphs 2 and 4 shall share a general protocol aimed at defining the rules for interoperability and the modalities of interchange of data and acts among their respective databases, in accordance with the principle of uniqueness of the place of publication and uniqueness of the submission of information. For public works, the protocol shall be based on what provided for in legislative decree n. 229 of 29 December 2011. The set of shared data and acts in the framework of the protocol shall constitute a priority information source in the field of planning and monitoring of public contracts and investments.

Art. 30

(Principles for the award and execution of procurements and concessions)

1. The award and execution of works, services and supplies contracts and concessions within the meaning of this Code shall ensure the quality of the performances and shall be carried out with respect to the principles of cost-effectiveness, efficacy, timeliness and correctness. In awarding contracts and concessions, the contracting authorities shall also respect the principles of competition, non-discrimination, transparency, proportionality, as well as publicity, according to the modalities indicated in this Code. The principle of cost-effectiveness may be derogated, within the limits in which it is expressly allowed for in current legislation and in this Code, by criteria, provided in the call for competition, inspired to social exigencies, as well as to the safeguard of health, environment, cultural heritage and the promotion of sustainable development, also under a energy standpoint.
2. Contracting authorities or entities cannot artfully limit competition in any way in order to unduly favour or disadvantage some economic operators or, in the award procedures for concessions, including the estimate of value, some works, supplies or services.
3. In the execution of public contracts and concessions, economic operators comply with obligations in the fields of environmental, social and labour law established by Union and national law, collective agreements or by the international provisions listed in Annex X.
4. To the personnel employed in works, services and supplies constituting the subject-matter of public contracts and concessions shall be applied the national and territorial collective agreement in force for the sector and area in which provisions for work agreed upon by the association of employers and work providers comparatively more representative at the national level and those whose scope of application is closely linked to the activity constituting the subject-matter of the contract or concession executed by the undertaking also in a prevalent manner.
5. In case of contributory default resulting from the single document of contributory regularity relating to the personnel employed by the contractor, subcontractor or titular subjects of subcontracts or piecework as referred to in Article 105, employed in the execution of the contract, the contracting authority or entity shall keep from the certification of payment the amount corresponding to the default for the subsequent direct payment to the social security and insurance entities, including, in the field of works, the construction workers' social security fund.
- 5-bis. In any case on the net progressive amount of the provisions a withholding fee of 0,50% shall be operated; the withholdings may be released at the moment of the final liquidation, after the approval by the contracting authority or entity of the certification of testing or verification of conformity, after the issuance of the single document of contributory regularity.
6. In case of delayed payment of the salary to the personnel referred to in paragraph 5, the official responsible of the procedure shall invite in writing the defaulting subject, and in any case the contractor, to provide within 15 days. Where the validity of the request has not been formally and justifiably challenged within the abovementioned time limit, the contracting

authority or entity shall pay also during construction directly to workers the outstanding remuneration, deducting the relevant amount from the sums due to the contractor or from the sums due to the defaulting subcontractor in case the payment is provided within the meaning of Article 105.

7. The criteria for participating to tenders shall be such as not to exclude micro-enterprises, small and medium enterprises.

8. For what not expressly provided for in this Code and in the implementing acts, the award procedures and other administrative acts in the field of public contracts provisions in law n. 241 of 7 August 1990 shall apply, to the conclusion of the contract and to the execution phase the provisions in the Civil Code shall apply.

Art. 31

(Role and functions of the official responsible of the procedure in contracts and concessions)

1. For any individual procedure for the award of a contract or concession contracting authorities or entities shall identify when adopting or updating the programmes in Article 21, paragraph 1, or at the moment of initiation relating to each individual intervention, for the exigencies not included in the planning, an official responsible of the procedure for the planning, design, award and execution phases. Contracting authorities or entities shall make recourse to purchasing and negotiating systems of the central purchasing bodies shall appoint, for each of the abovementioned purchases, an official responsible of the procedure which specifically assumes, in relation to the individual purchase, the role and functions provided for in this Article. Without prejudice to what provided for in paragraph 10, the official responsible for the procedure shall be appointed with a formal act by the responsible subject of the organisational unit, which shall be of an apical level, among the established officials in charge of that same unity, endowed with the necessary level of juridical classification in relation to the structure of the public administration and of professional competences adequate with reference to the tasks to be carried out upon appointment; the substitution of the official responsible of the procedure identified in planning as of Article 21, paragraph 1, shall not involve any modification thereof. Where a shortage in the workforce of the abovementioned organisational unit has been ascertained, the official responsible of the procedure shall be appointed among the other employees in service. The office of official responsible of the procedure shall have a mandatory nature and cannot be rejected.

2. The name of the official responsible of the procedure shall be indicated in the call or notice through which the competition has been issued for the award of a works, services, supplies contracts or, in the procedures where competition is not called by means of a call or notice, in the invitation to submit a tender.

3. The official responsible of the procedure, pursuant to law n. 241 of 7 August 1990, shall perform all the tasks relating to the planning, design, award and execution procedures covered by this Code, which are not specifically assigned to other bodies or subjects.

4. Besides those tasks specifically provided for in other provisions of this Code, in particular, the official responsible of the procedure:

- a) shall formulate proposals and submit data and information in order to prepare the triennial programme of public works and the relevant annual updates, as well as for the preparation of any other act of planning of public contracts of services and supplies and of the preparation of the prior information notice;
 - b) shall control, in each phase of implementation of the investments, the levels of performance, quality and price determined in accordance with the financial budget and with the timeline for realisation of the programmes;
 - c) shall take care of the correct and rational performance of the procedures;
 - d) shall notify possible malfunctions, obstacles, delays in the performance of the interventions;
 - e) shall ascertain the free disposal of necessary areas and immovable properties;
 - f) shall submit to the contracting authority the data and information relating to the main phases of the performance of the intervention, necessary for the activity of coordination, address and control of competence and supervise the efficient economic management of the intervention;
 - g) shall propose to the contracting authority the conclusion of a framework agreement, within the meaning of the norms currently in force, when an integrated and coordinated action of several administrations becomes necessary;
 - h) shall propose the call or, where competent, call the conference of services pursuant to law n. 241 of 7 August 1990, where it is necessary or useful for the acquisition of agreements, opinions, concessions, authorisations, permits, licences, permissions, assents, however described;
 - i) shall verify and supervise the respect of the contractual provisions in concessions.
- comunque denominati;

5. ANAC, by means of guidelines, to be adopted within 90 days from the entry into force of this Code, shall regulate in greater detail the specific tasks of the official responsible for the procedure, the preconditions and modalities of appointment, as well as further professional requirements with respect to what provided for in this Code, in relation to the complexity of the works. With the same guidelines shall be determined also the maximum amount and typology of works, services and supplies for which the official responsible of the procedure may coincide with the designer, the director of works or director of execution. Until the adoption of that act, Article 216, paragraph 8 shall apply.

6. For works and services of architecture and engineering the official responsible of the procedure shall be a technical figure; where such a professional figure is not present, the competences shall be attributed to the responsible of the service to which the work to be realised pertains.

7. In case of particularly complex contracts in relation to the work to be realised or to the specificity of the supply or service, which necessarily require highly specialised evaluations and competences, the official responsible of the procedure shall propose to the contracting authority or entity to confer specific tasks supporting the whole procedure or parts thereof, to be identified since the first steps of the competition.

8. Tasks of planning, security coordination during planning, direction of works, direction of execution, security coordination during execution, testing, as well as tasks that the contracting authority or entity deems necessary in order to support the activity of the official responsible of

the procedure, shall be conferred according to the procedures in this Code and, in case of lower amount than the threshold of € 40,000, directly awarded pursuant to Article 36, paragraph 2, letter (a). The contractor shall not rely on subcontract, except for geologic, geotechnical and seismic enquiries, surveys, detections, measurements and staking, preparation of specialised and detailed documents, as well as for the graphic redaction of design documents. This is, however, without prejudice to the exclusive responsibility of the designer.

9. The contracting authority or entity, in order to improve the quality of the design and overall planning, may, within its organisational autonomy and in accordance with the limits provided in the existing legislation, establish a stable structure supporting the official responsible of the procedure, also under the direct authority of the competent public administration. For that same purpose, within the activity of mandatory training, shall organise specific training for all those employees having the adequate requirements for being appointed as an official responsible of the procedure, also on specific electronic methods and tools such as modelling for building and infrastructure.

10. Contracting authority or entity which are not public administrations or public entities shall identify, according to their regulations, one or more subjects to which they may award the tasks of the official responsible of the procedure, within the limits of the respect of the norms in this decree that they shall observe.

11. In case of ascertained shortcomings in the staff of the contracting authority or entity or where there is no subject possessing the necessary professional capacity for the performance of the tasks of the official responsible of the procedure, according to what attested by the competent manager, supporting tasks to the activity of the official responsible of the procedure may be awarded, in accordance with the procedures set out in this Code, to subjects having the specific technical, economic, financial, administrative, organisational and legal competences, endowed with a suitable insurance policy covering professional risks pursuant to Article 24, paragraph 4, however ensuring the respect of the principles of publicity and transparency. This is without prejudice to the prohibition of artful splitting of performances in order to exclude them from the field of application of this Code. To the contractors of supporting services pursuant to this Code, provisions on incompatibility as referred to Article 24, paragraph 7 shall apply, including possible design tasks.

12. The subject responsible for the competent organisational unit in relation to the intervention, shall previously identify the organisational and operational modalities through which the effective control by the contracting authority or entity on the execution of the performances shall be ensured, envisaging direct accesses for the official responsible of the procedure or the director of works or director of execution on the site of execution, as well as verifications, also unannounced, on the effective respect of all the mitigating and compensating measures, to the provisions in the field of environmental, landscape, historical, architectonical, archaeological and human health safeguard imposed by the competent entities and bodies. The planning document, accompanied by subsequent report on what actually performed, shall constitute a strategic objective in the framework of the plan of organisational performance of the concerned subjects and by consequence it shall be taken into account when evaluating the indemnity of result. The evaluation of such a control activity by the competent evaluation bodies shall also impact on the payment of the incentives referred to in Article 113.

13. In public work contracts awarded with the form of general contractor and in other forms of public-private partnership, it shall be forbidden the attribution of the tasks of official responsible of the procedure, responsible of the works, director of works, tester to that same general contractor or awardees of public-private partnerships or subjects connected to them.

14. Public purchasing bodies and aggregating subjects of contracting authorities or entities shall appoint an official responsible of the procedure for the activities falling within their competences, with tasks and functions determined with reference to the specificity and complexity of the directly managed. processes of acquisition.

Art. 32 **(Phases in the award procedure)**

1. Award procedures of public contracts shall take place in accordance with the acts of planning of the contracting authorities or entities provided in this Code or in other existing norms.

2. Before the initiation of the award procedures for public contracts, contracting authorities or entities, in conformity with their regulations, shall decide or determine to enter into an agreement, by identifying the essential elements of the contract and the selection criteria for economic operators and tenders. In the procedure set out in Article 36, paragraph 2, letter (a), the contracting authority or entity may proceed to the direct award by means of a decision to enter into an agreement, or equivalent act, containing the object of the award, the amount, the supplier, the reasons for the selection of the supplier, the possession by the supplier of the general requirements, as well as technical and professional requirements, where required.

3. The selection of participants and tenders shall take place by means of one of the systems and according to the criteria set out by this Code.

4. Each contractor shall not present more than one offer. The offer shall be binding for the period indicated in the call or invitation and, in case of lack of indication, for 180 days since the time limit for the presentation of the tender has expired. The contracting authority or entity may require to tenderers the delay of that time line.

5. The contracting authority or entity, after verification of the proposal of award pursuant to Article 33, paragraph 1, provides for the award.

6. The award shall not be regarded as acceptance of the tender. The tender by the contractor shall not be revocable until the time limit fixed in paragraph 8.

7. The award becomes effective after the verification of the possession of the necessary requirements.

8. Once the award has become effective, without prejudice to the exercise of the powers of self-defence in cases provided by existing norms, the conclusion of the procurement or concession contract shall take place within the following 60 days, unless a different time limit has been

provided for in the call or invitation to tender, or where the hypothesis of delay has been expressly agreed upon with the contractor. Where the conclusion of the contract has not taken place within the fixed time limits, the contractor may, by means of a notification to the contracting authority or entity, back out from any commitment or withdraw from the contract. The contractor is not entitled to any reimbursement, except the reimbursement of the documented expenses for the contract. In case of works, where the delivery of works has intervened on an urgency basis, and in case of services and supplies, where the execution of contract has commenced on an urgency basis, the contractor shall have the right to be reimbursed of the expenses made for the execution of the works commanded by the director of works, including those for provisional works. In case of services and supplies, where the execution of the contract has commenced on an urgency basis, the contractor shall have the right to the reimbursement of the provisions carried out upon command of the director of the execution. The urgent execution as referred to in this paragraph shall be exclusively accepted in the hypothesis of objectively unforeseeable events, in order to overcome situations of danger for persons, animals or goods, as well as for public hygiene and safety or for the safeguard of the historical, artistic, cultural heritage or in cases in which the lack of immediate execution of the provision indicated in the competition should determine a great damage to public interest it is intended to satisfy, including the loss of European funds.

9. The contract shall however not be concluded before 35 days from the submission of the last communications regarding the award decision.

10. The dilatory time limit referred to in paragraph 9 shall not apply in the following cases:

- a) where, following publication of a call or notice by means of which a tender is called or submission of the invitations in accordance with this Code, a single tender has been presented or admitted and the proposals for challenge of the call or letter of invitations have not been timely proposed or have been rejected with final judgment;
- b) in case of a contract based on a framework agreement referred to in Article 54, in case of specific contracts based on a dynamic purchasing system referred to in Article 55, in case of purchase made through electronic market within the limits of Article 3, letter (bbbb) and in case of awards made pursuant to Article 36, paragraph 2, letters (a) and (b).

11. Where an appeal has been proposed against the award with a simultaneous precautionary request, the contract shall not be concluded, since the moment of the notification of the precautionary measure to the contracting authority or entity and for the following 20 days, provided that within that time limit shall at least intervene the first-instance precautionary decision or the publication of the operative part of the judgement of first instance in case of decision regarding the precautionary hearing or until the pronouncement of those decisions where subsequent. The suspensive effect on the conclusion of the contract ceases where, at the moment of the exam of the precautionary request, the judge declares to be incompetent within the meaning of Article 15, paragraph 4, of the Code of Administrative Procedure contained in Annex I of the legislative decree n. 104 of 2 July 2010, or establishes by means of an order the date of discussion on the merit without conceding precautionary measures or in case of referral of the exam of the precautionary measure to the judgment on the merits, with the consent of the parties, to be intended as an explicit renunciation to the immediate exam of the preliminary request.

12. The contract shall be subjected to the suspensive condition to the positive outcome of the possible approval and other controls provided for in the specific rules of the contracting authorities or entities.

13. The execution of the contract shall commence only after it has become effective, unless, in cases of urgency, the contracting authority or entity requests its anticipated execution, according to the modalities and conditions set out in Article 8.

14. The contract shall be concluded, on pain of nullity, with public notary act in digital form or, in electronic modalities according to the norms existing for each contracting authority or entity, in public administrative form by the requesting official of the contracting authority or entity or by means of a private agreement; in case of negotiated procedure or for awards whose amount do not exceed € 40,000 by means of correspondence according to the customs of commerce consisting in a specific exchange of letters, also by means of certified electronic mail or similar instruments in other Member States.

14-bis. Specifications and the estimated metric calculation, recalled in the call or invitation, shall form integral part of the contract.

Art. 33

(Controls on the acts of the award procedures)

1. The proposal of award shall be subject to the approval by the competent body according to the regulations of the contracting authority or entity and in accordance with the terms thereby provided for, running from the reception of the proposal of award from the competing body. In absence, the time limit shall be of 30 days. The time limit shall be interrupted by any request of clarifications or documentations and shall newly run since the clarifications or documents are dispatched to the requiring body. Once those time limit expire, the proposal of award shall be intended to be approved.

2. The approval of the concluded contract shall take place in accordance with terms and procedures similar to those referred to in paragraph 1. The approval of the contract is subject to the controls provided for in the respective regulations of contracting authorities or entities.

Art. 34

(Energy and environmental sustainability criteria)

1. Contracting authorities or entities shall contribute to the achievement of the environmental goals provided for in the Action Plan for environmental sustainability of the consumptions in the public administration sector by means of the inclusion, in the design and tender documents, at least of the technical specifications and contract clauses included in the minimum environmental criteria adopted by means of a decree of the Minister of Environment and Protection of Land and Sea and in conformity, with reference to the purchase of goods and services in the sectors of collective catering and supply of foodstuffs, also to what specifically provided for in Article 144.

2. The minimum environmental criteria defined in the decree referred to in paragraph, particularly rewarding criteria, shall be taken into consideration also for the purpose of preparing tender documents for the application of the criterion of the most economically advantageous tender within the meaning of Article 95, paragraph 6. In case of contracts relating to procurement contracts referring to restructuration, including demolition and reconstruction, the minimum environmental criteria referred to in paragraph 1, shall be taken into account, where possible, in relation to the typology of the intervention and of the localisation of the works to be realised, on the basis of appropriate criteria defined by the Minister of Environment and Protection of Land and Sea.

3. The obligations referred to in paragraphs , 2 and 3 shall apply for awards of any amount, in relation to the categories of supplies and awards of services and works constituting the subject matter of minimum environmental criteria adopted in the abovementioned Action Plan.

PART II

PROCUREMENT CONTRACTS FOR WORKS, SERVICES AND SUPPLIES

TITLE I - COMMUNITY RELEVANCE AND BELOW-THRESHOLD CONTRACTS

Art. 35

(Community relevance thresholds and methods of calculation of the estimated amount of contracts)

1. For the implementation of this Code, the thresholds of EU relevance are:

- a) euro 5.225.000 for public works contracts and concessions;
- b) euro 135.000 for public supply and services contracts and for public design contests awarded by contracting authorities that are central governmental authorities identified in Annex III; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex VIII;
- c) euro 209.000 for public supply and service contracts and for public design contests awarded by sub-central contracting authorities, that threshold shall also apply to public supply contracts awarded by central government authorities that operate in the field of defence, where those contracts involve products not covered by Annex III;
- d) euro 750.000 for social services and other specific services contracts covered in Annex IX.

2. This Code shall also apply to public contracts in the special sectors, whose value, net of value-added tax, is be equal to or greater than the following thresholds:

- (a) EUR 5.225.000 for works contracts;
- (b) EUR 418 000 for supplies and services contracts as well as for design contests;
- (c) EUR 1.000.000 for services contracts, for social and other specific services listed in Annex IX.

3. The thresholds in this Article shall be periodically updated by means of a decision of the European Commission, which shall find direct application since the date of publication in the Official Journal of the European Union.

4. The calculation of the estimated value of a public works, services and supplies procurement shall be based on the total amount payable, net of VAT, estimated by the contracting authority or the contracting entity. The calculation takes into account the maximum estimated value, including any form of option and any renewal of the contract as explicitly set out in the procurement documents. Where the contracting authority or contracting entity provide for prizes or payments to candidates or tenderers, they shall take them into account when calculating the estimated value of the procurement.

5. Where a contracting authority or a contracting entity are comprised of separate operational units, the total estimated value of the procurement shall take into account the total estimated value for all the individual operational units. Where a separate operational unit is independently responsible for its procurement or certain categories thereof, the value of the procurement may be estimated with reference to the value estimated by the separate operative unit.

6. The choice of the method used to calculate the estimated value of a procurement or concession shall not be made with the intention of excluding it from the scope of the dispositions in this Code relating to the EU thresholds. A procurement shall not be subdivided with the effect of preventing the application of the norms in this Code, unless justified by objective reasons.

7. The estimated value of the procurement shall be quantified at the moment at which the contract notice is issued or a call for competition is sent, or, in cases where a call for competition is not foreseen, at the moment at which the contracting authority or the contracting entity commences the award procedure.

8. With regard to public works contracts, the calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authority or contracting entity, provided that they are necessary for executing the works. The value of the supplies and services not necessary to the execution of a specific works contract shall not be added to the value of the works procurement in a way to exclude the purchase of these supplies and services from the application of this Code.

9. For works and services contracts:

- a) where a proposed work or a proposed provision of services may result in contracts being awarded simultaneously in the form of separate lots, account shall be taken of the total estimated value of all such lots;
- b) where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 4, the dispositions of this Code shall apply to the awarding of each lot.

10. For supplies contracts:

- a) where a proposal for the acquisition of similar supplies may result in contracts being awarded simultaneously in the form of separate lots, in the application of thresholds as referred to in paragraphs 1 and 2 the total estimated value of all such lots is calculated;
- b) where the aggregate value of the lots is equal to or exceeds the thresholds laid down in paragraphs 1 and 2, the provisions of this Code shall apply to the awarding of each lot.

11. Notwithstanding paragraphs 9 and 10, contracting authorities or contracting entities may award contract for individual lots without applying the procedures in this Code, when the estimated value net of VAT of the lot is less than euro 80.000 for supplies or services or euro 1.000.000 for works, provided that the aggregate value of the lots awarded shall not exceed 20% of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed provision of services has been divided.

12. Where public supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the base for the calculation of the estimated value of the contract shall be:

- a) the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, where possible, to take account of the changes in terms of quantity or value which would occur in the course of the 12 months following the initial contract;
- b) the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year where that is longer than 12 months.

13. With regard to public supply contracts relating to the leasing, hire, rental or hire-purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

- a) in the case of fixed-term public contracts, where that term is less than or equal to 12 months, the total estimated value for the term of the contract or, where the term of the contract is greater than 12 months, the total value including the estimated residual value;
- b) in the case of public contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

14. With regard to public service contracts, the value on the basis of which the estimated value of the contract shall be calculated, according to the kind of services, is the following:

- a) for insurance services: the premium payable and other forms of remuneration;
- b) for banking and other financial services: the fees, commissions payable, interests and other forms of remuneration;
- c) for design contracts: fees, commissions payable and other forms of remuneration;
- d) for public services contracts which do not indicate a total price:
 - 1) in the case of fixed term contracts, where that term is less than or equal to 48 months, the total estimated value for their full term;
 - 2) in the case of contracts without a fixed term or for with a term greater than 48 months, the monthly value multiplied by 48.

15. The calculation of the estimated value of a mixed contract of services and supplies shall be based on the total value of the services and supplies, irrespective of their respective quotes. This calculation shall include the value of the operations of siting and installation.

16. With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

17. In the case of innovation partnerships, the value to be taken into consideration shall be the

maximum estimated value net of VAT of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.

18. On the value of the procurement contract shall be calculated the amount of the anticipation of price of 20% to be paid to the contractor within 15 days from the effective initiation of the works. The delivery of the compensation shall be subjected to the provision of a financial or insurance guarantee for an amount equal to the anticipation plus the legal interest rate applied for the period necessary for the recovery of that same anticipation according to the timetable of the works. The abovementioned guarantee shall be issued by authorised bank enterprises within the meaning of legislative decree n.385 of 1 September 1993, or insurances authorised to cover those risks to whom the insurance refers to and can meet the solvency requirements provided for in the laws regulating the relevant activity. The guarantee may also be issued by financial intermediaries enrolled in the financial intermediaries register provided for in Article 106 of legislative decree n. 385 of 1 September 1993. The amount of the guarantee shall be gradually and automatically reduced during the course of works, in relation to the progressive recovery of the anticipation by the contracting authorities or entities. The beneficiary shall lose the anticipation, with obligation of reimbursement, where the execution of the works should not go ahead, for delays attributable to it, according to contractual timeframes. On the reimbursed amount the legal interests shall be due starting from the date of provision of the anticipation.

Art. 36 **(Below-threshold contracts)**

1. The award and execution of works, services and supplies for an amount less than the thresholds set out in Article 35 shall take place in accordance with the principles set out in Articles 30, paragraph 1, 34 and 42, as well as in accordance with the principle of rotation of invitations and awards and in a way to ensure the effective possibility for participation to micro-enterprises and small and medium enterprises. Contracting authorities or entities may, also, apply the provisions set out in Article 50.

2. Without prejudice to what provided for in Articles 37 and 38 and without prejudice to the possibility to use ordinary procedures, contracting authorities or entities shall proceed to the award of works, services and supplies for an amount lower than the thresholds set out in Article 35, according to the following modalities:

- a) for awards whose amount is less than € 40,000, by means of direct award also without prior consultation of two or more economic operators or for works in direct administration;
- b) for awards whose amount is equal to or exceeds € 40,000 and less than € 150,000 for works, or to the thresholds set out in Article 35 for supplies and services, by means of negotiated procedure with prior consultation, where existing, of at least ten economic operators for works and, for services and supplies, of at least five economic operators identified on the basis of market analyses or lists of economic operators, in accordance with a criterion of rotation of invitations. Works may be executed also in direct administration, without prejudice to the purchase or lease of equipments, for which the negotiated procedure with prior consultation as referred to in the previous period shall apply. The notice on the results of the award procedures shall contain also the indication of the invited subjects;

c) for works whose amount is equal to or exceeds € 150,000 and less than € 1 million, by means of a negotiated procedure with consultation of at least 15 economic operators, where existing, and in accordance to a criterion of rotation of invitations, identified on the basis of market analyses or lists of economic operators. The notice on the results of the award procedure shall contain indication also of the invited subjects:

d) for works whose amount is equal to or exceeds € 1 million by means of the ordinary procedures without prejudice to what provided for in Article 95, paragraph 4, letter (a).

3. For the award of public works as referred to in Article 1, paragraph 2, letter (e) of this Code, relating to the town-planning works deducted for amounts less than those referred to in Article 35, the provisions set out in paragraph 2 shall apply.

4. In case of primary town-planning works whose amount is less than the threshold set out in Article 35, paragraph 1, letter (a), calculated according to the provisions in Article 35, paragraph 9, that are functional to the intervention of urban transformation of the area, Article 16, paragraph 2-bis of the Presidential Decree n. 380 of 6 June 2001 shall apply.

5. In cases in which the contracting authority or entity has used the negotiated procedures as referred to in paragraph 2, the verification of the requirements shall take place on the contractor. However, the contracting authority or entity may extend the verifications to other participants. Contracting authority or entity shall verify the possession of the economic and financial requirements, as well as technical and financial requirements, where required in the letter of invitation.

6. For the conduct of the procedures in this Article contracting authorities or entities may proceed through an electronic market allowing computerised purchases on the basis of a system operating procedures for the selection of the contractor entirely managed by electronic means. The Ministry of Economics and Finances, relying on CONSIP S.p.A., shall make available for contracting authorities or entities the electronic market of public administrations.

6-bis. In the electronic markets referred to in paragraph 6, for awards whose amount is less than € 40,000, the verification on the absence of the grounds of exclusion set out in Article 80 shall be made on a significant sample during the admission and permanence phase, by the subject responsible for the admission to the electronic market. This is without prejudice to the verification on the contractor pursuant to paragraph 5.

7. ANAC, by means of guidelines, to be adopted within 90 days from the entry into force of this Code, shall establish detailed modalities to support contracting authorities and entities and improve the quality of procedures referred to in this Article, of market analyses, as well as for the redaction and management of the lists of economic operators. In the abovementioned guidelines, specific modalities of rotation of invitations and awards and of implementation of verifications on the selected contractor without conduction of a negotiated procedures shall be indicated, together with modalities of performing the invitations where the contracting authority or entity intends to rely on the faculty of excluding anomalous bids. Until the adoption of those guidelines, Article 216, paragraph 9 shall apply.

8. Public undertakings and those subjects holding special and exclusive rights for work, supply

and service contracts for an amount less than the EU threshold, falling within the scope of Articles 115 to 121, shall apply the rules contained in their respective regulations, which, however, shall be in accordance with the principles contained in the EU Treaty on the safeguard of competition.

9. In case of use of ordinary procedures, in accordance with the principles contained in Article 79, the minimum time limits set out in Articles 60 and 61 may be reduced up to half. Calls and notices shall be published on the buyer's profile of the contracting authority or entity and on the digital platform of tenders managed by ANAC as referred to in Article 73, paragraph 4, with the effects provided by paragraph 5 of that Article. Until the date in Article 73, paragraph 4, for the juridical effects connected to the publication, calls and notices for contracts relating to works whose amount is equal to or exceeds € 150,000 and for contracts relating to supplies and services shall also be published in the Official Journal of the Italian Republic, special series on public contracts; to the same effects, calls and notices for contracts relating to works whose amount is less than € 150,000 shall be published in the official notice board of the municipality where the works are executed.

TITOLO II

QUALIFICATION OF THE CONTRACTING AUTHORITIES OR ENTITIES

Art. 37 **(Aggregation and centralisation of demands)**

1. Contracting authorities or entities, notwithstanding the obligation to use acquisition and negotiation tools, also computerised, provided by current provisions relating to the containment of public expenditure, may proceed directly and autonomously to the acquisition of supplies and services for a value lower than euro 40.000 and of works for a value lower than euro 150.000, as well as through the execution of orders from purchasing tools made available by central purchasing bodies and aggregating entities. In order to execute procedures for a value exceeding the thresholds indicated in the previous paragraph, contracting authorities or entities shall possess the necessary qualification as referred to in Article 38.

2. Notwithstanding what provided for in paragraph 1, for the purchase of supplies and services for a value exceeding € 40,000 and lower than the threshold set out in Article 35, as well as for the purchase of works of ordinary maintenance for a value exceeding € 150,000 and lower than € 1 million, contracting authorities or entities possessing the necessary qualification provided for in Article 38 as well as other subjects and organs referred to in Article 38, paragraph 1 proceed through the autonomous use of the computerised tools of negotiation made available by the central purchasing bodies qualified in accordance with the current legislation. In case of unavailability of those tools, also in relation to individual product categories, contracting authorities or entities shall operate pursuant to paragraph 3 or proceed through the development of procedures provided for in this Code.

3. Contracting authorities or entities not possessing the necessary qualification pursuant to

Article 38 shall acquire supplies, services and works by recurring to a central purchasing body or through aggregation with one or more contracting authorities or entities having the necessary qualification.

4. Where the contracting authority or entity is a municipality that is not a provincial capital, without prejudice to what provided for in paragraphs 1 and in the first period of paragraph 2, shall proceed according to one of the following modalities:

- a) by making use of a central purchasing body or qualified aggregating subjects;
- b) by means of union of municipalities established and qualified as central purchasing body, or by an association or consortium in central purchasing bodies within the forms provided in the legal framework;
- c) by means of a single contracting authority established at the provincial level, in the metropolitan cities or through the vast area entities within the meaning of law n. 56 of 7 April 2014.

5. By means of a decree of the President of the Ministers, upon proposal of the Minister of Economics and Finances, after having reached an agreement within the unified conference, within six months from the entry into force of this Code, ensuring the safeguard of linguistic minorities, shall be identified the reference territorial areas in application of the principles of subsidiarity, differentiation and adequacy, and shall be established the criteria and modalities for the constitution of the central purchasing bodies under the form of union of municipalities that are not provincial capitals. In case of concession of network public local services of general economic interest, the sphere of competence of the central purchasing body shall coincide with the territorial ambit of reference (ATO), identified on the basis of the sectorial legislation. This shall be without prejudice to the competences of the provinces, metropolitan cities and vast area entities within the meaning of law n. 56 of 7 April 2014. Until the date of entry into force of the decree referred to in the first period, Article 216, paragraph 10 shall apply.

6. Notwithstanding what provided for in paragraphs 1 to 3, contracting authorities or entities may acquire works, supplies or services through a central purchasing body that is qualified within the meaning of Article 38.

7. Central purchasing bodies may:

- a) award contracts, conclude and execute contracts on behalf of contracting authorities and contracting entities;
- b) conclude framework agreements to which qualified contracting authorities or entities may recur to award their own contracts;
- c) operate dynamic purchasing systems and electronic auctions.

8. Qualified central purchasing bodies may carry out ancillary purchasing activities for other central purchasing bodies or for one or more contracting authorities or entities in relation to the possessed qualification requirements and to the territorial reference ambits identified by the decree referred to in Article 5.

A contracting authority or entity, in the context of procedures managed by the central purchasing body of which it is part, is responsible for the respect of this Code for the activities that are directly imputable to it. The central purchasing body which exclusively pursues

activities of centralization of awarding procedures on behalf of other contracting authorities and contracting entities must respect the provisions in this Code and is held directly responsible for that.

10. Two or more contracting authorities or entities deciding to jointly execute specific procurements and concessions and possess, also in a cumulative way, of the necessary qualifications in relation to the value of the procurement or concession, are jointly responsible of the compliance with the obligations deriving from this Code. The contracting authorities or entities also proceed to identify a single responsible of the proceeding in common between them, for each procedure, in the act through which they agreed the form of aggregation in central purchasing body referred to in paragraph 4 or the recourse to the central purchasing body. Provisions referred to in Article 31 shall apply.

11. Where the conduct of a procurement procedure is not in its entirety carried out in the name and on behalf of the contracting authorities concerned, they shall be jointly responsible only for those parts carried out jointly. Each contracting authority or entity shall have sole responsibility for fulfilling its obligations pursuant to this Code in respect of the parts it conducts in its own name and on its own behalf.

12. Without prejudice to the obligations to use the purchasing and negotiation tools provided for in the existing provisions on the containment of the expenses, in the identification of the central purchasing body, also located in another Member State of the European Union, contracting authorities or entities may proceed on the basis of the principle of good administration, giving adequate justification.

13. Contracting authorities or entities may use a central purchasing body located in another Member State of the European Union only for activities of centralisation of purchases carried out in the form of centralised purchase of supplies and/or services to contracting authorities or entities; the provision of the activity of centralisation of purchases by a central purchasing body located in another Member State shall be made in conformity with national provisions of the Member State where the central purchasing body is located.

14. From the application of this Article shall be excluded the contracting entities which are not contracting authorities when they carry out one of the activities provided for in Articles 115 to 121 and the other contracting subjects referred to in Article 3, paragraph 1, letter (g).

Art. 38

(Qualification of contracting authorities or entities and central purchasing bodies)

1. Without prejudice to what provided for in Article 37 regarding aggregation and centralisation of contracts, at ANAC, which shall ensure its publicity, shall be established a specific list of qualified contracting authorities or entities including central purchasing bodies. The qualification shall be obtained with reference to the ambits of activity, to territorial basins, to the typology and complexity of the contract and ranges of amounts. The Minister of Infrastructures and Transports, including the interregional superintendencies for public works, CONSIP S.p.A., INVITALIA - National Agency for the Attraction of Investments and Enterprise Development

S.p.A, as well as the regional aggregating subjects referred to in Article 9 of legislative decree n. 66 of 24 April 2014, converted with modifications by law n. 89 of 23 June 2014, shall be included in the list by right.

2. By means of a decree of the President of the Council of Ministers, to be adopted, upon proposal of the Minister of Infrastructures and Transports and of the Minister of Economics and Finances, in agreement with the Minister for the Simplification of Public Administration, within 90 days from the entry into force of this Code, having heard ANAC and the Unified Conference, shall be defined the technical and organisational requirements for the enrolment in the list referred to in paragraph 1, in application of the criteria of quality, efficiency and professionalism, including, for central purchasing bodies, the character of stability of activities and the relevant territorial ambit. The decree shall also establish the modalities of implementation of the system of qualification attestations and possible update and withdrawal, as well as the date from which the new system of qualification shall enter into force.

3. Qualification has as subject-matter the set of activities characterising the process of acquisition of a good, service or work in relation to the following ambits:

- a) planning and design capacity;
- b) award capacity;
- c) capacity of verification on the execution and control of the entire procedure, including testing and installation.

4. The requirements in paragraph 3 shall be identified on the basis of the following parameters:

- a) basic requirements, such as:
 - 1) stable organisational structures intended for the ambits referred to in paragraph 3;
 - 2) presence in the organisational structure of employees having the specific competences in relation to the activities in paragraph 3;
 - 3) system of training and upgrading of the staff;
 - 4) number of tenders carried out in the previous five years with indication of typology, amount and complexity, number of approved variants, verification on the deviation between the tendered amounts and the final balance of expenses incurred, respect of the timelines for execution of the entrusting, award and testing procedures;
 - 5) respect of the time limits provided for the payment of undertakings and suppliers as established by the existing legislation or the respect of the payment of undertakings and suppliers, according to the indexes of timeliness indicated in the decree adopted for the implementation of Article 33 of legislative decree n. 33 of 14 March 2013;
 - 5-bis) fulfilment of the obligations to communicate the data on public work, service and supply contracts in the archives held or managed by the Authority, according to Article 213, paragraph 9;
 - 5-ter) for works, fulfilment of what provided for in Articles 1 and 2 of legislative decree n. 229 of 29 December 2011, on monitoring procedures of the state of the implementation of public works, verification of the use of funds in the expected timeframes and establishment of the Work funds, and in Article 29, paragraph 3;
- b) rewarding requirements, such as:
 - 1) positive evaluation by ANAC with reference to the implementation of measures for the prevention of corruption risks and promotion of legality;
 - 2) presence of quality management systems in conformity with the standard UNI EN ISO 9001

for offices and competition procedures, certified by accredited bodies for that purpose within the meaning of European Parliament and Council regulation EC 765/2008;

3) availability of digital technologies for the management of competition procedures;

4) level of defeat in disputes;

5) implementation of the criteria of environmental and social sustainability in the planning and award activities.

4-bis. Contracting authorities whose organisation provides for articulation, also territorial, shall verify the subsistence of the requirements referred to in paragraph 4 upon those same structures and notify to ANAC for qualification.

5. Qualification obtained shall last for 5 years and may be reviewed after verification, also on the base of samples, by ANAC or upon request by the contracting authority or entity.

6. ANAC shall establish the implementing modalities for the system of qualification, on the basis of what provided for in paragraphs 1 to 5, and shall allocate to contracting authorities or entities and to central purchasing bodies, also for ancillary activities, an adequate time limit in order to obtain the necessary requirements for qualification. It shall also establish different modalities which take into account the peculiarities of private subjects requesting qualification.

7. By means of the provision referred to in paragraph 6, ANAC shall also establish cases in which qualification with reserve may be decided, in order to allow the contracting authority or entity and the central purchasing body, also for ancillary activities, to acquire the required technical and organisational capacity. The qualification with reserve shall have a maximum duration not exceeding the time limit established in order to obtain the requirements necessary for the qualification.

8. Since the date of entry into force of the new system of qualification for contracting authorities or entities, ANAC shall not issue the Identification Tender Code (CIG) to contracting authorities or entities which proceed to the purchase of goods, services or works not falling within the obtained qualification. Until that date, Article 216, paragraph 10 shall apply.

9. A percentage of the resources of the fund referred to in Article 213, paragraph 14, allocated to the contracting authority or entity by means of the decree referred to in that paragraph shall be attributed by the administration of which the rewarded contracting authority or entity forms a part to the fund for the remuneration of the results of managers and employees working in the competent organisational units for the procedures in this Code. The positive evaluation of the contracting authority or entity shall be notified by ANAC to the administration of which they form a part in a way that it shall take into account for the evaluation of the organisational and operational performances of the concerned employees.

10. Contracting entities which are not contracting authorities and other contracting subjects referred to in Article 3, paragraph 1, letter (g) shall be excluded from the application of this Article.

Art. 39

(Ancillary purchasing activities)

1. The ancillary purchasing activities referred to in Article 3, paragraph 1, letter (m) may be attributed to central purchasing bodies referred to in Article 38.
2. Besides cases in paragraph 1, contracting authorities or entities may recur, for the performance of ancillary purchasing activities, with exclusion of the activities referred to in Article 3, paragraph 1, letter (m), point 4, to service providers identified by means of the conduct of procedures in this Code.

Art. 40

(Obligation of using electronic means of communication in the conduct of award procedures)

1. Communications and information exchange relating to procedures set out in this Code and conducted by central purchasing bodies shall be carried out using electronic means within the meaning of Article 5-bis of legislative decree n.82 of 7 March 2005, Code of Digital Administration.
2. Since 18 October 2018 onwards, communications and exchanges of information relating to procedures set out in this Code conducted by central purchasing bodies shall be carried out using means of electronic communication.

Art. 41

(Measures for the simplification of the procurement procedures carried out by central purchasing bodies)

1. Within one year from the entry into force of this Code, by means of a decree of the President of the Council of Ministers, upon proposal of the Minister of Economics and Finances, having heard the Unified Conference and CONSIP S.p.A. and aggregating subjects, the measures of revision and efficiency increase of the procurement procedures, framework agreements, covenants and in general of the procedures to be used by CONSIP, aggregating subjects and central purchasing bodies aimed at improving the quality of purchases and reduce the costs and timeframes for the conduct of competitions shall be identified, also by promoting a system of purchasing networks with the purpose of achieving a wider recourse to digital tenders and awards and the effective participation of micro-enterprises, small and medium enterprises, in accordance with the provisions set out in this Code and in the European Union legal framework.
2. The identification of the measures referred to in paragraph 1 shall be conducted, with reference to the goals of rationalisation of public spending pursued through the activities of CONSIP and of the aggregating subjects, on the basis of the following criteria: standardisation of purchase solutions in aggregated form in such a way as to respond to public demand in the widest possible measure, leaving to more specific solutions the satisfaction of peculiar non-standardised needs; progressive increase in the use of digital tools, also through forms of cooperation among aggregating subjects; monitoring of the effective implementation of the

phases of the procedures, also in relation to the forms of coordination of planning among aggregating subjects; reduction of the costs of participation to the procedures for economic operators.

2-bis. It shall be forbidden to charge on competitors, as well as on the contractor, any cost connected to the management of the platforms referred to in Article 58.

3. Within 30 days from the adoption of the review decisions, subjects referred to in paragraph 1 shall transmit to the "Cabina di Regia" referred to in Article 212 and to ANAC a report on the review activities carried out, emphasising, also in percentage terms, the increase in the use of digital tenders and awards, as well as the solutions adopted in order to ensure the effective participation of micro-enterprises, small and medium enterprises.

Art. 42

(Conflict of interest)

1. Contracting authorities or entities shall take appropriate measures to combat fraud and corruption, as well as to effectively identify prevent and remedy any hypothesis of conflicts of interest in the conduct of contract and concession award procedures, so as to avoid any distortion of competition and to ensure the transparency of competition and ensure the equal treatment of all economic operators.

2. There is conflict of interest when staff members of a contracting authorities or entities or service providers intervene, also on behalf of the contracting authority or entity, in the conduct of the contract or concession award procedure or may influence, in any way, the outcome of that procedure or have, directly or indirectly, a financial, economic or other personal interest which might be perceived as a threat to their their impartiality and independence in the context of the contract or concession award procedure.

In particular, it can be considered as situations of conflict of interest all these situations determining the obligation to abstain provided for in Article 7 of the Decree of the President of the Republic n. 62 of 16 April 2013.

3. Staff members falling in one of the hypothesis contained in paragraph 2, shall give communication to the contracting authorities or entities, abstain from participating in the contract or award concession procedure. Without prejudice to the hypothesis of administrative and criminal liability, the lack of abstention in cases provided in the first period constitute in any case a cause of disciplinary liability of the public official.

4. Provisions in paragraphs 1, 2 and 3 shall also apply to the phase of execution of public contracts.

5. The contracting authority or entity shall supervise on the respect of the provisions in paragraphs 3 and 4.

Art. 43

(Contracts involving contracting authorities and contracting entities in different Member States)

1. Contracting authorities and contracting entities may recur to central purchasing bodies located in another Member State of the European Union conducting their activities in accordance with the national provisions of the Member State in which they are located, within the limits provided for in Article 37, paragraph 13.

Contracting authorities or contracting entities may award a public contract, conclude a framework agreement or operate a dynamic purchasing system jointly with contracting authorities or contracting entities of different Member States by concluding an agreement that determines:

- (a) the responsibilities of the parties and the relevant applicable national provisions;
- (b) the management of the award procedure, the distribution of the works, supplies or services to be procured, and the terms of conclusion of contracts. The attribution of responsibilities and the applicable national law are indicated in the procurement documents of the public contracts jointly procured.

Where one or more national contracting authorities or one or more national contracting entities have constituted with contracting authorities or contracting entities of different Member States a joint entity, with the European Groupings of Territorial Cooperation referred to in Regulation (EC) n. 1082/2006 of the European Parliament and of the Council, or other entities established under Union law, with a dedicated agreement establish the national applicable norms to the procurement procedures of one of the following Member States:

- (a) the Member State where the joint entity has its registered office;
- (b) the Member State where the joint entity is carrying out its activities.

The agreement referred to in this Article may either apply for an undetermined period, when fixed in the constitutive act of the joint entity, or may be limited to a certain period of time, certain types of contracts or to individual contracts.

Art. 44

(Digitalisation of procedures)

1. Within one year from the entry into force of this Code, by means of a decree by the Minister for the Simplification of Public Administration, in accordance with the Minister for Infrastructures and Transports and the Minister for Economics and Finances, having head the Agency for Digital Italy (AGID) as well as the Authority for the Safeguard of Privacy in respect of its own competence, the modalities of digitalisation of procedures of all public contracts shall be defined, also by means of inter-connection for interoperability of public administrations' data. Furthermore, the best practices regarding organisational and working methodologies, planning and design methodologies, also referred to the identification of relevant data, the gathering, management and elaboration thereof, digital computerised, technological and supporting solutions shall be defined.

Art. 45
(Economic operators)

1. Economic operators referred to in Article 3(1), letter (p) are eligible for the award procedures of public contracts, as well as the economic operators established in other member States, formed in conformity with the law of that State. Economic operators, groups of economic operators, including temporary associations, which according to the law of the Member State in which they have been formed, are entitled to provide the service object of the award procedure, may participate in the award procedure of public contracts also in case they would have been required to be either natural or legal persons according to the provisions of this Code.

2. The following subjects shall fall within the definition of economic operators:

- a) individual entrepreneurs, also artisans, and societies, also cooperatives;
- b) consortia between cooperative societies of production and work established in accordance with law n. 422 of 25 June 1909, and with the decree of the provisional Head of State n. 1577 of 14 December 1947, and subsequent modifications, and consortia between craftmanships pursuant to law n. 443 of 8 August 1985;
- c) stable consortia, also established in form of consortium companies pursuant to Article 2615-ter of the Civil Code, among individual entrepreneurs, also artisans, commercial societies, cooperative societies of production and work. Stable consortia set up by no less than three consortium members which, by means of a decision taken by the relevant deliberation bodies, decides to operate jointly in the sector of public contracts of works, services and supplies for a period of time exceeding 5 years, and to set up a shared enterprise structure for that purpose;
- d) temporary groups of tenderers, set up by subjects referred to in letters (a), (b) and (c), which, before the presentation of the tender, have conferred a special collective mandate of representation to one of them, qualified as agent, which shall express the tender in the name and on behalf of itself and of the principals;
- e) ordinary consortia of tenderers as referred to in Article 2602 of the Civil Code, set up by subjects referred to in letters (a), (b) and (c) of this paragraph, also in associated form in accordance with Article 2615-ter of the Civil Code;
- f) aggregations of enterprises adhering to the network contract pursuant to Article 3, paragraph 4-ter, of law-decree n. 5 of 10 February 2009, converted with modifications by law n. 33 of 9 April 2009;
- g) subjects having concluded the agreement for the European Group of Economic Interest (EGEI) pursuant to legislative decree n. 240 of 23 July 1991.

3. Contracting authorities or entities may require groups of economic operators to assume a specific legal form once they have been awarded the contract, in case that the transformation is necessary for the satisfactory performance of the contract.

4. Contracting authorities or entities may impose to legal persons to indicate, in the tender or in the application for award procedures for services and works, as well as for supplies covering also services or works of installation and concessions, the names and relevant professional qualifications of the natural persons responsible for the performance of the contract in question.

5. Contracting authorities or entities may request groups of economic operators conditions for the execution of a contract or concession that are different from those imposed to single

participants, provided that they are proportionate and justified by objective reasons.

Art. 46

(Economic operators for the award of architecture and engineering services)

1. To the procedures for the award of services relating to architecture and engineering shall be admitted to participate:

- a) architecture and engineering service providers: individual and associated professionals, societies among professionals as referred to in letter (b), engineering societies as referred to in letter (c), consortia, EGEL, temporary groups among the abovementioned subjects delivering to public and private buyers, operating on the market, architecture and engineering services, as well as technical and administrative activities and economic and financial feasibility studies connected thereof, including, with reference to interventions relating to renovation and maintenance of movable goods and decorated surfaces of architectural goods, subjects qualified as restorers of cultural goods within the meaning of the legislation currently in force;
- b) societies of professionals: societies exclusively set up by professionals enrolled in the specific registers provided for in the professional regulations currently in force, in the forms of societies of persons as referred to in Chapters II, III and IV of Title V of the fifth book of the Civil Code or in the form of cooperative society as referred to in Chapter I of Title VI of the fifth book of the Civil Code, pursuing for private and public buyers architecture and engineering services such as feasibility studies, researches, advises, design or direction of works, evaluation on the technical and economic congruity or environmental impact studies;
- c) engineering societies: capital companies as referred to in Chapters V, VI and VII of Title V of the fifth book of the Civil Code or in the form of cooperative society as referred to in Chapter I of Title VI of the fifth book of the Civil Code, not having the requirements of societies among professionals, executing feasibility studies, researches, advises, design or direction of works, evaluation on the technical and economic congruity or environmental impact studies, as well as any activity of production of goods connected to the performance of such services;
- d) providers of architecture and engineering services identified by CPV codes from 74200000-1 to 74276400-8 and from 74310000-5 to 74323100-0 and 74874000-6 established in other Member States, set up in conformity with the legislation in force in the respective States;
- e) temporary groups established by subjects referred to in letters from (a) to (d);
- f) stable consortia of societies of professionals and of engineering societies, also in mixed form, set up by no less than three consortium members having operated in the architecture and engineering sectors.

2. For the purpose of the participation in the award procedures referred to in paragraph 1, societies, for 5 years since their establishment, may document the possession of the economic and financial as well as technical and organisational requirements requested by the tender notice also with reference to the requirements for the partners of the society of persons or cooperative society or technical directors or professionals employed by the society with a full-time work contract, when set up in the form of capital companies.

Art. 47

(Requirements for the participation of consortia to tenders)

1. The requirements of technical and economic suitability for the admission to award procedures for subjects in Article 45, paragraph 2, letters (b) and (c) shall be possessed and proved by those subjects with the modalities provided for in this Code, except for those relating to the availability of equipments and workforces, as well as to the average yearly staff, which shall be cumulatively calculated on the consortia even where possessed by the individual associated enterprises.

2. Consortia referred to in Article 45, paragraph 2, letter (c) and 46, paragraph 1, letter (f), for the purpose of qualification, may use both the qualification requirements autonomously reached, and those possessed by the individual associated enterprises designed for the execution of the provisions and, by means of reliance, those of the individual associated enterprises not designed for the execution of the contract. By means of the guidelines by ANAC as referred to in Article 84, paragraph 2, the criteria for the attribution of the performances to the consortium or to the individual societies executing the provisions shall be established.

Art. 48

(Temporary groups and ordinary consortia of economic operators)

1. In case of works, for temporary vertical groups shall be intended a grouping of economic operators within which one of them realizes the works of the prevailing category; for unbundled works shall be intended those works as defined in Article 3, paragraph 1, letter (oo-ter) to be assumed by one of the principals; for horizontal group shall be intended a grouping of economic operators aimed at realising works of the same category.

2. In case of supplies or services, for vertical group shall be intended a grouping of economic operators within which the agent provides services and supplies indicated as most important also in economic terms, while the principals execute secondary works or supplies; for horizontal group shall be intended a grouping where economic operators perform the same kind of provision; contracting authorities or entities shall indicate in the call for competition the most important and secondary provisions.

3. In case of works, temporary groups and ordinary consortia shall be admitted where the entrepreneurs participating to the group, or the associated entrepreneurs, have the requirements referred to in Article 84.

4. In case of works, supplies or services, in the tender shall be specified the categories of works or parts of the supply or service that will be executed by grouped or associated individual economic operators.

5. Tenders by grouped or associated economic operators shall determine their joint responsibility before the contracting authority or entity, as we³³ as the subcontractor and suppliers. For those taking works to be unbundled and, in case of services and supplies, for those taking secondary provisions, the responsibility shall be limited to the execution of the provisions of respective competence, without prejudice to the joint responsibility of the agent.

6. In case of works, for horizontal temporary works, the requirements referred to in Article 84, provided that they can be separated, shall be possessed by the agent for works of the most important category and for the relevant amount; for unbundled works each principal shall possess the requirements provided for the amount of the category of works that it wishes to take and in the measure indicated for the individual competitor. Works that can be referred to the most important category or to unbundled categories may be also taken by entrepreneurs grouped in a horizontal temporary grouping.

7. It shall be prohibited to competitors to participate to the tender in different temporary groups or ordinary consortium of competitors, or to participate to the tender also in individual form where it has participated to the same competition in a group or ordinary consortium of competitors. Consortia referred to in Article 45, paragraph 2, letters (b) and (c) shall also indicate, when tendering, for which associated members the consortium is tendering; those members shall not participate, under any other form, to that same tender; in case of violation both the consortium and the consortium member shall be excluded from the competition; in case of lack of respect of this prohibition, Article 353 of the Criminal Code shall apply.

7-bis. For reasons indicated in the following paragraphs 17, 18 and 19 or for intervened facts or acts, subjects indicated in Article 45, paragraph 2, letters (b) and (c) may design for the execution of works or services, an associated enterprise different than the one indicated when tendering, provided that the subjective modification is not aimed at excluding in that phase the lack of a requirement for participation to the associated enterprise.

8. It is possible for subjects referred to in Article 45, paragraph 2, letters (d) and (e) to present tenders even when they are still not established. In that case the offer shall be subscribed by all the economic operators that will establishes the temporary groups or ordinary consortia of competitors and shall include the commitment that, in case of award, those same economic operators will confer special collective mandate with representation to one of them, to be indicated while tendering and qualified as agent, which will conclude the contract in the name and on behalf of itself and its principals.

9. The association in participation shall be forbidden both during the tender procedure and after the award. Without prejudice to what provided for in Articles 17 and 18, any modification in the composition of temporary groups or ordinary consortia of participants shall be forbidden with respect to that resulting from the commitment presented while tendering.

10. The lack of respect of the prohibitions in paragraph 9 shall lead to the annulment of the award or the nullity of the contract, as well as the exclusion of competitors associated in group or ordinary consortium of competitors, simultaneously or following the award procedures relating to the same contract.

11. In case of restricted or negotiated procedures, or competitive dialogue, the economic operator that has been individually invited, or the candidate that has been individually admitted in the procedure of competitive dialogue, shall have the possibility to present an offer or to negotiate for itself or as an agent of grouped operators.

12. For the purposes of establishing a temporary group, economic operators may confer, with a single act, collective special mandate with representation to one of them, called agent.

13. The mandate shall result from an authenticated private agreement. The relevant proxy shall be conferred to the legal representative of the economic operator acting as an agent. The mandate shall be free of charge and not revocable and its revocation for justified cause shall not have effect for the contracting authority or entity. In case of failure of the agent enterprise, the revocation of the special collective mandate referred to in paragraph 12 shall be allowed in order to allow the contracting authority or entity to pay directly the other enterprises of the group.

14. Provisions in this Article shall find application, where compatible, for the participation to the award procedures of aggregation of enterprises adhering to a network contract, as referred to in Article 45, paragraph 2, letter (f); those enterprises, in case they have all the requirements of a stable consortium as referred to in Article 45, paragraph 2, letter (c) shall be equalised to them for the purposes of the SOA qualification.

15. The agent shall have the exclusive representation, also in the process, of principals before the contracting authority or entity for all operations and acts of whatsoever nature depending from the contract, also after the testing, or equivalent act, until the extinction of any relationship. The contracting authority or entity may, however, claim the responsibilities attributable to principals.

16. The mandate relationship shall not determine in itself organisation or association of grouped economic operators, each of them maintaining its autonomy for the purposes of management, tax and social obligations.

17. Without prejudice to what provided for in Article 110, paragraph 5, in case of default, mandatory administrative liquidation, controlled administration, extraordinary administration, preventive agreement or procedure of insolvency or liquidation of the agent or in case of individual entrepreneur, in case of death, interdiction, incapacitation or failure or in case of loss, during execution, of the requirements in Article 80, or in cases provided for by anti-mafia legislation, the contracting authority or entity may prosecute the contract relationship with another economic operator constituted as agent in the modalities provided for in this Code provided that it possesses the requirements of qualification adequate to works or services or supplies to be executed; where those conditions do not subsist, the contracting authority or entity shall withdraw from the contract.

18. Without prejudice to what provided for in Article 110, paragraph 5, in case of default, mandatory administrative liquidation, controlled administration, extraordinary administration, preventive agreement or procedure of insolvency or liquidation of one of the principals or in case of individual entrepreneur, in case of death, interdiction, incapacitation or failure or in case of loss, during execution, of the requirements in Article 80, or in cases provided for by anti-mafia legislation, the agent, where it does not indicate an incoming economic operator possessing the prescribed suitability requirements, shall execute, directly or by means of other principals, provided that they possess the adequate qualification requirements of the works or services to be executed.

19. The withdrawal of one or more associated undertakings from the contract shall be allowed, even when the grouping is reduced to a single subject, exclusively for the organizational exigencies of the grouping and provided that the remaining enterprises possess the requirements of qualification adequate to the works or services or supplies still to be provided. In any case the subjective modification referred to in the first period shall not be permitted when aimed at excluding the lack of a requirement of participation to the competition.

19-bis. Provisions in paragraphs 17, 18 and 19 shall find application also with reference to the subjects in Article 45, paragraph 2, letters (b), (c) and (e).

19-ter. Provisions in paragraphs 17, 18 and 19 shall also find application where the subjective modifications thereby included occur while tendering.

Art. 49

(Conditions relating to the GPA and other international agreements)

1. In so far as they are covered by Annexes 1, 2, 4 and 5 and the General Notes to the European Union's Appendix I to the GPA and by the other international agreements by which the Union is bound, contracting authorities shall accord to the works, supplies, services and economic operators of third countries that are signatories to those agreements a treatment no less favourable than the treatment accorded pursuant to this Code.

Art. 50

(social clauses in tender notices and invitation for tender)

1. For the award of concession contracts and contracts for work and services other than those having an intellectual nature, with particular reference to those relating to contracts at high labor intensity, calls for competition, notices and invitations shall insert, in accordance to the principles of the European Union, specific social clauses aimed at promoting occupational stability of employed staff, providing for the application by the contractor, of the sectorial national collective agreements referred to in Article 51 of the legislative decree n. 81 of 15 June 2015. Services of high labor intensity are those in which the cost of labor is equal to at least 50% of the total amount of the contract.

Art. 51

(Subdivision into lots)

1. In accordance with the EU regulation on public contracts, both in ordinary sectors and special sectors, in order to favor the access of micro-enterprises, small and medium enterprise, contracting authorities or entities shall subdivide contracts into functional lots as referred to in Article 3, paragraph 1, letter (qq), or in performance lots as referred to in Article 3, paragraph 1, letter (ggggg) in conformity with the categories or specialisations in the sector of works, services or supplies. Contracting authorities or entities shall, explain the reasons for the lack of subdivision into lots of a contract in the procurement documents or in the invitation to confirm

interest and in the individual report under Articles 99 and 139. In case of subdivision into lots, the relevant value shall be adequate in a way to ensure the effective possibility to participate for micro-enterprises, small and medium enterprises. It is forbidden for contracting authorities to subdivide into lots only to exclude from the application of provisions in this Code, or to award through the artful aggregation of contracts.

2. Contracting authorities or entities shall also indicate, in the contract notice or in the invitation to confirm interest, whether tenders may be submitted for one, for a single lot, for several lots or for all of the lots.

3. Contracting authorities or entities may, even where tenders may be submitted for several or all lots, limit the maximum number of lots that may be awarded to one tenderer, provided that the maximum number of lots per tenderer is stated in the contract notice or in the invitation to confirm interest, to submit tenders or to negotiate. In those same procurement documents they shall also indicate the rules or the objective and non-discriminatory criteria they intend to apply for determining which lots will be awarded, where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.

4. Contracting authorities or entities may award contracts combining several or all lots to the same tenderer, where they have specified in the contract notice or in the invitation to confirm interest that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined, as well as the modalities through which perform the comparative assessment between tenders on single lots and tenders on the combination of lots.

Art. 52

(Rules applicable to communications)

1. In ordinary sectors and special sectors, all communications and information exchange under this Code are performed using electronic means of communication in accordance with the requirements of this paragraph and of paragraphs 2 to 9, as well as the Code of digital administration in Legislative Decree n. 82 of 7 March 2005. The tools and devices to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the ICT products in general use and shall not restrict economic operators' access to the procurement procedure. Notwithstanding the first subparagraph, contracting authorities or entities shall not be obliged to require electronic means of communication in the offer submission process exclusively in the following hypotheses:

- a) due to the specialised nature of the procurement, the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications;
- b) the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority or entity;
- c) the use of electronic means of communication would require specialised office equipment that is not generally available to the contracting authority or entity;

- d) the procurement documents require the submission of physical or scale models which cannot be transmitted using electronic means;
- e) the use of means of communication other than electronic means is necessary either because of a breach of security of the electronic means of communications or for the protection of for the protection of particularly sensitive information requiring such a high level of protection that it cannot be properly ensured by using electronic tools and devices that are generally available to economic operators or can be made available to them by alternative means of access within the meaning of paragraph 6.

2. In cases in which electronic means of communication are not used pursuant to the third period of paragraph 1, communication shall be carried out by post or other suitable carrier or by a combination thereof.

3. Contracting authorities or entities shall indicate in the single report the reasons according to which the use of means of communication other than electronic means has been deemed necessary in accordance with paragraph 1, third period.

4. Notwithstanding paragraphs 1 to 3, oral communication may be used in respect of communications other than those concerning the essential elements of a procurement procedure, provided that the content of the oral communication is documented to a sufficient degree. For this purpose, the essential elements of a procurement procedure include the procurement documents, requests for participation, confirmations of interest and tenders. In particular, oral communications with tenderers which could have a substantial impact on the content and assessment of the tenders shall be documented to a sufficient extent and by appropriate means.

5. In all communication, exchange and storage of information, contracting authorities or entities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. They shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

6. Contracting authorities or entities may, where necessary, require the use of tools and devices which are not generally available but, in that case, they offer alternative means of access. Adequate alternative means of access are considered those which:

- a) offer a complete, unlimited and direct access free of charge by electronic means to those tools and devices from the date of publication of the notice in accordance with Annex V or from the date when the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which those tools and devices are accessible;
- b) ensure that tenderers having no access to the tools and devices concerned, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the tenderer concerned, may access the procurement procedure through the use of provisional tokens made available free of charge online; or
- c) offer an alternative channel for electronic submission of tenders.

7. Contracting authorities and contracting entities may impose on economic operators conditions intended to safeguard the confidentiality nature of information that the abovementioned subjects make available during the entire award procedure.

8. In addition to the requirements set out in Annex XI, the following rules shall apply to tools and devices for the electronic transmission and receipt of tenders and for the electronic receipt of requests to participate:

- a) contracting authorities or entities make available for the interested parties information on specifications for the electronic submission of tenders and requests to participate, including encryption and time-stamping;
- b) contracting shall specify the level of security required for the electronic means of communication in the various stages of the procurement procedure. That level shall be proportionate to the risks attached;
- c) where contracting authorities conclude that the level of risks, assessed under point (b) of this paragraph, is such that advanced electronic signatures as defined by the Code of Digital Administration (Legislative Decree n. 82 of 7 March 2005), are required, contracting authorities shall accept advanced electronic signatures supported by a qualified certificate, taking into account whether those certificates are provided by a certificates service provider, which is on a trusted list provided for in Commission Decision 2009/767/EC, created with or without a secure signature creation device, subject to compliance with the following conditions:
 - 1) the contracting authorities or entities shall establish the required advanced signature format on the basis of formats established in technical rules adopted in implementing the Code of Digital Administration (Legislative Decree n. 92 of 7 March 2005) and shall put in place necessary measures to be able to process these formats; in case a different format of electronic signature is used, the electronic signature or the electronic document carrier shall include information on existing validation possibilities. Validation possibilities shall allow the contracting authority to validate online, free of charge and in a way that is understandable for non-native speakers, the received electronic signature as an advanced electronic signature supported by a qualified certificate.
 - 2) where a tender is signed with the support of a qualified certificate that is included on a trusted list, the contracting authorities or entities shall not apply additional requirements that may hinder the use of those signatures by tenderers.

9. In respect of documents used in the context of a procurement procedure that are signed by a competent authority or another issuing entity, the competent issuing authority or entity may establish the required advanced signature format in accordance with the requirements set out in the technical rules adopted in implementing the Code of Digital Administration (Legislative Decree n. 82 of 7 March 2005). They shall put in place the necessary measures to be able to process that format technically by including the information required for the purpose of processing the signature in the document concerned. Such documents shall contain in the electronic signature or in the electronic document carrier information on existing validation possibilities that allow the validation of the received electronic signature online, free of charge and in a way that is understandable for non-native speakers.

10. As for concessions, except where use of electronic means is mandatory pursuant to this Code, contracting authorities or entities may choose one or more of the following means of communication for all communication and information exchange:

- a) electronic means;
- b) post;
- c) oral communication, including telephone, in respect of communications other than the essential elements of a concession award procedure, and provided that the content of the oral

communication is documented to a sufficient degree on a durable medium;
d) hand delivery certified by an acknowledgment of receipt.

11. In the cases provided for in paragraph 10, the means of communication chosen shall be generally available and non-discriminatory, and shall not restrict economic operators' access to the concession award procedure. The tools and devices to be used for communicating by electronic means, as well as their technical characteristics, shall be interoperable with the information and communication technology products in general use.

12. To concessions, paragraphs 5 to 7 shall apply.

Art. 53 **(Access to acts and confidentiality)**

1. Without prejudice to what explicitly provided for in this Code, the right to access to documents related to the award procedures and to the execution of public contracts, including tenders and offers, is subject to Articles 22 and subsequent of Law n.241 of 7 August 1990. The right to access to the documents of an electronic auction may be exercised by means of an interrogation of the registrations made by the informatic system containing the documentation of these acts in electronic formats, or through the sending or availability of an authenticated copy of the documents.

2. Without prejudice to the provisions of this Code, for secret contracts or contracts whose execution requires special security measures, the right of access shall be delayed:

- a) in open procedures, in relation to the list of subjects which have presented tenders, until the expiry of the term for their presentation;
- b) in restricted or negotiated procedures and in informal competitions, in relation to the list of subjects which have required invitation or have manifested their interest, and in relation to the list of subjects that have been invited to present tenders and of the list of subjects which have presented tenders, until the expiry of the term for their presentation; to subjects whose request of invitation has been rejected, access to the list of subjects which have required invitation or have shown their interest shall be allowed after official communication, by contracting authorities or entities, of the names of the candidates to be invited;
- c) in relation to tenders, until the award;
- d) in relation to the procedure of verification of the anomaly of the offer, until the award.

3. Acts in paragraph 2, until the expiry of the terms thereby included, shall not be communicated to third parties or made however known under any means.

4. The lack of respect of paragraphs 2 and 3 for public officials or for persons entrusted with public offices shall have relevance for the purposes of Article 326 of the Criminal Code.

5. Without prejudice to the provisions of this Code, for secret contracts or contracts whose execution requires special security measures it is totally excluded the right to access to information and any form of advertising in relation to:

- a) information provided in the context of a tender or as a justification of the offer which

constitute, according to justified and proved declaration of the tenderer, technical or commercial secrets;

b) to legal advices obtained by subjects held to the application of this Code, for the resolution of disputes, either potential or actual, relating to public contracts;

c) to relations reserved to the director of works, the director of execution and to the testing bodies on the demands and reservations of the executor of the contract;

d) to the technical solutions and to computer programmes used by the contracting authority or entity or by the computer system operator for electronic auctions, when covered by intellectual property rights.

6. Concerning the hypothesis referred to in paragraph 5, letter (a), the access is allowed for the bidder in order to defend its own interests in relation to the contract award procedure.

Art. 54 **(Framework agreements)**

1. Contracting authorities or entities may conclude framework agreements in accordance with the procedures provided for in this Code. The term of a framework agreement shall not exceed four years for contracts in the ordinary sectors and eight years for contracts in the special sectors, save in exceptional cases duly justified, in relation in particular to the subject of the framework agreement.

2. In ordinary sectors, contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and in paragraphs 3 and 4. Those procedures may be applied only between those contracting authorities clearly identified in the call for competition or the invitation to confirm interest, and those economic operators party to the framework agreement as concluded. Contracts based on a framework agreement may under no circumstances entail substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

3. Where a framework agreement is concluded with a single economic operator, contracts shall be awarded within the limits of the terms laid down in the framework agreement. The contracting authority may consult in writing the economic operator part of the framework agreement, requesting it to supplement its offer as necessary.

4. Where a framework agreement is concluded with more than one economic operator, that framework agreement shall be performed in one of the following ways:

(a) following the terms and conditions of the framework agreement, without reopening the competition, where the framework agreement sets out all the terms governing the provision of the works, services and supplies concerned, as well as the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform the provision. Those conditions shall be indicated in the procurement documents for the framework agreement.

The identification of the economic operator party to the framework agreement which will perform the provision takes place on the basis of a justified decision in relation to the specific needs of the contracting authority;

(b) where the framework agreement sets out all the terms governing the provision of the works, services and supplies concerned, partly without reopening of competition in accordance with point (a) and partly with reopening of competition amongst the economic operators parties to the framework agreement in accordance with point (c), where this possibility has been stipulated by the contracting authority in the procurement documents for the framework agreement. The choice of whether specific works, supplies or services shall be acquired following a reopening of competition or directly on the terms set out in the framework agreement shall be made pursuant to objective criteria, which shall be set out in the procurement documents for the framework agreement. These procurement documents shall also specify which terms may be subject to reopening of competition. The possibilities provided for under this letter shall also apply to any lot of a framework agreement for which all the terms governing the provision of the works, services and supplies concerned are set out in the framework agreement, even if all the terms governing the provision of the works, services and supplies concerned under other lots have been set out;

(c) through reopening competition amongst the economic operators parties to the framework agreement, where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement.

5. The competitions referred to in paragraph 4, letters (b) and (c) shall be based on the same terms as applied for the award of the framework agreement and more precisely formulated terms, where appropriate, and on other terms referred to in the procurement documents for the framework agreement, in accordance with the following procedure:

(a) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;

(b) the contracting authority shall fix a sufficient time limit to present tenders for each specific contract, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for presentation has expired;

(d) the contracting authority shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the procurement documents for the framework agreement.

6. In special sectors, contracts based on a framework agreement are awarded on the basis of objective rules and criteria which may provide for the re-opening of competition between the economic operators part to the concluded framework agreement. Those rules and criteria shall be indicated in the procurement documents for the framework agreement and ensure equality of treatment between the economic operators part to the agreement. Where the reopening of competition is provided for, the contracting entity shall fix an adequate time limit in order to allow the presentation of tenders relating to each specific procurement and award each procurement to the tenderer which has presented the best offer on the basis of the award criteria set out in the specifications of the framework agreement. The contracting entity shall not make recourse to framework agreements in order to exclude the application of this decree or to prevent, limit or distort competition.

Art. 55

(Dynamic purchasing systems)

1. For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities or entities, contracting authorities may use a dynamic purchasing system. The dynamic purchasing system shall be a completely electronic process, and shall be open throughout the period of validity to any economic operator that satisfies the selection criteria. It may be divided into categories of products, works or services on the basis of characteristics of the procurement to be undertaken. Such characteristics may include reference to the maximum allowable size of the subsequent specific contracts or to a specific geographic area in which contracts will be performed.

2. In order to procure under a dynamic purchasing system, contracting authorities or entities shall follow the rules provided for the restricted procedure under Article 61. All the candidates satisfying the selection criteria shall be admitted to the system, and the number of candidates to be admitted to the system shall not be limited in accordance with Articles 91 and 135, paragraph 2. Where contracting authorities have divided the system into categories of products, works or services in accordance with paragraph 1, they shall specify the applicable selection criteria for each category.

3. In the ordinary sectors, notwithstanding what provided for in Article 61, the following time limits shall apply:

(a) the minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent;

(b) the minimum time limit for receipt of tenders shall be at least 10 days from the date on which the invitation to tender is sent. Where appropriate, Article 61, paragraph 5 shall apply.

4. In special sectors, the following time limits shall apply:

(a) the minimum time limit for receipt of requests to participate shall, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement has been sent.

(b) the minimum time limit for receipt of tenders shall be at least 10 days from the date on which the invitation to tender is sent. Article 61, paragraph 5 shall apply.

5. All communications in the context of a dynamic purchasing system shall only be made by electronic means in accordance with Article 52, paragraphs 1, 2, 3, 5, 6, 8 and 9.

6. For the purposes of awarding contracts under a dynamic purchasing system, contracting authorities shall:

(a) publish a call for competition making it clear that a dynamic purchasing system is involved;

(b) indicate in the procurement documents at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including how the dynamic purchasing system operates, the electronic equipment used

and the technical connection arrangements and specifications;
(c) indicate any division into categories of products, works or services and the characteristics defining those categories;
(d) offer unrestricted and full direct access to the procurement documents in conformity with Article 74.

7. Contracting authorities or entities shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraphs 2 to 4. Contracting authorities or entities shall assess such requests in accordance with the selection criteria within 10 working days following their receipt. That deadline may be prolonged up to 15 working days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met. Notwithstanding the first, second and third period, as long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, contracting authorities or entities may extend the evaluation period provided that no invitation to tender is issued during the extended evaluation period. Contracting authorities or entities shall indicate in the procurement documents the maximum length of the extended period that they intend to apply. Contracting authorities or entities shall inform as early as possible the economic operator concerned of whether or not it has been admitted to the dynamic purchasing system.

8. Contracting authorities or entities shall invite all admitted participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 75 and Article 131. Where the dynamic purchasing system has been divided into categories of products, works or services, contracting authorities or entities shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender. They shall award a contract:

a) in the ordinary sectors, to the tenderer that has presented the best tender on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest.

b) in the special sectors, to the tenderer that has presented the best offer on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system, in the invitation to confirm interest or, where a notice on the existence of a system of qualification is used as a means of calling for competition, an invitation to submit an offer.

9. The criteria in paragraph 8, letters (a) and (b) may, where appropriate, be formulated more precisely in the invitation to tender.

10. In ordinary sectors, contracting authorities may, at any time during the period of validity of the dynamic purchasing system, require admitted participants to submit a renewed and updated Single European Procurement Document as provided for in Article 85, within five working days from the date on which that request is transmitted. Article 85, paragraphs from 5 to 7, shall apply throughout the entire period of validity of the dynamic purchasing system.

11. In special sectors, contracting entities which, pursuant to Article 136, apply the grounds for exclusion and the selection criteria referred to in Articles 80 and 83, may require, in any moment

in which the dynamic purchasing system is valid, that selected participants renew or update the European single procurement document referred to in Article 85, within 5 working days since the date in which the request is submitted. Article 85, paragraphs 5 to 7, shall apply for all the period in which the dynamic purchasing system is valid.

12. Contracting authorities or entities shall indicate the period of validity of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in the period of validity, using the following standard forms:

- (a) where the period of validity is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;
- (b) where the system is terminated, a contract award notice referred to in Articles 98 and 129, paragraph 2.

13. No charges may be billed prior to or during the period of validity of the dynamic purchasing system to the economic operators interested in or party to the dynamic purchasing system.

14. The Minister of Economics and Finances, also relying on CONSIP S.p.A., may provide to the realisation and operation of a dynamic purchasing system on behalf of the contracting authorities or entities, preparing the organisational and administrative, electronic and digital tools and taking care of the execution of all computerised, digital and advisory services needed.

Art. 56

Electronic auctions

1. Contracting authorities or contracting entities may use electronic auctions, in which new prices, revised downwards or new values concerning certain elements of tenders are presented. For this purpose, contracting authorities or contracting entities shall structure the auction as a repetitive electronic process, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods. Public services and works contracts having as their subject-matter intellectual performances, such as the design of works, which cannot be ranked using automatic evaluation methods, shall not be the object of electronic auctions.

2. In open or restricted procedures or competitive procedures with negotiation or negotiated procedures preceded by a call for competition, the contracting authorities or contracting entities may decide that the award of a public contract shall be preceded by an electronic auction when the content of the procurement documents, in particular the technical specifications, can be established with precision.

At the same conditions, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in Article 54, paragraph 4, letters (b) and (c) and paragraph 6, and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 55.

3. The electronic auction shall be based on one of the following elements of the tenders:

- (a) solely on prices where the contract is awarded on the basis of price only;
- (b) on prices or on the new values of the features of the tenders indicated in the procurement documents where the contract is awarded on the basis of the best price-quality ratio or cost-effectiveness.

4. Contracting authorities or contracting entities shall indicate the recourse to an electronic auction in a call for competition or in the invitation to confirm interest, or, in special sectors, in the invitation to tender, when a notice on the existence of a qualification system is used as a means to call for competition. The procurement documents shall include at least the information set out in Annex XII.
5. Before proceeding with an electronic auction, contracting authorities or contracting entities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria that have been set out and with their relevant weighting.
6. In ordinary sectors, a tender shall be considered admissible where it has been submitted who has not been excluded pursuant to Article 80 and who meets the selection criteria set out in Article 63, and whose tender is in conformity with the technical specifications without being irregular or unacceptable or unsuitable, within the meaning of paragraphs 8, 9 and 10.
7. In special sectors, a tender shall be considered admissible where it has been submitted by a tenderer, who has not been excluded pursuant to Article 135 or Article 136, who meets the selection criteria set out in the same Articles 135 and 136 and whose tender complies with the technical specifications without being irregular or unacceptable or inadequate, pursuant to paragraphs 8, 9 and 10.
8. Tenders which do not comply with the procurement documents, which were received late, where there is evidence of collusion or corruption or abuse of office or agreement between economic operators aimed at distorting competition, or which have been found by the contracting station to be abnormally low, shall be considered as being irregular.
9. Tenders submitted by tenderers that do not have the required qualification, and tenders whose price exceeds the contracting authorities or contracting entities' budget as determined and documented prior to the launching of the procurement procedure shall be considered as unacceptable.
10. A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned is to be or may be excluded pursuant to Article 80 or Article 135 or Article 136, or does not meet the selection criteria set out by the contracting authority pursuant to Article 83. or by the contracting entity pursuant to Articles 135 and 136.
11. All tenderers that have submitted admissible tenders shall be invited simultaneously by electronic means, to participate in the electronic auction using, as of the specified date and time, the connections in accordance with the instructions set out in the invitation. The electronic auction may take place in a number of successive phases and shall not start sooner than two working days after the date on which invitations are sent out.
12. The invitation shall be accompanied by the full evaluation of the relevant tender, carried out in accordance with the weighting provided for in Article 95, paragraphs 9 and 9. The invitation shall also state the mathematical formula to be used in the electronic auction to determine the automatic re-rankings on the basis of the new prices and/or new values submitted. Except where the most economically advantageous offer is identified on the basis of price alone, that formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in other procurement documents. For that purpose, any ranges shall, however, be reduced beforehand to a specified value. Where variants are authorised, a separate formula shall be provided for each variant.

13. Throughout each phase of an electronic auction the contracting authorities or contracting entities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. Contracting authorities or contracting entities may, where this has been indicated in the procurement documents, communicate other information concerning other prices or values submitted. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

14. Contracting authorities shall close an electronic auction in one or more of the following manners:

(a) at the previously indicated date and time;

(b) when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they declare the electronic auction to be closed;

(c) when the previously indicated number of phases in the auction has been completed.

15. Where the contracting authorities or contracting entities intend to close an electronic auction in accordance with paragraph 14, letter (c), possibly in combination with the arrangements laid down in letter (b) thereof, the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

16. After closing an electronic auction contracting authorities or contracting entities shall award the contract on the basis of the results of the electronic auction.

Art. 57

Electronic catalogue.

1. Where the use of electronic means of communication is required, contracting authorities or contracting entities may require tenders to be presented in the format of an electronic catalogue or to include an electronic catalogue. Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.

2. Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a given procurement procedure in accordance with the technical specifications and format established by the contracting authorities or contracting entities. Furthermore, electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting authorities or contracting entities in accordance with Article 52.

3. Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting authorities or contracting entities shall

(a) in ordinary sectors, state so in the contract notice or in the invitation to confirm interest where a prior information notice is used as a means of calling for competition; in special sectors, they state so in the contract notice, in the invitation to confirm interest or, when a notice on the existence of a qualification system is a means to call for competition, in the invitation to tender or negotiate;

(b) indicate in the procurement documents all the necessary information pursuant to Article 52, paragraphs 8 and 9, concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.

4. Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting authorities or contracting entities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such a case, contracting authorities and contracting entities shall use one of the following methods alternatively:

(a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question;

(b) notify tenderers that they intend to use information collected from the electronic catalogues which have already been submitted to constitute tenders adapted to the requirements of the contract in question; provided that the use of that method has been announced in the procurement documents for the framework agreement.

5. Contracting authorities or contracting entities, when reopening competition for specific contracts in accordance with paragraph 4, letter (b) shall notify tenderers of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract and shall give tenderers the possibility to refuse such collection of information. Contracting authorities or contracting entities shall allow for an adequate period between the notification and the actual collection of information. Before awarding the contract, contracting authorities or contracting entities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

6. Contracting authorities or contracting entities may award contracts based on a dynamic purchasing system by requiring that offers for a specific contract are to be presented in the format of an electronic catalogue.

Contracting authorities or contracting entities may also award contracts based on a dynamic purchasing system in accordance with paragraph 4, letter (b) and paragraph 5 provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting station. That catalogue shall be completed subsequently by the candidates, when they are informed of the contracting station's intention to constitute tenders by means of the procedure set out in paragraph 4, letter (b).

Art. 58

(Procedures carried out through telematic trading platforms)

1. Pursuant to current legislation in the field of electronic documents and digital signatures, in compliance with Article 52 and the principles of transparency, simplification and effectiveness of procedures, contracting entities shall use tendering procedures wholly managed by telematic systems in accordance with the provisions referred to in this Code. The use of telematic systems must not affect the equal access of operators or prevent, limit or distort competition or modify the subject matter of the contract as defined in the tender documents.

2. Contracting entities may stipulate that the award of a fully managed telematic procedure shall be carried out by the submission of a single tender or through an electronic auction under the conditions and in the manner laid down in Article 56.

3. ((PARAGRAPH REPEALED BY LEGISLATIVE DECREE NO. 56 OF 19 APRIL 2017))

4. The telematic system automatically creates and attributes to each economic operator

participating in the procedure a personal identification code by assigning user IDs and passwords and any other individual codes needed to operate within the system.

5. When tenders are received, the contracting entity shall electronically send to each competitor the notification of the correct transposition of the tender.

6. ((PARAGRAPH REPEALED BY LEGISLATIVE DECREE NO. 56 OF 19 APRIL 2017))

7. Following the procedure in paragraph 6, the telematic system automatically produces the ranking.

8. The tendering procedures entirely managed by telematic systems may also be adopted for the purpose of concluding the agreements referred to in Article 26 of Law No. 488 of 23 December 1999.

9. Technologies are chosen in such a way as to ensure the accessibility of people with disabilities, in accordance with European standards.

10. The Digital Agency for Italy (AGID) issues, by July 31 2016, additional technical rules to ensure the interception and sharing of data between telematic purchase and trading systems.

Art. 59

Procedure's choice

1. When awarding public contracts, contracting authorities or contracting entities shall apply the open or restricted procedures, preceded by the publication of a call or an invitation to tender. They can also use the innovation partnership when the conditions laid down in Article 65 are met, the competitive procedure with negotiation and the competitive dialogue when the conditions laid down in paragraph 2 are met and the negotiated procedure without prior publication of a contract notice when the conditions laid down in Article 63 are met.

2. Contracting authorities use the competitive procedure with negotiation or the competitive dialogue in the following hypotheses, and with exclusion of those subjects referred to in paragraph 4, letters (b) and (d):

(a) with regard to works, supplies or services fulfilling one or more of the following criteria:

1) the needs of the contracting authority pursued through the procurement cannot be met without adoption of readily available solutions;

2) they include design or innovative solutions;

3) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up of the subject-matter of the contract or because of the risks attaching to them;

4) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference within the meaning of points 2 to 5 of Annex XIII;

b) with regard to works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted within the meaning of paragraphs 3 and 4. In such situations contracting authorities shall not be required to publish a contract notice where they include in the further procedure all of, and only, the tenderers which satisfy the criteria set out in Articles 80 to 90 and which, during the prior open or restricted procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

3. Without prejudice to what provided for in Article 83, paragraph 9, tenders are considered to be irregular if:

- a) do not comply with the procurement documents;
- b) were received late with respect to the terms indicated in the contract notice or in the invitation to tender;
- c) have been found by the contracting authority to be abnormally low.

4. Are considered to be inadmissible those tenders:

- a) in relation to which the jury deems there are sufficient elements to inform the Prosecutor's Office for offences related to corruption or collusive phenomena;
- b) whose price exceeds the sum indicated by the contracting administration as the tender base, determined and documented before the launching of the procurement procedure.

5. The call for competition shall be made by means of a contract notice pursuant to Article 71. Where the contract is awarded by restricted procedure or competitive procedure with negotiation, contracting authorities within the meaning of Article 3, paragraph 1, letter (c) may, notwithstanding the first subparagraph of this paragraph, use a prior information notice pursuant to paragraphs 2 and 3 of Article 70.

5. Where the call for competition is made by means of a prior information notice, economic operators having expressed their interest following the publication of the prior information notice shall subsequently be invited to confirm their interest in writing, by means of an invitation to confirm interest in conformity with Article 75.

Art. 60

Open procedure

1. In open procedures, any interested economic operator may submit a tender in response to a call for competition. The minimum time limit for the receipt of tenders shall be 35 days from the date on which the contract notice was sent. The tender shall be accompanied by the information requested by the contracting authority for qualitative selection.

2. Where contracting authorities have published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in paragraph 1, may be shortened to 15 days, provided that all of the following conditions are fulfilled:

a) the prior information notice includes all the information required for the contract notice in Annex XIV, Part I, letter B, section B1, in so far as that information are available at the time the prior information notice is published;

(b) the prior information notice has been sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

3. Contracting authorities may fix a time limit which shall be not less than 15 days from the date on which the contract notice was sent, where a state of urgency duly substantiated by the contracting authority renders impracticable the time limit laid down in paragraph 1.

Contracting authorities may further reduce by five days the time limit set out in paragraph 1 in case tenders may be submitted by electronic means.

Art. 61

Restricted procedures

1. In restricted procedures, any economic operator may submit a request to participate in response to a call for competition containing the information set out in Annex XIV, Part I, letters B or C as the case may be, by providing the information requested by the contracting authority for qualitative selection.

2. The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice was sent or, where a prior information notice is used as a means of calling for competition, from the date the invitation to confirm interest was sent.

3. Following the assessment by the contracting authorities of the information provided, only those economic operators invited to do so may submit a tender. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 91.

The minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation to tender was sent.

4. Where contracting authorities have published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders may be shortened to 10 days, provided that all of the following conditions are fulfilled:

a) the prior information notice includes all the information required in Annex XIV, part I, letter B, section B1, in so far as that information was available at the time the prior information notice was published;

b) the prior information notice has been sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

5. Contracting authorities within the meaning of Article 3, paragraph 1, letter (c), may set out the time limit for the receipt of tenders by mutual agreement with the selected candidates, provided that all selected candidates have the same time to prepare and submit their tenders. In the absence of agreement on the time limit for the receipt of tenders, the time limit shall be at least 10 days from the date on which the invitation to tender was sent.

6. Where, because of a state of urgency duly substantiated, it is impossible to respect the time limits laid down in this Article, contracting authorities may fix:

(a) for the receipt of requests to participate, a time limit which shall not be less than 15 days from the date on which the contract notice was sent;

(b) a time limit for the receipt of tenders which shall not be less than 10 days from the date on which the invitation to tender was sent.

Art. 62

Competitive procedures with negotiation

1. In competitive procedures with negotiation, any economic operator may submit a request to participate in response to a call for competition containing the information set out in Annex XIV, Part I, letters B and C by providing the information requested by the contracting authority for qualitative selection.

2. In the procurement documents, contracting authorities shall identify the subject-matter of the

procurement by providing a description of their needs, define the characteristics required of the supplies, works or services to be procured while specifying the contract award criteria and also indicate which elements of the description define the minimum requirements to be met by all tenders.

3. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the procurement and decide whether to participate in the procedure.

4. The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest was sent. The minimum time limit referred to in this paragraph shall be reduced in cases provided for in Article 61, paragraphs 4, 5 and 6.

5. The time limit for the receipt of initial tenders shall be of 30 days from the date in which the invitation was sent. The time limits referred to in this paragraph shall be reduced in cases provided for in Article 61, paragraphs 4, 5 and 6.

6. Only those economic operators invited by the contracting authority following its assessment of the information provided may submit an initial tender which shall be the basis for the subsequent negotiations. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 91.

7. Unless otherwise provided for in paragraph 8, contracting authorities shall negotiate with economic operators their initial and all subsequent tenders submitted by them, except for the final tenders within the meaning of paragraph 12, to improve the content thereof. The minimum requirements and the award criteria shall not be subject to negotiations.

8. Contracting authorities may award contracts on the basis of the initial tenders without negotiation where this possibility is provided in the contract notice or in the invitation to confirm interest. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information which may give some tenderers an advantage over others. They shall inform in writing all tenderers, whose tenders have not been eliminated pursuant to paragraph 11, of any changes to the technical specifications or other procurement documents, other than those setting out the minimum requirements. Following these changes, contracting authorities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

10. Contracting authorities, within the limits of what provided for in Article 53, shall not reveal to the other participants confidential information communicated by a candidate or a tenderer participating in the negotiations without their agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the expressly intended communication of specific information.

11. Competitive procedures with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in another procurement document. In the contract notice, the invitation to confirm interest or in another procurement document, the contracting authority shall indicate whether it will use that option.

12. Where the contracting authorities intend to conclude the negotiations, they shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders. They shall verify that the final tenders are in conformity with the minimum requirements and comply with Article 94, assess the final tenders on the basis of the award criteria and award the contract in accordance with Articles 95, 96 and 97.

Art. 63

Negotiated procedure without prior publication of a contract notice

1. In the cases and circumstances laid down in the following paragraphs, contracting authorities and contracting entities may award public contracts by a negotiated procedure without prior publication of a contract notice, explaining with an adequate reason, in the first act of the procedure, of the existence of the required conditions.

2. In case of public works supplies and services contracts, the negotiated procedure without prior publication may be used:

a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the European Commission where it so requests.

A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned is to be or may be excluded pursuant to Article 80 or does not meet the selection criteria set out by the contracting authority pursuant to Article 83;

b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:

1) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

2) competition is absent for technical reasons;

3) the protection of exclusive rights, including intellectual property rights;

The exceptions set out in points (2) and (3) shall only apply when there are no other economic operators or no reasonable alternative exist and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open procedures or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify the recourse to the procedure in this Article shall not in any event be attributable to the contracting authority.

3. In case of public supplies contracts, the procedure in this Article is, furthermore, allowed in the following cases:

(a) where the products involved in the contract are manufactured purely for the purpose of research, experimentation, study or development; except cases in which the production regards quantity sufficient to establish commercial viability or to recover research and development costs;

(b) for additional deliveries made by the original supplier which are intended either as a partial

renewal of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics whose use or maintenance would result in incompatibility or disproportionate the duration of such contracts as well as that of recurrent contracts shall not, as a general rule, exceed three years;

(c) for supplies quoted and purchased on a commodity market;

(d) for the purchase of supplies or services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure.

4. The procedure provided for in this Article may be also used for public service contracts, where the contract concerned follows a design contest and is to be awarded, under the applicable rules, to the winner or one of the winners of the contest. In the latter case, all winners must be invited to participate in the negotiations.

5. This procedure may be used for new works or services consisting in the repetition of similar works or services, already entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded pursuant to a procedure in accordance with Article 39, paragraph 1. The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded. The possibility to use the procedure provided for in this Article shall be indicated since the beginning of the competitive negotiation in the first operation and the total estimated cost for the prosecution of works or the provision of services is calculated for the determination of the total value of the contract, in order to apply the thresholds referred to in Article 35, paragraph 1.

This procedure may be used only during the three years following the conclusion of the original contract.

6. Contracting authorities shall identify the economic operators to be consulted on the basis of information concerning the characteristics of economic and financial and technical and professional qualification obtained from the market, in compliance with the principles of transparency, competition, rotation, and select at least five economic operators, if there are suitable subjects in this number. The contracting authority chooses the economic operator who has offered the most advantageous tender, in accordance with Article 95, subject to verification of the possession of the requisites for participation provided for the awarding of contracts of equal amount by an open procedure, restricted or by procedure competitive

Art. 64

Competitive dialogue

1. Il provvedimento con cui le stazioni appaltanti di cui all'articolo 3, comma 1, lettera a), decidono di ricorrere al dialogo competitivo deve contenere specifica motivazione, i cui contenuti sono richiamati nella relazione unica di cui agli articoli 99 e 139 sulla sussistenza dei presupposti previsti per il ricorso allo stesso. L'appalto è aggiudicato unicamente sulla base del criterio dell'offerta con il miglior rapporto qualità/prezzo conformemente all'articolo 95, comma 6.

1. The document by which the contracting authorities referred to in Article 3, paragraph 1, letter a), decide to resort to the competitive dialogue must contain specific motivation, the contents of

which are referred to in the single report referred to in Articles 99 and 139 on existence of the conditions foreseen for the recourse to the same. The contract is awarded only on the basis of the bid criteria with the best quality / price ratio in accordance with Article 95, paragraph 6.

2. In competitive dialogue, any economic operator may submit a request to participate in response to a contract notice, or to a call for competition, by providing the information requested by the contracting authority for qualitative selection.

3. The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice, or in the special sectors, where a notice on the existence of a qualification system was used as a means to call for competition, the invitation to confirm interest were sent. Only those economic operators invited by the contracting authorities following the assessment of the information provided may participate in the dialogue. Contracting authorities or contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 91.

4. Contracting authorities or contracting entities shall set out their needs and requirements in the contract notice or in the call for competition and they shall define these needs and requirements in that notice or in a descriptive document.

5. Contracting authorities or contracting entities shall open, with the selected participants, a dialogue the aim to identify and define the means best suited to satisfying their needs. During the dialogue they may discuss all aspects of the procurement with the chosen participants.

6. During the dialogue, contracting authorities or contracting entities shall ensure equality of treatment among all participants. To that end, they shall not provide information which may give some participants an advantage over others.

7. In accordance with Article 53, contracting authorities or contracting entities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate or tenderer participating in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be considered as referred to the expressly intended communication of specific information.

8. Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the contract notice or in the descriptive document. In the contract notice or call for competition or the descriptive document, the contracting authorities or contracting entities shall indicate whether they will use that option.

9. The contracting authority or contracting entity shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

10. Having declared that the dialogue is concluded and having so informed the remaining participants, contracting authorities or contracting entities shall ask each of them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. Those tenders shall contain all the elements required and necessary for the performance of the project. Upon request of the contracting station, tenders may be clarified, specified and optimised. However, such clarifications, specifications, optimisations or additional information shall not have the effect to modify the essential aspects of the tender or of the procurement, including the needs and requirements set out in the contract notice, in the call for competition or in the descriptive document, where variations are likely to distort competition or have a discriminatory effect.

11. Contracting authorities or contracting entities shall assess the tenders received on the basis of the award criteria laid down in the contract notice, in the call for competition or in the descriptive document and shall also apply the following provisions:

- a) the documents on the basis of which tenders have been submitted may be complemented by additional information emerged from the competitive dialogue,
- b) at the request of the contracting station, negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio may be carried out to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract.

12. Provisions contained in letters (a) and (b) of paragraph 11 shall apply provided that this does not have the effect of substantially modifying essential aspects of the tender or of the procurement, including the needs and requirements set out in the contract notice, in the call for competition or in the descriptive document, or that there is not the risk of distorting competition or causing discrimination.

13- Contracting authorities or contracting entities may provide for prizes or payments to the participants in the dialogue.

Art.65 Innovation partnerships

1. The contracting authorities and the contracting entities may recur to innovation partnerships in cases where the need to develop innovative products, services or works and to subsequently purchase the ensuing supplies, services or works cannot, on the basis of a justified reason, be met by recurring to solutions already available on the market, provided that the ensuing supplies, services or works correspond to the maximum levels of provision and to the costs agreed upon among the participating contracting authorities or contracting entities.

2. In the contract documents, contracting authorities and contracting authorities or contracting entities shall fix the minimum requirements that all tenderers must meet, in a sufficiently precise way as to enable economic operators to identify the nature and scope of the required solution and decide whether to participate in the procedure.

3. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice or to a call for competition, by providing the information requested by the contracting station for qualitative selection.

4. The contracting authority and the contracting entity may decide to set up the innovation partnership with one partner or more economic operators conducting separate research and development activities. The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice is sent. Only those economic operators invited by the contracting authorities or the contracting entities following the assessment of the information provided may participate in the procedure. Contracting authorities or contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 91. The contracts shall be awarded on the sole basis of the award criterion of the best price-quality ratio in accordance with Article 95.

5. The innovation partnership shall be structured in successive phases following the sequence of

steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of the remuneration in appropriate instalments.

Based on those targets, the contracting authority or the contracting entity may decide, after each phase, to terminate the innovation partnership or, in the case of an innovation partnership with several operators, to reduce the number of operators by terminating individual contracts, provided that the contracting authority has indicated in the procurement documents those possibilities and the conditions for their use.

6. Unless otherwise provided for in this Article, contracting authorities or contracting entities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve the content thereof. The minimum requirements and the award criteria shall not be subject to negotiations.

7. During the negotiations, contracting authorities or contracting entities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall inform all tenderers whose tenders have not been eliminated, pursuant to paragraph 8, in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements. Following those changes, contracting authorities or contracting entities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate. In accordance with Article 53, contracting authorities or contracting entities shall not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the explicitly indicated communication of specific information.

8. Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting authority or the contracting entity shall indicate whether it will use that option.

9. In selecting candidates, contracting authorities or contracting entities shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions. Only those economic operators invited by the contracting authorities or the contracting entities following the assessment of the requested information may submit research and innovation projects. In the procurement documents, the contracting authority or the contracting entity shall define the arrangements applicable to intellectual property rights. In the case of an innovation partnership with several operators, the contracting authority or the contracting entity shall not, in accordance with Article 53, reveal to the other operators solutions proposed or other confidential information communicated by an operator in the framework of the partnership without that partner's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

10. The contracting authority or contracting entity shall ensure that the structure of the partnership and, in particular, the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The

estimated value of supplies services or works shall not be disproportionate in relation to the investment required for their development.

Art. 66

Market consultations

1. Before launching a procurement procedure, contracting authorities may conduct market consultations with a view to preparing the procurement and conducting the relevant procedure and informing economic operators of their procurement plans and requirements thereof.
2. For the purposes under paragraph 1, contracting authorities may acquire advices, relations or other technical documentation from experts, market participants with respect to the provisions established in this Code, or by independent authorities. That documentation may be used in the planning and conduct of the procurement procedure, provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

Art. 67

Previous participation of candidates or bidders

1. Where a candidate or tenderer or an undertaking related to a candidate or tenderer has given to the contracting authority the documentation referred to in Article 66, paragraph 2, or has otherwise been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer. The communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure as well as the fixing of adequate time limits for the receipt of tenders shall be considered as an adequate measure.
2. Where it is not possible under any circumstance to ensure the respect of the principle of equal treatment, the candidate or tenderer concerned shall be excluded from the procedure. In any case, prior to proceed to their exclusion, the contracting authority invites the candidates or tenderers concerned, within a time limit however not exceeding ten days, to prove that their involvement in preparing the procurement procedure is not capable of distorting competition
3. The measures taken by the contracting authority shall be documented in the individual report required by Article 99 of this Code.

Art. 68

Technical specifications

1. The technical specifications as defined in point 1 of Annex XIII shall be included in the procurement documents and shall lay down the characteristics required of works, services or supplies. Those characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of their life cycle even where such factors do not form part of their substantial content, provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.

2. The technical specifications may also specify whether the transfer of intellectual property rights will be required.

3. For all procurement which is intended for use by natural persons, whether general public or staff of the contracting authority, it is necessary that the technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users. Where mandatory accessibility requirements are adopted by a legal act of the European Union, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.

4. Technical specifications shall afford equal access of economic operators to the procurement procedure and shall not have the effect of directly or indirectly creating unjustified obstacles to the opening up of public procurement to competition.

5. Without prejudice to mandatory national technical rules, the technical specifications shall be formulated in one of the following ways:

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when any of those do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies. Each reference shall be accompanied by the words 'or equivalent';

(c) in terms of performance or functional requirements as referred to in letter (a), with reference to the technical specifications referred to in letter (b) as a means of presuming conformity with such performances or functional requirements;

(d) by reference to the technical specifications referred to in letter (b) for certain characteristics and to the performances or functional requirements referred to in letter (a) for other characteristics.

6. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. However, such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 5 is not possible. In that case, such mention or reference shall be accompanied by the words 'or equivalent'.

7. Where contracting authorities use the option of referring to the technical specifications referred to in paragraph 5, letter (b), they shall not reject or exclude a tender on the grounds that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender by any appropriate means, including the means of proof referred to in Article 86, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.

8. Where contracting authorities use the option laid down in paragraph 5, letter (a) to formulate technical specifications in terms of performances or functional requirements, they shall not reject or exclude a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down. In its tender, the tenderer shall prove by any appropriate means, including means of proof referred to in Article 86, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

Art. 69

labels

1. Contracting authorities intending to purchase works, supplies or services with specific environmental, social or other characteristics may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics, provided that all of the following conditions are fulfilled:

- (a) the label requirements are adequate to define the characteristics of the works, supplies or services which constitute the subject-matter of the contract and exclusively regard criteria which are linked to them;
- (b) the label requirements are based on objectively verifiable and non-discriminatory criteria;
- (c) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;
- (d) the labels are accessible to all interested parties;
- (e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

2. Where contracting authorities do not require the works, supplies or services to meet all of the label requirements, they shall indicate which label requirements are referred to. Contracting authorities requiring a specific label shall accept all labels that confirm that the works, supplies or services meet equivalent label requirements.

3. Where an economic operator demonstrates that it has no possibility of obtaining the specific label indicated by the contracting authority or an equivalent label within the relevant time limits for reasons that are not attributable to it, the contracting authority shall accept other appropriate means of proof, which may include a technical dossier from the manufacturer, appropriate to

demonstrate that the works, supplies or services to be provided by the economic operator fulfil the requirements of the specific label or the specific requirements indicated by the contracting authority.

4. Where a label fulfils the conditions provided in paragraph 1, letters (b), (c), (d) and (e), but also sets out requirements not linked to the subject-matter of the contract, contracting authorities shall not require the label as such but may define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Art. 70

Prior information notice

1. Contracting authorities or contracting entities shall make known by the 31 December of each year their intentions of planned procurements in the following year through the publication of a prior information notice. The notice, containing the information set out in Annex XIV, part I, letter B, section B1, shall be published by the contracting authority on its buyer profile. For contracts whose amount is equal or higher with respect to the threshold set out in Article 35, the prior information notice is published by the Publications Offices of the European Union or by the contracting station on its buyer profile. In this latter case, contracting authorities or contracting entities shall submit to the abovementioned Office a notice of the publication on their buyer profile, in accordance with the mentioned Annex. The notice shall contain the information set out in Annex XIV, part I, letter A.

2. For restricted procedures and competitive procedures with negotiation, sub-central contracting authorities referred to in Article 3, paragraph 1, letter (c), may use a prior information notice as a call for competition pursuant to Article 59, paragraph 5, provided that the notice fulfils all of the following conditions:

(a) it refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;

(b) it indicates that the contract will be awarded by restricted procedure or competitive procedure with negotiation without further publication of a call for competition and invites interested economic operators to express their interest;

(c) it contains, in addition to the information set out in Annex XIV, part I, letter B, section B1, the information set out in that same Annex, section B2;

(d) it has been sent for publication no less than 35 days and no more of 12 months prior to the date on which the invitation to confirm interest referred to in Article 75, paragraph 2 is sent.

3. The notice referred to in paragraph 2 may be published on the buyer profile as an additional information at the national level in accordance with Article 73. The period covered by the prior information notice shall be a maximum of 12 months from the date the notice is transmitted for publication. However, in the case of public contracts for social and other specific services, the prior information notice referred to in point (b) of Article 142, paragraph 1, may cover a period which is longer than 12 months and not exceeding 24 months.

Art. 71
Contract notice

1. Without prejudice to what contained in Article 59, paragraph 5, second period, and 63, all the procedures of choice of the contractor shall be initiated through contract notices. In order to facilitate the activity of contracting authorities or contracting entities by homogenizing their conduct, following the adoption by ANAC of models of notice, the contract notices are edited in conformity with them. They shall contain the information set out in Annex XIV, Part I, letter C, and are published in conformity with Article 72. They shall also contain the minimum environmental criteria set out in Article 34. Contracting authorities or contracting entities shall explicitly motivate in their decision to contract any derogation from the models of notice.

Art. 72
Form and manner of publication of notices

1. Notices and calls referred to in Articles 70, 71 and 98 including the information set out in Annex XIV, in the format of standard forms, including standard forms for corrigenda, are edited and submitted to the Publications Office of the European Union by electronic means and published in conformity with Annex V.

2. Notices and calls referred to in paragraph 1 are published within five days from their submission, except the provisions on their publication by the Publications Office of the European Union.

3. Prior information notices shall not be published on a buyer profile before the dispatch to the Publications Office of the European Union of the notice of their publication in that form. They shall indicate the date of that dispatch.

4. The Publications Office of the European Union shall ensure that the full text and the summary of prior information notices referred to in Article 70, par 2 and 3 and calls for competition setting up a dynamic purchasing system, as referred to in article 55, par. 6, letter a) continue to be published:

- (a) in the case of prior information notices, for 12 months or until receipt of a contract award notice as provided for in Article 98 indicating that no further contracts will be awarded during the 12-month period covered by the call for competition. However, in the case of public contracts for social and other specific services, the prior information notice referred to in point (b) 142, comma 1, shall continue to be published until the end of its originally indicated period of validity or until receipt of a contract award notice as provided for in Article 98 indicating that no further contracts will be awarded during the period covered by the call for competition;
- (b) in the case of calls for competition setting up a dynamic purchasing system, for the period of validity of the dynamic purchasing system

5. Confirmation of the receipt of the notice and of the publication of the submitted information,

with mention of the date of publication released by the contracting station to the Publications Office of the European Union shall be used as a proof of the publication.

6. Contracting authorities may publish notices for public contracts that are not subject to the publication requirement laid down in this Code, provided that those notices are sent to the Publications Office of the European Union by electronic means in accordance with the format and procedures for transmission indicated in paragraph 1.

Art. 73

Publication at national level

1. Notices and calls referred to in Articles 70, 71 and 98 shall not be published at national level before the publication pursuant to Article 72. However, publication may in any event take place at the national level where contracting authorities have not been notified of the publication within 48 hours after confirmation of the receipt of the notice in accordance with Article 72.

2. Notices and calls published at national level shall not contain information other than that contained in the notices or calls dispatched to the Publications Office of the European Union or published on a buyer profile, but shall indicate the date of dispatch of the notice to the Publications Office of the European Union or its publication on the buyer profile.

3. Prior information notices shall not be published on a buyer profile before the dispatch to the Publications Office of the European Union of the notice of their publication in that form. They shall indicate the date of that dispatch.

4. Without prejudice to the provisions of article 72, notices and notices are also published without charge on the profile of the client of the contracting authority and on the digital platform of calls for tenders to the ANAC, in application cooperation with the computerized systems of regions and regional e-procurement platforms. By decree of the Minister of Infrastructures and Transport, in agreement with the ANAC, to be adopted within six months from the date of entry into force of this code, the general publication guidelines are defined in order to guarantee the certainty of the publication date and adequate levels of transparency and know-how, even with the use of the most widespread daily press in the area concerned. The aforementioned decree identifies the date until which notices and notices must also be published in the Official Journal of the Italian Republic, special series relating to public contracts, by the sixth working day following the receipt of documentation by the Office. Polygraphic Institute of the State. The publication of additional information, complementary or additional to those indicated in this code, takes place exclusively electronically and does not entail financial charges for the contracting authorities. Until the date indicated in the decree referred to in this paragraph, article 216, paragraph 11 applies. (this is the decree of December 2, 2016, in G.U. No. 20 of January 25, 2017)

5. The legal effects that the legal system connects to advertising at national level start from the date of publication on the digital platform of calls for tenders to the ANAC.

Art. 74

Electronic availability of tender documents

1. Contracting authorities or contracting entities shall by electronic means offer unrestricted and full direct access free of charge to the procurement documents from the date of publication of a notice in accordance with Articles 70 and 72 or the date on which an invitation to confirm interest was sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which the procurement documents are accessible.
2. Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in Article 52, paragraph 1, third period, contracting authorities may indicate in the notice or the invitation to confirm interest that the procurement documents concerned will be transmitted by certified electronic mail or other similar means in the other Member States or, in case of impossibility, by means other than electronic means in accordance with paragraph 4. In such a case, the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency referred to in Article 60, paragraph 3, 61, paragraph 6 and 62, paragraph 5.
3. Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because contracting authorities intend to apply Article 52, paragraph 2 of this Code, they shall indicate in the notice or the invitation to confirm interest which measures aimed at protecting the confidential nature of the information they require and how access can be obtained to the documents concerned. In such case, the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency referred to in Article 60, paragraph 3, 61, paragraph 6 and 62, paragraph 5.
4. Provided that it has been requested in good time, additional information relating to the specifications and any supporting documents shall be supplied by the contracting authorities or contracting entities to all tenderers taking part in the procurement procedure not later than six days before the time limit fixed for the receipt of tenders. In the event of an accelerated procedure as referred to in Article 60, paragraph 3 and 61, paragraph 6 that period shall be four days.

Art. 75

Invitations to candidates

1. In restricted procedures, competitive dialogue procedures, innovation partnerships and competitive procedures with negotiation, contracting authorities or contracting entities shall simultaneously and in writing invite, usually through electronic means, the selected candidates to submit their tenders or negotiate or, in the case of a competitive dialogue, to take part in the dialogue. With the same modalities contracting authorities or contracting entities shall invite, where a prior information notice is used as a call for competition, the economic operators which have already expressed their interest to confirm their continuing interest.
2. The invitations referred to in paragraph 1 shall specify the electronic address on which the procurement documents have been made directly available by electronic means and shall include the information mentioned in Annex XV. Where those documents have not been the subject of unrestricted and full direct access, free of charge, pursuant to Article 74 and have not been made available with other means, invitations are accompanied by procurement documents in digital

format, or where this is not possible, in paper format.

3. In negotiated procedures without prior publication of a contract notice, the selected economic operators shall normally be invited by certified e-mail or similar tool in the other Member States or, where this is not possible, by letter. The invitations contain the elements of the requested performance.

Art. 76

Information of candidates and tenderers

1. Contracting authorities or contracting entities, with respect to the specific modalities of publication established by this Code, shall as soon as possible inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or not to award a contract for which there has been a call for competition or to recommence the procedure or not to implement a dynamic purchasing system.

2. On written request from the candidate or tenderer concerned, the contracting authority shall as quickly as possible, and in any event within 15 days from receipt of the request, inform:

(a-bis) any unsuccessful candidate of the reasons for the rejection of its request to participate,

(a) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in Article 65, paragraphs 7 and 8, the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements,

(b) any tenderer that has made an admissible and assessed tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement,

(c) any tenderer that has made an admissible and assessed tender of the conduct and progress of negotiations and dialogue with tenderers.

3 (suppressed)

4. Contracting authorities may decide to withhold certain information regarding the contract award, the conclusion of framework agreements or admittance to a dynamic purchasing system, as referred to in paragraphs 1 and 2, where the release of such information would impede law enforcement or would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of public or private economic operator or of the selected economic operator, or might prejudice fair competition between economic operators.

5. The contracting authorities shall immediately and immediately communicate within a period not exceeding five days:

- a) the award, to the successful tenderer, to the next competitor in the ranking, to all candidates [rectius: to all bidders] who have submitted a bid accepted in the tender, to those whose bid or offer has been excluded if have appealed against the exclusion or are in terms to present an appeal, as well as to those who have challenged the call for tenders or the letter of invitation, if such appeals have not been rejected with final judicial decision;
- b) exclusion to candidates and excluded bidders;
- c) the decision not to award a contract or not to conclude a framework agreement, to all candidates;
- d) the date of conclusion of the contract with the contractor, to the subjects referred to in letter a) of this paragraph.

6. The communications referred to in paragraph 5 shall be made by certified e-mail or similar instrument in the other Member States. The communications referred to in paragraph 5, letters a) and b), indicate the expiration date of the deadline for the conclusion of the contract.

Article 77

((Selection Board))

1. In the procedures for awarding contracts for tenders or concessions, limited to award cases with the criterion of the most economically advantageous tender ((...)), the evaluation of tenders from a technical and economic point of view is entrusted to a selection board composed of experts in the specific sector to which the subject of the contract relates.

2. The board consists of an odd number of commissioners, no more than five, identified by the contracting entity, working remotely with telematic procedures that safeguard the confidentiality of communications.

3. Commissioners shall be selected from among the experts entered in the Register established by ANAC referred to in Article 78 and, in the case of award procedures carried out, from CONSIP SpA, INVITALIA -

the National Agency for Inward Investment and Economic Development SpA, the regional aggregators referred to in Article 9 of Legislative Decree No. 66 of April 24 2014, converted with amendments by Law No. 89 of June 23 2014, from among the experts listed in the special edition of the Register, not belonging to the same contracting entity and only if not available in

sufficient numbers, and also from the special section experts serving at the same contracting entity or, if the number is still insufficient, using other experts entered in the Register outside the special section as well. They are identified by the contracting entities by drawing public lots from a list of candidates consisting of a number of names at least twice that of the members to be appointed and in any event respecting the principle of rotation. This list is communicated by ANAC to the contracting entity within five days of the request by the contracting entity. The contracting entity may, in the case of tendering of contracts ((for services and supplies)) of an amount less than the thresholds referred to in Article 35 ((, for works of less than 1 million euros)) or for those that do not have particular complexity, appoint ((some)) internal members to the contracting entity, respecting the principle of rotation ((, except the Chairman)). The procedures conducted through telematic trading platforms pursuant to Article 58 are not considered particularly complex. ((In the case of the tendering of contracts for services and supplies of high technological or innovative scientific content, carried out within research and development activities, ANAC, upon request and comparison with the contracting entity on the specific nature of the profiles, may also select the members of the selection boards from among the experts within the same contracting entity.))

4. Commissioners must not have performed or perform any other function or technical or administrative assignment regarding the contract to which the award relates. ((The appointment of the sole project manager as a member of the competition boards is evaluated with reference to the single procedure.))

5. Those who have served as public administrators within two years prior to the calling of the award procedure may not be appointed selection commissioners in respect of contracts tendered by the Administrations within which they exercised their office functions.

6. Article 35, subsection 2 of Legislative Decree No. 165 of March 30 2001, Article 51 of the Code of Civil Procedure, as well as Article 42 of this Code apply to commissioners and secretaries of the boards. Also excluded from subsequent commissioner appointments are those who, as members of the selection boards, have taken part, intentionally or with gross negligence determined in the courts and with sentence not suspended, in the approval of acts declared unlawful.

7. The appointment of commissioners and the establishment of the board shall take place after the expiry of the deadline for the submission of tenders.

8. The Chairman of the Selection Board is identified by the contracting entity from the commissioners drawn.

9. At the time of the acceptance of the assignment, the commissioners declare, under Article 47 of Legislative Decree No. 445 of the President of the Republic of December 28 2000, the non-existence of the causes of incompatibility and abstention referred to in paragraphs 4, 5 and 6.

((The contracting entities, prior to the entrusting of the assignment, ensure that there are no prohibitive grounds for the appointment of a member of the Selection Board as referred to in paragraphs 4, 5 and 6 of this Article, Article 35, subsection 2 of Legislative Decree No. 165 of 2001 and Article 42 of this Code. The existence of any prohibitive grounds or the declaration of incompatibility of the candidates must be promptly communicated by the contracting entity to ANAC for the purpose of the possible cancellation of the expert from the register and the communication of a new expert.))

10. Expenses relating to the board shall be included in the economic framework of the intervention between the sums available to the contracting entity. By decree of the Minister for Infrastructure and Transport, in agreement with the Minister for Economy and Finance, after hearing ANAC, the entry fee and the maximum remuneration for the commissioners has been

set up. Public employees are entered free of charge in the register and are not entitled to any compensation if they are part of the contracting entity.

11. In the case of the renewal of the tendering procedure as a result of the cancellation of the award or cancellation of the exclusion of some of the competitors, the board will be reconsidered, except where the cancellation is derived from a defect in the composition of the board.

12. ((PARAGRAPH REPEALED BY LEGISLATIVE DECREE NO. 56 OF 19 APRIL 2017))

13. This Article shall not apply to the procedures for the award of contracts or concessions by contracting entities other than contracting authorities when carrying out any of the activities referred to in Articles 115 to 121.

Article 78

(Register of selection boards)

1. The mandatory national register of the members of the selection boards for the procedures for tendering public contracts is established at ANAC, which manages and updates it according to criteria identified by appropriate determinations. For the purpose of enrolment in the abovementioned register, the parties concerned must be in possession of compatibility and morality requirements, as well as proven competence and professionalism in the specific sector to which the contract relates, according to the criteria and methods defined by the Authority ((with appropriate guidelines)), assessing the possibility of dividing the Register into homogenous thematic areas to be adopted within one hundred and twenty days of the date of entry into force of this Code. Until the adoption of the legislation on entry in the Register, Article 216, paragraph 12 applies.

((1, subsection 2. The guidelines referred to in paragraph 1 also govern the modes of operation of the selection boards, providing, as a general rule, public sessions, as well as private sessions for the evaluation of technical tenders and any other specific commitments.))

Art. 79

1. When fixing the time limits for the receipt of the requests to participate and tenders, contracting authorities shall take account in particular of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set out in Articles 60, 61, 62, 64 and 65.

2. Where tenders can be made only after a visit to the site or after on-the-spot inspection of the procurement documents and relevant attachments, the time limits for the receipt of tenders, which shall be longer than the minimum time limits set out in Articles 60, 61, 62, 64 and 65, shall be fixed so that the economic operators concerned may be aware of all the information needed to produce tenders.

3. Contracting authorities or contracting entities shall extend the time limits for the receipt of tenders so that the economic operators concerned may be aware of all the information needed to produce tenders in the following cases:

(a) where, for whatever reason, significant additional information for the preparation of adequate tenders, although requested by the economic operator in good time, is not supplied at the latest six days before the time limit fixed for the receipt of tenders. In the event of an accelerated procedure as referred to in Articles 60, paragraph 3, and 61, paragraph 6, that period shall be four days;

(b) where significant changes are made to the procurement documents

4. The length of the extension referred to in paragraph 3 shall be proportionate to the importance of the information or change.

5. Where the additional information has either not been requested in good time or its importance with a view to preparing responsive tenders is insignificant, contracting authorities shall not be required to extend the time limits.

Art. 80

Exclusion grounds

1. It is considered to be a reason for the exclusion of an economic operator from participation in a contract or concession award procedure, the final judgment or an irrevocable decree of conviction or a judgment enforcing the penalty by request pursuant to Article 444 of the Criminal Procedure Code, also referred to a subcontractor in cases pursuant to Article 105(6) for one of the following offences:

a) crimes, committed or attempted, pursuant to Articles 416, 416-bis of the Criminal Code as well as crimes committed making use of conditions provided for in the aforementioned Article 416-bis or for one of the activities in that same Article, as well as for the crimes, committed or attempted, provided for in Article 74 of the decree of the President of the Republic n. 309 of 9 October 1990, in Article 291-quater of the decree of the President of the Republic n.43 of 23 January 1973, and Article 260 of legislative decree n.152 of 3 April 2006, as far as they can be attributed to the participation to a criminal organization, as defined in Article 2 of the framework decision 2008/841/JIA of the Council;

b) crimes, committed or attempted, according to Articles 317, 318, 319, 319-ter, 319-quater, 320, 321, 322, 322-bis, 346-bis, 353, 353-bis, 354, 355 and 356 of the Criminal Code as well as Article 2635 of the Civil Code;

b-bis) false social communications pursuant to Articles 2621 and 2622 of the Civil Code;

c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests;

d) crimes, committed or attempted, for purposes of terrorism, also international terrorism, and of subversion of the constitutional order; terrorist crimes or crimes connected to terrorist activities;

e) crimes pursuant to Articles 648-bis, 648-ter.1 of the Criminal Code, money laundering of proceeds of criminal activities or financing of terrorism, as defined in Article 1 of legislative decree n. 109 of 22 June 2007, and subsequent modifications;

f) exploitation of child labour and other forms of trafficking in human beings as defined by legislative decree n. 24 of 4 March 2014;

2. It is also a reason for exclusion of the existence, with reference to the persons indicated in paragraph 3, of causes for forfeiture, suspension or prohibition provided for in Article 67 of Legislative Decree 6 September 2011, n. 159 o of an attempt to infiltrate the mafia referred to in Article 84, paragraph 4, of the same decree. The provisions of articles 88, paragraph 4-bis, and 92, paragraphs 2 and 3 of legislative decree 6 September 2011, n. 159, with reference respectively to anti-mafia communications and anti-mafia information.

3. The exclusions referred to in paragraphs 1 and 2 shall apply if the judgment or the decree or the interdictive measures have been pronounced against: the owner or technical director, in case of an individual undertaking; the partner or technical director in case of a general partnership; the general partners or the technical director, in case of a limited partnership; the members of the board of directors who have been assigned legal representation, including agents and general procurers, the members of the organs with powers of direction or supervision or the subjects vested with power of representation, of direction or control, the technical director or unique partner natural person, or the majority partner in case of a society with less of four partners, if it is another kind of society or consortium. In any case the exclusion and ban shall also operate for the subjects ceased from the office in the year before the date of publication of the contract notice, if the undertaking does not demonstrate that there has been a complete and effective dissociation from the criminally sanctioned conduct; the exclusion shall not be imposed and the ban shall not apply if the crime has been decriminalised or rehabilitation has intervened or the crime has been declared extinguished after the conviction or in case of revocation of the same sentence.

4. An economic operator shall be excluded from the participation in an award procedure if it has committed serious violations, definitely sanctioned, with respect to obligations relating to the payment of taxes or social and security contributions according to Italian legislation or the legislation of the State where it is incorporated. Serious violations are those violations implying an omitted payment of taxes for a sum higher than what provided for in Article 48-bis, paragraphs 1 and 2-bis, of the decree of the President of the Republic n. 602 of 29 September 1973. Definitely sanctioned violations are those contained in judgments or administrative acts that are not challengeable anymore. Serious violations in the fields of social and security contributions are those preventing from issuing the Single Document of Contributive Regularity (SDCR), referred to in Article 8 of the decree of the Minister of Work and Social Policy of 30 January 2015 published in the Official Journal n.125 of 1 June 2015, or of the certifications issued by the relevant social security entities which do not adhere to the system of the single security board. This paragraph shall no longer apply when the economic operator has fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including any possible, interest accrued or fines, as long as the payment or binding agreement have been formalized before the deadline for the presentation of tenders.

5. Contracting authorities or contracting entities shall exclude from participation in an award procedure an economic operator in one of the following situations, even referred to a subcontractor in cases under Article 105(6) when:

a) the contracting authority or entity can demonstrate by any appropriate means the presence of serious violations duly ascertained with reference to the norms in the field of health and safety on workplaces, as well as the obligations contained in Article 30(3) of this Code;

- b) the economic operator is bankrupt or is the subject of winding-up proceedings or preventive agreement except cases of agreement with business continuity, or against which there is a proceeding for the declaration of one of these situations, without prejudice for what provided for in Article 110;
- c) the contracting authority or entity demonstrate with appropriate means that the economic operator has been liable of serious professional misconducts, to the extent that they make its integrity or reliability dubious. This includes, inter alia: significant shortcomings in the execution of a previous contract or concession that have caused its early resolution, not contested in trial, but confirmed by the outcome of a trial, or they have given rise to an order to pay damages or other sanctions; the attempt to unduly influence the decisional process of the contracting station or to obtain confidential information for self-advantage; to provide, also for negligence, false or misleading information capable of influencing the decisions on exclusion, the selection or the award, or to omit information due for correctly carrying out the selection procedure
- d) the participation of an economic operator determines a situation of conflict of interest pursuant to Article 42(2), not otherwise solvable;
- e) a distortion of competition deriving from the prior involvement of the economic operators in the preparation of the procurement procedure, as referred to in Article 67, cannot be remedied by other, less intrusive measures
- (f-bis) the economic operator presenting in the ongoing tender procedure or in the award of subcontracts untrue documents or declarations;
- f-ter) the economic operator enrolled in the computer records kept by the ANAC observatory for having presented false declarations or false documents in the tender procedures and in the award of subcontracts. The reason for exclusion lasts until as long as the enrolment in the computer records operates
- g) the economic operator enrolled in the computer records kept by the ANAC observatory for having presented false declarations or false documents in order to obtain the certification of qualification, for the period in which the enrolment operates;
- h) the economic operator has violated the ban on the fiduciary registration referred to in Article 17 of the Law of 19 March 1990, n. 55. The exclusion lasts one year from the definitive ascertainment of the violation and must be ordered if the violation has not been removed;
- i) the economic operator does not present the certification referred to in Article 17 of the Law of 12 March 1999, n. 68, or not to certify the existence of the same requirement;
- l) the economic operator who, despite having been the victim of the predicted offenses and punished by articles 317 and 629 of the penal code aggravated under Article 7 of the Decree-Law of 13 May 1991, n. 152, converted, with modifications, from the law 12 July 1991, n. 203, does not appear to have reported the facts to the judicial authority, except that the cases provided for by the first paragraph of Article 4 of the Law of 24 November 1981, n. 689. The circumstance must emerge from the indications based on the request for reference made to the defendant in the year preceding the publication of the announcement and must be communicated, together with the generality of the person who has omitted the aforementioned denunciation, from the procurator of the Republic proceeding to the ANAC, which takes care of the publication of the communication on the site of the Observatory;
- m) the economic operator is in relation to another participant in the same awarding procedure, in a control situation referred to in Article 2359 of the Italian Civil Code or in any report, even de facto, if the control situation or report implies that tenders are attributable to a single decision-making center.

6. Contracting authorities or contracting entities shall at any time during the procedure exclude an economic operator where it turns out that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraphs 1, 2, 4 and 5.

7. An economic operator, or a subcontractor, who is in one of the situations referred to in paragraph 1, limited to the cases in which the final sentence imposed a sentence not exceeding 18 months or recognized the mitigating factor of the collaboration as defined for the individual cases of crime, or in paragraph 5, is allowed to prove compensation or have committed to compensate any damage caused by the crime or the offense and to have taken concrete measures of a technical, organizational and staff nature suitable for preventing further crimes or offenses.

8. If the contracting authority considers that the measures referred to in paragraph 7 are sufficient, the economic operator is not excluded from the procurement procedure; vice versa of the exclusion, motivated communication is given to the economic operator.

9. An economic operator which has been excluded by final judgment from participating in procurement award procedures shall not be entitled to make use of the possibility provided for under paragraphs 7 and 8 during the period of exclusion resulting from that judgment.

10. If the final judgment does not set out the duration of the accessory penalty not to bargain with the public authority or rehabilitation has not occurred, that period shall be equal to five years, except where the main penalty is of a lower duration, and in this case it shall equal the duration of the main penalty and three years, running from the date of the final determination, in cases referred to in paragraphs 4 and 5 where the final judgment has not occurred.

11. The causes of exclusion provided for in this Article shall not apply to the undertakings or societies seized in confiscation pursuant to Article 12-sexies of the decree-law n. 306 of 8 June 1992, converted with modifications, by law n. 356 of 7 August 1992 or to Articles 20 and 24 of legislative decree n. 159 of 6 September 2011, and entrusted to a guardian or judicial or financial administrator, limited to those referred to the period preceeding this entrusting.

12. In case of presentation of a false declaration or a false documentation, in the procurement procedures and in the subcontracting assignments,. The contracting station gives notice to the Authority which, where it believes that they have been rendered with fraud or gross negligence considering the relevance or gravity of the facts object of the false declaration or presentation of false documentation, orders the enrolment in the electronic record with a view to exclusion from the procurement procedures and the subcontracting assignments pursuant to paragraph 1 up to two years, after which the enrolment is cancelled and however ceases to produce effects.

13. ANAC may, be means of guidelines to be adopted within 90 days from the entry into force of this Code, precise, in order to grant an homogeneous practice by contracting authorities or contracting entities, to consider as adequate means of proof in order to demonstrate the circumstances of exclusion referred to in paragraph 5, letter (c), or as shortcomings in the execution of a previous procurement contract are significant within the meaning of that same paragraph 5, letter (c).

14. The entities for whom the grounds of exclusion provided for in this Article apply shall not be entrusted with subcontracts and shall not conclude the relevant contracts.

Article 81

(Tender documents)

1. Without prejudice to Articles 85 and 88, the documentation proving that the general, technical, professional, economic and financial requirements have been met for the participation in the procedures governed by this Code ((and for the control during the performance phase of the contract of the permanence of these requirements,)) is acquired exclusively through the centralized database managed by the Ministry of Infrastructure and Transport, called the National Database of Economic Operators.
2. For the purposes referred to in paragraph 1, by decree of the Minister of Infrastructure and Transport, after hearing ANAC and AGID, the details concerning participation in the tendering procedures and their outcome are specified, in relation to which the inclusion is mandatory of the documentation in the database, the documents other than those for which inclusion is envisaged and the submission methods, the terms and technical rules for the acquisition, and the updating and searching of the above data. The same decree defines the procedures for the methods concerning the progressive computerization of the documents necessary to demonstrate the requirements for participation and the absence of grounds for exclusion, as well as the definition of the criteria and procedures for access and operation, in addition to the interoperability between the various databases involved in the process. To this end, by December 31 2016, the Ministry of Infrastructure and Transport, in agreement with ANAC, defines the arrangements for replacing the agreements stipulated by ANAC so as not to undermine the data management activity attributed to ANAC by this Code. Until the date of entry into force of the decree referred to in this paragraph, Article 216, paragraph 13 shall apply.
3. The rejection forms the object of performance evaluation, that is, the omission of what is necessary to ensure the interoperability of the databases, in accordance with the methods identified in the decree referred to in paragraph 2, by the party responsible for them within the administration or public body involved in the proceedings. To this end, ANAC, duly informed by the Ministry of Infrastructure and Transport, shall make the appropriate reports to the top administrative body or public body.
4. The results of the assessment of the general qualification requirements, constantly updated, with reference to the same participant in the terms of effectiveness of each document, may also be used for different competitions.

Art. 82

Test reports, certification and other means of proof

1. For the purpose of this paragraph, a “conformity assessment body” shall be a body that performs conformity assessment activities including calibration, testing, inspection and certification, accredited in accordance with Regulation (EC) n. 765/2008 of the European

Parliament and of the Council, or authorized for the application of EU legislation on harmonization, by Member States not on the basis of accreditation, pursuant to Article 5, paragraph 2, of the same Regulation (EC) n. 765/2008 of the European Parliament and of the Council. In cases not covered by EU legislation on harmonization, the reports and certificates issued by bodies referred to in sectorial national provisions shall be used.

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, including a technical dossier of the manufacturer, where the economic operator concerned had no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned and provided that the economic operator concerned thereby proves that the works, supplies or services provided by it meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.
3. Information related to the evidence and documents submitted in accordance with this Article and Articles 68, paragraph 8, and 69 are made available to other Member States upon request, by the Cabina di Regia. The exchange of information is aimed at an effective mutual cooperation, and takes place with respect to EU and national norms on the protection of personal data.

Art. 83

Selection criteria

1. Selection criteria may exclusively relate to:

- (a) professional suitability requirements;
- (b) economic and financial standing;
- (c) technical and professional ability.

2. The requirements and standings referred to in paragraphs 1 shall be related and proportionate to the subject matter of the contract, bearing in mind the public interest to have the maximum possible number of participants, with respect to the principles of transparency and rotation. For works, a decree by the Minister of infrastructures and transports to be adopted, upon proposal by ANAC within a year from the entry into force of this Code, following the opinion of the competent Parliamentary Committee, shall regulate, with respect to the principles set out in this Article and in order to favour access to micro-enterprises and small and medium enterprises, the system of qualification, the cases and modalities of availment, the requirements and standings to be possessed by the tenderer, also with reference to the consortia referred to in Article 45, letters (b) and (c) and the documentation required in order to demonstrate this possession as referred to in Article XVII. Until the adoption of the abovementioned guidelines, Article 216, paragraph 4 shall apply.

3. With regard to the subsistence of requirements referred to in paragraph 1, letter (a), tenderer, where Italian citizens or citizens of another Member State that are resident in Italy, shall be enrolled in the registry of the Chamber of Commerce, Craft, Industry and Agriculture or in the registry of the provincial commissions for craft, or to the competent professional orders. To the citizen of another Member State not resident in Italy, it shall be required the proof of enrolment,

according to the modalities currently in force in the State of residence, in one of the professional or commercial registries in Article XVI, through sworn statement or according to the modalities in force in the Member State where it is established or through the attestation, under their his own responsibility, that the presented certificate has been issued by one of the professional or commercial registries established in the country where he is a resident. In procurement procedures for public services contracts, in so far as tenderers or bidders have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting station may require them to prove that they hold such authorisation or membership.

4. For services and supplies contracts, in order to verify the possession of the requirements referred to in paragraph 1, letter (b), contracting authorities or contracting entities may require in the call for competition:

- a) that the economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract;
- b) that economic operators provide information on their annual accounts showing, in particular, the ratios, between assets and liabilities;
- c) an appropriate level of professional risk indemnity insurance.

5. The minimum yearly turnover that economic operators are required to have pursuant to paragraph 4, letter (a) shall not however exceed two times the estimated contract value, calculated in relation to the reference period of the same, except in duly justified cases attached to the nature of the entrusted services or supplies. The contracting authority or entity shall indicate the main reasons for requiring a minimum yearly turnover in the procurement documents. Where a contract is divided into lots this paragraph shall apply in relation to each individual lot. However, the contracting authorities or contracting entities may set the minimum yearly turnover that economic operators are required to have by reference to groups of lots in the event that the successful tenderer is awarded several lots to be executed at the same time.

Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement referred to in the first period of this paragraph shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum yearly turnover requirement shall be calculated on the basis of the expected maximum size of specific contracts to be awarded under that system.

6. With reference to services and supplies contracts, for the selection criteria referred to in paragraph 1, letter (c), contracting authorities or contracting entities may require a requirement aimed at ensuring that the economic operators possess the human and technical resources and the necessary experience in order to execute the contract to an appropriate quality standard. In the award procedures for supplies requiring works of siting and installation, the professional standing of the economic operators to provide these services or to execute the installation or works is assessed with reference to their competence, efficiency, experience and reliability. The required information shall not exceed the subject of the contract; the administration shall, however, take into account the exigency of protecting technical and commercial secrets.

7. Without prejudice to the qualification system referred to in Article 84 and to the provisions of documentary evidence prior to Article 85, the proof of the requirements referred to in paragraph 1, letters b) and c) is provided, depending on the nature, the quantity or importance and use of the supplies or services, using the means of proof referred to in Article 86, paragraphs 4 and 5.

8. Contracting authorities or contracting entities shall indicate the required conditions of participation which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest and proceed to the formal and substantial verification of the ability to deliver, the technical and professional abilities, including the human resources, relating to the undertaking, as well as the actually executed activities. For entities referred to in Article 45, paragraph 2, letters (d), (e), (f) and (g), possible measures in which these requirements have to be possessed by individual participating tenderer shall be indicated. The agent has to possess in any case the requirements and execute the provisions for the most part. The notices and invitation letters shall not contain further requirements on pain of exclusion with respect to those provided for in this Code and in other existing legal provisions. Such requirements shall be however null.

9. The deficiencies of any formal element of the application can be remedied through the procedure of preliminary investigation referred to in this paragraph. In particular, in case of lack, incompleteness and any other essential irregularity of the elements and of the single European tender document referred to in Article 85, with the exception of those relating to the economic offer and the technical offer, the contracting authority assigns to the competitor a term, not exceeding ten days, for the necessary declarations to be made, supplemented or regularized, indicating the content and the subjects who must render them. In case of unnecessary completion of the regularization deadline, the competitor is excluded from the race. The deficiencies in the documentation that do not allow the identification of the content or of the person responsible for the same constitute essential irregularities that can not be remedied.

10. A rating system is set up at the ANAC, which handles the management of the system, for which the Authority issues appropriate certification to economic operators, upon request. The aforementioned system is connected to reputational requirements assessed on the basis of qualitative and quantitative indicators, objective and measurable, as well as on the basis of definitive assessments that express the reliability of the company. The ANAC defines the reputational requirements and the evaluation criteria of the same, as well as the procedures for the issue of the relative certification, through guidelines adopted within three months from the date of entry into force of this provision. The guidelines referred to in the previous period also establish an administrative system, regulated under the direction of the ANAC, of penalties and reward for the compulsory reporting of extortion and bribery requests by companies that manage public contracts, including subcontractors and companies supplying materials, works and services, also providing for a specific sanctioning regime in cases of omitted or late denunciation. The reputational requirements underlying the company rating referred to in this paragraph take into account, in particular, the previous behavior of the company, with reference to the non-use of preliminary investigation, to the application of the provisions on mandatory reporting of extortion and corruption requests, as well as the respect of the times and the costs in the execution of the contracts and the incidence and results of the litigation both during the participation in the tender procedures and during the execution of the contract. The calculation

of the company rating takes into account the behavior of the economic operators in the award procedures launched after the entry into force of this provision. ANAC assigns reward elements to economic operators for conduct prior to the entry into force of this provision that comply with the provisions for the issue of the company rating.

Article 84

(Unique qualification system for firms that carry out public works)

1. Notwithstanding the provisions of paragraph 12 and Article 90, paragraph 8, parties carrying out any public works of a value equal to or greater than 150,000 euros, shall prove possession of the conditions of qualification referred to in Article 83 by certification by the appropriate private law bodies authorized by ANAC.

2. ANAC, ((with the decree)) referred to in Article 83, paragraph 2, also identifies the standard quality levels of the controls that the certifying bodies (SOA) must carry out, with particular reference to those of a non- documentary nature.

The activity of monitoring and controlling compliance with the above-mentioned standard levels of quality implies the exercising of discretionary powers, or rather, in the most serious cases, the suspension or revocation of ANAC's permit to operate.

3. Within three months of the date of entry into force of this Code, ANAC shall carry out a special survey on the possession of the requirements for carrying out the activity by the parties currently active in certification, and the manner in which it is carried out, providing for the outcome by means of warning, suspension, or revocation of the permit in the case of non-possession of the requirement or of the operation considered not upstanding. ANAC reports on the results of the above-mentioned special survey to the Government and the Chambers in order to provide assessment factors regarding the compliance of the current unique qualification system to competition and transparency requirements, including in terms of the quantity of existing bodies or the need for the identification of forms of public contribution to them and their certification activities.

4. The bodies referred to in paragraph 1 shall certify to:

a) The absence of the grounds for exclusion referred to in Article 80 ((which constitutes the condition for qualification))

b) Possession of the economic, financial, technical and professional capacity requirements referred to in Article 83; ((the period of documentable activity is that relating to the decade prior to the date of the signing of the contract with SOA to obtain the qualification;)) technical and organizational requirements including the certificates issued to the performing undertakings by the contracting entities.

The certification bodies acquire the above-mentioned certificates solely from the Observatory, copies of which are sent by the contracting entities

c) Possession of quality system certification conforming to the European standards of the UNI EN ISO 9000 series and the applicable national regulations issued by accredited parties in accordance with the European standards of series UNI CEI EN 45000 and series UNI CEI EN ISO/IEC 17000

d) Possession of a business rating certification, issued by ANAC in accordance with Article 83, paragraph 10.

((4-subsection 2. The bodies referred to in paragraph 1 immediately report to ANAC cases where economic operators make false statements or produce untruthful documents for the purpose of the qualification. ANAC, if it finds serious fault or the wilful misconduct of the economic operator, taking into account the gravity of the matter and its relevance in the qualification procedure, shall have it entered in the computer records for the purposes of exclusion from tendering procedures and subcontracting awards under Article 80, paragraph 5, letter (g)), for a maximum period of two years. Upon the deadline set by ANAC, the entry will lose its effectiveness and is immediately cancelled.))

5. The unique qualification system for firms that carry out public works is organized in relation to the type and amount of works.

6. ANAC shall supervise the qualification system and, for this purpose, perform inspections without prior notice or request any document deemed necessary. Supervisory and control powers are also exercised on a reasoned and documented instance of an undertaking, SOA or contracting entity. Contracting entities are obliged to carry out spot checks at minimum, in accordance with predetermined procedures, that the requirements of the certification are met, promptly reporting any irregularities found to ANAC, which provides for the precautionary suspension of the effectiveness of the certification of the requirements within ten days of receipt of the application.

ANAC shall provide for the verification within 60 days, in accordance with the procedures laid down in the guidelines. The checks carried out by the contracting entities constitute a positive factor of evaluation for the purposes of the reward referred to in Article 38.

7. For works contracts of a value equal to or greater than 20 million euros, in addition to the presentation of the qualification requirements certification referred to in Article 83, the contracting entity may require additional requirements aimed at:

a) The verification of economic and financial capacity. In this case, the competitor provides the significant economic and financial parameters required, certified by auditing companies or other parties who are responsible for the technical evaluations of the certification body, which unequivocally discloses the financial exposure of the competing undertaking at the time it participates in a tender. As an alternative to this requirement, the contracting entity may require a turnover of at least ((two)) times the amount of the tender that the undertaking has had ((in the best five of the 10 years preceding)) the date of publication of the notice

b) The verification of professional capacity for contracts for which unlimited classification is required. In this case, the competitor provides evidence of having carried out work for bodies and types in the category identified as prevalent to those tendered and appropriately certified by the respective procurement entities, by submitting the work execution certificate. This requirement only applies to works contracts of over 100 million euros.

8. The guidelines referred to in this Article govern the cases and procedures for suspending or cancelling certifications, as well as the revocation of the authorizations of the ((certifying bodies)). The guidelines also govern the criteria for determining the fees for the qualification activity in relation to the total amount and the number of general or specialized categories required to be qualified, having regard also to the necessary reduction thereof in case of stable consortia as well as for micro and small and medium-sized enterprises.

9. In order to ensure the effectiveness and transparency of audits on the certification activity set up by the SOAs, ANAC shall pre-determine and publish on its website the criterion and number of spot checks to be carried out annually on the certificates issued by the SOAs.

10. Violation of the provisions of the guidelines is punishable by the fines provided for in Article 213, paragraph 13. For the violations referred to in the previous sentence, payment at a reduced

rate is not permitted. The amount of the fine is determined by ANAC by order of injunction on the basis of the general criteria laid down in Law No. 689 of November 24 1981, with particular reference to the criteria of proportionality and adequacy in relation to the gravity of the particular case. In the most serious cases, in addition to the administrative fine, the additional penalty of the suspension of business activity is applied for a period from one month to two years, or until the revocation of the permit. The revocation of the permit shall always apply in the event of a recurrence of the breach that led to the additional penalty of the suspension of activity, pursuant to Law No. 689 of November 24 1981.

11. The SOA qualification has a duration of five years, with verification by the third year of maintaining the general requirements as well as the structural capacity requirements set out in the guidelines.

12. Within one year from the date of entry into force of this Code, by decree of the Minister for Infrastructure and Transport, upon the proposal of ANAC, after consulting the competent parliamentary committees, qualification methods, including alternatives or experiments by contracting entities deemed to be particularly qualified are identified pursuant to Article 38, in order to improve the effectiveness of the verifications and consequently, the quality and morality of the performances of economic operators, where appropriate through a gradual overcoming of the unique qualification system of firms that carry out public works.

((12-subsection 2. Parties who on the date of entry into force of this Code were acting as technical directors with a performer of public contracts and on the same date having a minimum of five years' experience, without prejudice to Article 146, paragraph 4, of this Code, may continue to perform such functions.))

Art. 85

European Single Procurement Document

1. At the time of submission of requests to participate or of tenders, contracting authorities or contracting entities shall accept the European Single Procurement Document (ESPD), drawn up in conformity with the standard model approved with Regulation by the European Commission. The ESPD is submitted exclusively in electronic form since 18 April 2018 and consists of an updated self-declaration as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the relevant economic operator fulfils the following conditions:

- (a) it is not in one of the situations referred to in Article 80;
- (b) it meets the relevant selection criteria that have been set out pursuant to Article 83;
- (c) where applicable, it fulfils the objective criteria that have been set out pursuant to Article 91.

2 The ESPD shall also contain the relevant information requested by the contracting station and the information referred to in paragraph 1 relating to the possible entities upon which the economic operator may rely pursuant to Article 89, indicate the public authority or the third party responsible for the release of complementary documents and includes a formal declaration according to which the economic operator can, upon request and with no delay, submit these documents.

3. Where the contracting station can obtain the supporting documents directly by accessing a database pursuant to Article 81, the EPSD shall also contain the information required for this purpose, any identification data and, where applicable, the necessary declaration of consent.

4. Economic operators may reuse an ESPD which has already been used in a previous procurement procedure, provided that they confirm that the information contained therein continues to be correct.

5. A contracting station may also ask tenderers and candidates at any moment during the procedure to submit all or part of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

Before awarding the contract, the contracting station shall, except in respect of contracts based on framework agreements where such contracts are concluded in accordance with Article 54, paragraph 3 or 4, letter (a), require the tenderer to which it has decided to award the contract to submit up-to-date supporting documents in accordance with Article 86 and, where appropriate, Article 87. The contracting station may invite economic operators to supplement the certificates received pursuant to Articles 86 and 87.

6. Notwithstanding paragraph 5, economic operators shall not be required to submit supporting documents or other documentary evidence where they are present in the database referred to in Article 81 or where the contracting already has these documents after having awarded a contract or concluded a framework agreement.

7. For the purpose of paragraph 5, databases which contain relevant information on economic operators, may be consulted under the same conditions, by the contracting authorities of other Member States, with the modalities identified by the decree referred to in Article 81, paragraph 2.

8. Through the “Cabina di Regia”, it is made available and up-to-date in e-Certis a complete list of databases containing relevant information on economic operators which can be consulted by contracting authorities or contracting entities from other Member States and are communicated, upon request, to other Member States any information related to the databases referred to in this Article.

Art. 86

Means of proof

1. Contracting authorities or contracting entities may require the certificates, statements and other means of proof referred to in this Article and Annex XVII as evidence for the absence of grounds for exclusion as referred to in Article 80 and for the fulfilment of the selection criteria in accordance with Article 80.

Contracting authorities or contracting entities shall not require means of proof other than those referred to in this Article, in Annex XVII and in Article 87. Economic operators may rely on any appropriate documentary means to prove that they will have the necessary resources at their disposal.

2. Contracting authorities or contracting entities shall accept the following as sufficient evidence of the non-applicability to the economic operator of the grounds of exclusion referred to in Article 80:

(a) as regards paragraphs 1, 2 and 3 of that Article, an extract from the judicial records or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the Member State or country of origin or provenance showing that those requirements have been met;

b) as regards paragraph 4 of that Article, through a specific certificate issued by the competent fiscal authority and, with reference to social security and assistential contributions, through the Single Document of Contributive Regularity automatically acquired by the contracting authorities or contracting entities from the social security institutes pursuant to applicable legislation or through similar certification issued by the competent authorities of other States.

3. A Member State shall, where relevant, provide an official declaration stating that the documents or certificates referred to in paragraph 2 are not issued or that they do not cover all the cases. Such official declarations shall be made available through the online repository of certificates (e- Certis)

4. As a general rule, proof of the economic operator's economic and financial standing may be provided by one or more of the means of proof listed in Annex XVII Part I. The economic operator, which for valid reasons is unable to provide the references requested by the contracting authority, may prove its economic and financial standing by any other document which the contracting authority considers appropriate.

5. The economic operators' technical abilities may be demonstrated by one or more of the means listed in Annex XVII Part II, in accordance with the nature, quantity or importance, and use of the works, supplies or services.

6. The "Cabina di Regia", shall make available, upon request, to other Member States any information relating to the grounds for exclusion listed in Article 80, the suitability to pursue the professional activity, and the financial and technical capacities of tenderers referred to in Article 83, as well as any information relating to the means of proof referred to in this Article.

Art. 87

Quality assurance standards

1. Where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, contracting authorities or contracting entities refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. Contracting authorities or contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures where the economic operator concerned had no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic

operator provided that the economic operators prove that the proposed quality assurance measures comply with the required quality assurance standards.

2. Contracting authorities or contracting entities, when requiring the presentation of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, shall refer to the Eco- Management and Audit Scheme (EMAS) of the Union or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) n. 1221/2009 or other environmental management standards based on the relevant European or international standards by accredited bodies, within the meaning of regulation (EC) n. 765/2008 of the European Parliament and the Council. Contracting authorities or contracting entities shall recognise equivalent certificates from bodies established in other Member States. Where economic operators had demonstrably no access to such certificates, or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to them, the contracting authority or entity shall also accept other documentary evidence of environmental management measures, provided that the economic operators prove that these measures are equivalent to those required under the applicable environmental management system or standard.

3 Contracting stations, where they require economic operators to present certificates issued by independent bodies to certify compliance with the criteria referred to in paragraph 2 of Article 34, shall refer to conformity assessment bodies accredited in accordance with the Regulation (EC) n. 765/2008 of the European Parliament and of the Council, in compliance with the UNI CEI EN ISO / IEC standards of the 17000 series.

4.Information relating to the documents produced as evidence of compliance with quality and environmental standards shall be made available to other Member States, upon request, by the “Cabina di Regia”.

Art. 88

Online repository of certificates (e-Certis)

1. With a view to facilitating cross-border tendering, information concerning certificates and other forms of documentary evidence introduced in e-Certis and established by the Commission is constantly kept up-to-date through the “Cabina di Regia” referred to in Article 212.

2. Contracting authorities or contracting entities shall have recourse to e-Certis and shall require primarily such types of certificates or forms of documentary evidence that are covered by e-Certis.

Art. 89

Reliance on the capacities of other entities

1.The economic operator, individually or in group, referred to in Article 45, for a certain contract, may meet the requirement relating to the possession of the requirements relating to economic, financial, technical and professional standing as set out pursuant to Article 83,

paragraph 1, letters (b) and (c), necessary to participate in a procurement procedure and, in any case, with the exception of requirements referred to in Article 80, relying on the capacities of other entities, even participating to the grouping, regardless of the legal nature of the links which it has with them. With regard to criteria relating to the educational and professional qualifications as set out in Annex XVII Part II, letter (f) or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will directly perform the works or services for which these capacities are required. The economic operator which wants to rely on the capacities of other entities shall attach, additionally to the possible certification of the auxiliary undertaking, a declaration signed by that same undertaking attesting the possession of the general requirements referred to in Article 80 as well as of the technical requirements and the resources object of the availment. The economic operator shall prove to the contracting authority that it will have at its disposal the resources necessary by producing a commitment signed by the auxiliary undertaking through which it commits itself to the tenderer and the contracting station in order to make the necessary resources of whom the tenderer is lacking available for the entire duration of the contract. In case of false declarations, notwithstanding the application of Article 80, paragraph 12, to the subscribers, the contracting station shall exclude the tenderer and realise the value. The tenderer shall also attach to the request of participation either in original or authentic copy the contract by virtue of which the auxiliary undertaking commits itself towards the tenderer in order to make the requirements and necessary resources available for the entire duration of the contract. To that end, the contract of availment contains, on pain of nullity, the specification of the requirements provided and of the resources made available by the auxiliary undertaking.

2. In the special sectors, if the objective rules and criteria for the exclusion and selection of economic operators requiring qualification in a qualification system include requirements relating to the economic and financial capacity of the economic operator or his technical and professionals, he may rely, if necessary, on the capacity of other persons, regardless of the legal nature of the links with them. The provisions of subsection 1, second and third periods, are to be understood as to be understood as referring to the period of validity of the qualification system

3. The contracting authority or entity shall, in accordance with Articles 85, 86 and 88, verify whether the entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria and whether there are grounds for exclusion pursuant to Article 80. It shall require that the economic operator replaces entities which do not meet a relevant selection criterion, or in respect of which there are compulsory grounds for exclusion. In the call for competition there may also be an indication of cases in which the economic operator shall substitute an entity in respect of which there are non-compulsory grounds for exclusion, provided that technical requirements are concerned. The tenderer and the auxiliary undertaking are jointly responsible towards the contracting station with regard to the provisions object of the contract. The obligations provided by the anti-mafia legislation upon the contractor shall also apply with reference to the auxiliary undertaking on account of the amount of the contract as object of the competition.

4. In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, contracting stations may provide in the procurement documents that certain critical tasks shall be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators, by a participant in that group.

5. The competitor and the auxiliary company are jointly and severally liable to the contracting authority for the services covered by the contract. The obligations foreseen by the anti-mafia legislation against the competitor also apply to the auxiliary subject, based on the amount of the tender placed on the basis of the tender.
6. The use of several auxiliary companies is permitted. The auxiliary can not avail himself of another subject.
7. In relation to each tender, it is not allowed, under penalty of exclusion, that more than one competitor is used by the same auxiliary company, or that both the auxiliary company and the one that makes use of the requisites participate.
8. The contract is in any case carried out by the undertaking participating in the tender, to which the certificate of execution is issued, and the auxiliary company can assume the role of subcontractor within the limits of the requisites provided.
9. In relation to each assignment, the contracting authority carries out the substantial verifications in progress of the actual possession of the requisites and resources subject to the transfer by the auxiliary company, as well as the effective use of the same resources in the execution of the contract. For this purpose, the sole manager of the procedure ascertains during the course of work that the contracted services are performed directly by the human and instrumental resources of the auxiliary company that the contract holder uses in fulfillment of the obligations deriving from the utilization contract, under penalty of termination of the contract. It also has the obligation to send to both parties of the contract of use the communications referred to in Article 52 and those related to the execution of the work. The contracting authority transmits to the Authority all declarations of use, indicating also the successful bidder, for the exercise of supervision, and for the prescribed advertising.
10. Reliance on the capacities of other entities is not allowed to satisfy the requirement of registration in the National Register of Environmental Managers referred to in Article 212 of Legislative Decree 3 April 2006, n. 152.
11. Reliance on the capacities of other entities is not allowed if the works or objects of considerable technological content or of significant technical complexity, such as structures, plants and special works, are necessary for the purpose of the contract or the granting of works. It is considered relevant, for the purposes of the existence of the assumptions referred to in the first period, that the value of the work exceeds ten percent of the total amount of the work. By decree of the Minister of Infrastructures and Transport, to be adopted within ninety days from the date of entry into force of this code, after consultation with the Board of Public Works, the list of the works referred to in this paragraph and the specialization requirements are defined. required for the qualification for the purpose of obtaining the qualification certification of the performers referred to in Article 84, which may be periodically revised. Until the date of entry into force of said decree, article 216, paragraph 15 applies. (Ministerial decree November 10, 2016, No. 248 was published in the G.U. No. 3 of January 4, 2017)

Art. 90

official lists of contractors

1. Economic operators enrolled in official lists of contractors, suppliers or service providers or in possession of a certification by certification bodies accredited for these certifications within the meaning of regulation (EC) n. 765/2008 of the European Parliament and the Council referred to in Annex XIII may present to the contracting station, for each contract, a certificate of enrolment or the certificate issued by the competent certification body. Those certificates shall indicate the references which allow the enrolment in the lists or to obtain the release of the certificate as well as the relevant classification.

2. Authorities or entities managing the lists and the certification bodies referred to in Article 1, at which the requests shall be presented, communicate to the "Cabina di Regia" referred to in Article 212, their data within three months from the entry into force of this Code or from the institution of the new lists or new certification bodies and shall also provide to the update of the data communicated. In the 30 days following their receipt, the "Cabina di Regia" shall transmit those data to the European Commission and the other Member States.

3. With respect to economic operators belonging to a group claiming resources made available to them by the other companies in the group, the enrolment in the lists or the certificates shall respectively indicate the resources at their disposal, who is the owner and the relevant contract terms.

4 The enrolment of an economic operators on an official list or the possession of a certificate issued by a competent certifying body may, constitute presumption of suitability for the qualitative selection requirements provided by the list or the certificate.

5. Data that can be deduced from registration on official lists or certification, for whom the presumption of suitability referred to in paragraph 4 shall apply, shall be questioned by whatever means of proof when verifying the economic operators' requirements by whoever holds an interest in that. With regard to the payment of social security contributions and taxes, an additional certificate may be required of any registered economic operator whenever a contract is to be awarded.

6. The contracting authorities or contracting entities shall apply paragraphs 1 and 5 of this Article only in favour of economic operators established in the national territory.

7. The requirements of proof for the criteria for qualitative selection encompassed by the official list or certificate shall comply with Article 86 and, where appropriate, Article 87. Economic operators may request at any time their registration on an official list or the issuance of a certificate. They shall be informed within a reasonable period of time, set out pursuant to Article 2 of law n. 241 of 7 August 1990, and subsequent modifications, of the decision of the authority or entity drawing up the official list or of the competent certification body.

8. The registration on official lists or the certification shall not be imposed to economic operators from other Member States in order to participate in a public contract. The contracting authorities or contracting entities shall recognize equivalent certificates from bodies established in other Member States. They shall also accept other equivalent means of proof.

9. Any information relating to the documents produced as evidence that the economic operators fulfil the requirements to be registered on the official list of approved economic operators or as evidence that economic operators from another Member State possess an equivalent certification shall be made available, upon request to other Member States.

10. The official lists of contractors shall be published on its buyer profile and on the computer records kept by the ANAC.

Art. 91

(Reduction in the number of otherwise qualified candidates to invite to participate)

1. In restricted procedures, competitive procedures with negotiation, competitive dialogue procedures and innovation partnerships, contracting authorities may, where the difficulty or complexity of the work, supply or service so requires, limit the number of candidates meeting the selection criteria and that shall be invited to tender or to conduct a dialogue, provided the minimum number, in accordance with paragraph 2, of qualified candidates is available.

2. When making use of this possibility, contracting authorities or contracting entities shall indicate, in the contract notice or in the invitation to confirm interest, the objective and non-discriminatory criteria, according to the principle of proportionality, that they intend to apply, the minimum number of candidates they intend to invite and, where appropriate because of justified reasons of good administration, the maximum number. In the restricted procedure the minimum number of candidates shall not be less than five. In the competitive procedure with negotiation, in the competitive dialogue and in the innovation partnership the minimum number of candidates shall not be less than three. In any event the number of candidates invited shall be sufficient to ensure genuine competition. The contracting authorities or contracting entities shall invite a number of candidates at least equal to the minimum number. However, where the number of candidates meeting the selection criteria and the minimum levels of ability as referred to in Article 83 is below the minimum number, the contracting station may continue the procedure by inviting the candidates with the required capabilities. The contracting station shall not include in the same procedures other economic operators that did not request to participate, or candidates that do not have the required capabilities.

Art. 92

Reduction of Tenders and solutions

1. Contracting authorities or contracting entities, when exercising the option of reducing the number of tenders to be negotiated as provided for in Article 62, paragraph 11, or of solutions to be discussed as provided for in Article 64, paragraph 8, shall do so by applying the award criteria

stated in the procurement documents. In the final stage, the number shall allow for genuine competition in so far as there are enough tenders, solutions or qualified candidates.

Article 93

(Guarantees for participation in the procedure)

1. The tender shall be accompanied by a fiduciary bond, called a "performance bond" of 2% of the basic price specified in the notice or invitation, in the form of a security or bond, chosen by the tenderer. In order to make the amount of the bond proportional and adequate to the nature of the services covered by the contract and the degree of risk connected to it, the contracting entity can justifiably reduce the amount of the deposit by up to 1% or increase it by up to 4%.

In the case of tendering procedures carried out in aggregate by central purchasing bodies, the amount of the guarantee shall be fixed in the notice or in the invitation to a maximum of 2% of the basic price. In the event of participation in the competition of a temporary grouping of undertakings, the fiduciary bond must include all companies in the grouping. ((In the cases referred to in Article 36, paragraph 2, letter (a)), the contracting entity may not require the bonds provided for in this Article.))

2. ((Subject to the limits on the use of cash as referred to in Article 49, paragraph 1 of Legislative Decree No. 231 of November 21 2007, the security may be, at the option of the tenderer, in cash, bank transfer, or bank draft)) or in government securities guaranteed by the State at the filing date of the deposit, at a provincial treasury branch or authorized agency, by way of a pledge in favour of the contracting authority. ((Paragraph 8 applies and, with regard to the release, paragraph 9.))

3. The performance bond as per paragraph 1 can be, according to the contractor's discretion, issued by banking or insurance institutions meeting the solvency requirements of the laws governing their respective activities or issued by the financial intermediaries registered in the register referred to in Article 106 of Legislative Decree ((1 September)) 1993, no. 385/1993, which, as their exclusive or predominant business, issue guarantees and which are audited by an auditing firm registered in the Professional Register provided for by article 161 of Legislative Decree no. 58 of 24 February 1998, and which meet the minimum solvency requirements set forth by current bank and insurance legislation.

4. Said bond must expressly provide for the waiver of the principal debtor's right to enforce preliminary payment, the waiver of the exception as per article 1957, para. 2, of the Italian Civil Code, as well as for the guarantee to be applied within fifteen days, further to a simple written request from the contracting party.

5. The bond must be effective for at least one hundred and eighty days from the date of submission of the tender. The notice or invitation may require a bond with a validity limit of greater or lesser duration in relation to the probable duration of the proceedings, and may also require that the tender be accompanied by the guarantor's undertaking to renew the bond at the request of the contracting entity in the course of the procedure, for the duration indicated in the notice, if, at the time of its expiry, the award has not yet taken place.

((6. The bond covers the failure to sign the contract after the award due to any facts attributable to the policyholder or the adoption of interim anti-mafia information issued pursuant to Articles

84 and 91 of Legislative Decree No. 159 of September 6 2011. The bond is released automatically upon signing the contract.))

7. The amount of the bond and of any renewal is reduced by 50% for economic operators that have been issued the quality system certification of the series UNI CEI ISO9000, issued by certified bodies in compliance with the European standards of the series UNI CEI EN 45000 and the series UNI CEI EN ISO/IEC 17000.((The 50% reduction, not cumulated with the reduction in the first sentence, also applies to micro, small and medium-sized enterprises and groupings of economic operators or ordinary consortia consisting solely of micro, small and medium-sized enterprises.)) In contracts relating to works, services or supplies, the amount of the bond and its possible renewal is reduced by 30%, which can also be combined with the reduction in the first sentence, for economic operators holding registration in the Community Eco-Management and Audit Scheme (EMAS), pursuant to regulation (EC) No. 1221/2009 of the European Parliament and Council, of November 25 2009, or 20% for the operators holding environmental certification under standard UNI ENISO14001. In service or supply contracts, the amount of the bond and its possible renewal is reduced by 20%, which can also be combined with the reduction in the first and second sentences, for economic operators holding, in relation to goods or services constituting at least 50% of the value of the goods and services covered by the contract, of the EU Ecolabel pursuant to regulation (EC) No. 66/2010 of the European Parliament and Council, of November 25 2009. In works, services or supplies contracts, the amount of the bond and its possible renewal is reduced by 15% ((, also able to be combined with the reduction in the first, second, third and fourth periods)) for economic operators that develop a greenhouse gas inventory under UNI EN ISO 14064-1 or a product carbon footprint under standard UNI ISO/TS 14067. In order to qualify for the reductions referred to in this paragraph, the economic operator shall indicate, at the time of the tender, possession of the relative requirements and document this in the manner prescribed by the current rules. In contracts for goods and services, the amount of the bond and of any renewal thereof is reduced by 30 percent, not to be combined with the reductions under the previous points, for economic operators that have been assigned ((a legality rating or company rating)) or holding a certification of the organizational model, pursuant to Legislative Decree no. 231/2001 or a 8000 social accountability certification, or certification of the health and safety system for workers, or the OHSAS 18001 certification, or the UNI CEI EN ISO 50001 certification concerning the energy management system or the UNI CEI 11352 certification concerning operations as an ESC (energy Service Company) for the quality supply of energy services and for economic operators holding the ISO 27001 certification concerning the information security management system) cannot be combined with other reductions provided for by the regulation, as per the above formula. ((In the case of combined reductions, the subsequent reduction must be calculated on the amount resulting from the previous reduction.))

8. The tender shall be accompanied by the undertaking of a guarantor, under penalty of exclusion, other than the guarantor that issued the performance bond, to issue the performance bond for the performance of the contract referred to in Articles 103 and 104, if the tenderer becomes the awarded party. ((This paragraph does not apply to micro, small and medium-sized enterprises or temporary groupings and ordinary consortia consisting solely of micro, small and medium-sized enterprises.))

((8-subsection 2. Fiduciary bonds shall be in accordance with the scheme type referred to in Article 103, paragraph 9.))

9. The contracting entity shall, in the notification of the award to the unsuccessful tenderers, at the same time, provide for the release of the bond referred to in paragraph 1, promptly and in

any case within a period not exceeding thirty days from the award, even when the period of effectiveness of the bond has not expired.

10. This Article shall not apply to service contracts relating to the drafting of the design and the security and coordination plan and the tasks of supporting the activities of the sole project manager.

TITLE IV AWARDS FOR ORDINARY SECTORS

Article 94

(General selection principles)

1. Contracts shall be awarded on the basis of criteria established in accordance with Articles 95 to 97, subject to verification, ((pursuant to Articles 85, 86 and 88,)) of the existence of the following conditions:

- a) The tender complies with the requirements, conditions and criteria set out in the call for tender or in the invitation to confirm interest as well as in the tender documents, taking into account, where appropriate, Article 95, paragraph 14
- b) The tender comes from a tenderer not excluded under Article 80 and who fulfils the selection criteria set by the contracting authority in accordance with Article 83 and, where appropriate, the non-discriminatory rules and criteria referred to in Article 91.

2. The contracting entity may decide not to award the contract to the tenderer who has submitted the most economically advantageous tender if it has ascertained that the tender does not meet the obligations referred to in Article 30, paragraph 3

Art. 95

Contract award criteria

1. Award criteria shall not confer on the contracting station an unrestricted freedom of choice of the tender. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the effective verification of the information provided by the tenderers in order to assess to which degree award criteria are met. Contracting authorities or contracting entities shall verify the accuracy of the information and proof provided by the tenderers.

2. Without prejudice to laws, regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, contracting authorities or contracting entities shall, with respect to the principles of transparency, non-discrimination and equal

treatment, proceed to the award of public contracts and the design contests and contests of ideas, on the base of the criterion of the most economically advantageous tender, identified on the basis of the best quality/price ratio or on the base of the element of price or cost, following a criterion of comparing cost/ effectiveness such as the life cycle cost, in accordance with Article 96.

3. Are exclusively awarded on the basis of the most economically advantageous tender identified on the best quality/price ratio:

a) contracts relating to social services and hospital, assistential and school catering, as well as labour-intensive services, as defined in Article 50, paragraph 1, notwithstanding the awards within the meaning of Article 36, paragraph 2, letter (a);

b) contracts relating to the award of engineering and architecture services and other services of technical and intellectual nature for an amount equal to or exceeding €40.000;

4. The criterion of the lowest price may be used;

a) without prejudice to what provided for in Article 36, paragraph 2, letter (d), for works of an amount equal to or lower than €2,000,000, when the award of the works takes place through ordinary procedures, on the basis of the executive project; in this case, where the contracting station applies the automatic exclusion, it has the obligation to make recourse to the procedures set out in Article 97, paragraphs 2 and 8;

b) for the services and supplies with standardised characteristics or whose conditions are defined by the market;

c) for the services and supplies of an amount up to €40,000, as well as for the services and supplies of an amount equal to or exceeding €40,000 and up to the threshold set out in Article 35 only where characterised by high repetitiveness, except for those at high technological content or having an innovative character.

5. Contracting authorities or contracting entities making an award within the meaning of paragraph 4 give adequate justification and state in the call for competition the criterion applied to select the best tender.

6. Procurement documents shall establish the award criteria, coherently with the nature, object and characteristics of the contract. In particular, the most economically advantageous tender shall be identified on the basis of the best price-quality ratio, assessed on the basis of objective criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the contract. Such criteria may comprise, for instance:

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility for disabled persons, adequate design for all users, certifications and attestations on safety and health of workers, such as OSHAS 18001, social and environmental characteristics, containment of energy consumption and environmental resources by the work or product, innovative characteristics, trading and its conditions; (attention shall be devoted to the possible critical issues of this criterion in presence of the reduction of the guarantee within the meaning of Article 93, paragraph 7, seventh period - editor's note)

b) the possess of a label of ecological quality of the European Union (Ecolabel EU) in relation to the goods or services object of the contract, in a measure equal to or exceeding 30% of the value of the supplies or provisions object of that same contract; (attention shall be devoted to the possible critical issues of this criterion in presence of the reduction of the deposit within the meaning of Article 93, paragraph 7, third period - editor's note)

- c) the cost of use and maintenance also in relation to the consumption of energy and natural resources, polluting emissions, and to the total costs, including external costs and costs of mitigation of climate change impacts, referred to the entire life cycle of the work, good or service, with the strategic objective of a more efficient use of the resources and of a circular economy able to promote the environment and employment;
- d) the compensation of the greenhouse gases associated to the activities of the undertaking calculated according to the methods established in recommendation n. 2013/179/EU of the European Commission of 9 April 2013, concerning the use of common methodologies to measure and communicate the environmental performances during the life cycle of products and organisations;
- (e) organisation, qualification and experience of staff effectively assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract;
- (f) after-sales service and technical assistance;
- (g) delivery conditions such as delivery date, delivery process and delivery period or period of completion.

7. The cost element, also in cases set out in provisions recalled in paragraph 2, may take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.

8. Procurement documents or, in case of competitive dialogue, the call or the descriptive document shall list the evaluation criteria and the relative weighting which given to each of them, also providing a range in which the gap between the minimum and the maximum shall be adequate. For each evaluation criterion that has been chosen, it is possible to provide, where appropriate, sub-criteria and sub-weightings or sub-scores.

9. Contracting authorities or contracting entities, where they consider that weighting as referred to in paragraph 8 is not possible for objective reasons, shall indicate in the call for competition and in the specifications or, in case of competitive dialogue, in the descriptive document, the decreasing order of importance of the criteria. In order to implement the weighting or assign the score to each element of the tender, contracting authorities shall use methodologies able to allow the identification through a final, single numeric parameter the most advantageous tender

10. In the economic offer, the operator must indicate his labor costs and the business burdens concerning the fulfillment of the provisions on health and safety in the workplace, excluding supplies without installation, of services of an intellectual nature and of the assignments pursuant to article 36, paragraph 2, letter a). The contracting stations, with regard to labor costs, before the award process proceed to verify compliance with the provisions of article 97, paragraph 5, letter d).

10-bis. The contracting authority, in order to ensure the effective identification of the best quality / price ratio, enhances the qualitative elements of the offer and identifies criteria that guarantee an effective competitive comparison on the technical profiles. To this end the contracting authority sets a ceiling for the economic score within the limit of 30 percent.

11. Award criteria shall be considered to be linked to the subject-matter of the contract, where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in the specific process of

production, provision or trading of those works, supplies or services or in a specific process for another stage of their life cycle, even if those factors are not a part of their substantial content.

12. Contracting authorities may decide not to proceed with the award if no offer is convenient or suitable in relation to the subject matter of the contract. This right is expressly indicated in the call for tender or in the letter of invitation.

13. Compatibly with European Union law and the principles of equal treatment, non-discrimination, transparency, proportionality, contracting authorities shall indicate in the contract notice, in the notice or in the invitation, the award criteria they intend to apply to evaluation of the offer in relation to the bidder's highest legality and business rating, as well as to facilitate participation in the award procedures for micro, small and medium-sized enterprises, young professionals and newly established companies. They also indicate the highest score on the offer concerning goods, works or services that have a lower impact on health and the environment, including goods or products from a short or zero-kilometer supply chain.

14. As far as awarding criteria are concerned, in case of best quality/price ratio criterion, the following rules shall apply:

a) contracting authorities or contracting entities may authorize or require tenderers to submit variants. They shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest whether or not they authorize or require variants; in the absence of this indication, Variants shall not be authorized. Variants shall be linked to the subject-matter of the contract.

b) contracting authorities or contracting entities authorizing or requiring variants shall state in the procurement documents the minimum requirements to be met by the variants, as well as any specific requirements for their presentation, in particular whether variants may be submitted only where a tender, which is not a variant, has also been submitted. They shall also ensure that the chosen award criteria can be applied to variants meeting those minimum requirements and to conforming tenders which are not variants.

c) only variants meeting the minimum requirements laid down by the contracting authorities shall be taken into consideration;

d) in procedures for awarding public supply or service contracts, contracting authorities that have authorized or required variants shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

14-bis. In the case of contracts awarded with the criterion referred to in paragraph 3, the contracting authorities can not attribute any score for the offer of additional works compared to the provisions of the executive project based on an auction.

15. Any change that occurs, also as a result of a judicial decision, after the admission, regularization or exclusion of offers is not relevant to the calculation of average in the procedure, nor for the identification of the anomaly threshold of the offers.

Art. 96

Life-cycle costs

1. Life-cycle costs shall include, as far as relevant, all the following costs, or parts thereof, linked to the life cycle of a product, service or work:
 - (a) costs borne by the contracting authority or other users, such as:
 - (1) costs relating to acquisition,
 - (2) costs of use, such as consumption of energy and other resources,
 - (3) maintenance costs,
 - (4) end of life costs, such as collection, disposal and recycling costs.
 - (b) costs imputed to environmental externalities linked to the products, services or works during their life cycle, provided their monetary value can be determined and verified. Such costs may include the costs of emissions of greenhouse gases and of other pollutant substances, as well as other climate change mitigation costs.
2. When assessing the costs using a life-cycle costing approach, contracting authorities or contracting entities shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting authority will use to determine the life-cycle costs on the basis of those data. For the evaluation of the costs imputed to environmental externalities,
The method shall fulfil all the following conditions:
 - (a) it is based on objective, verifiable and non-discriminatory criteria. Where the method has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain economic operators;
 - (b) it is accessible to all interested parties;
 - (c) the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from other Member States, third countries party to the GPA or other international agreements by which the Union is bound or ratified by Italy.
3. Annex XVIII to this Code contains the list of the legislative acts of the Union and, where appropriate, the implementing delegated acts approving common methods for the assessment of life-cycle costs.

Art. 97

abnormally low tenders

1. Economic operators shall provide, upon request of the contracting station, explanations on the price or costs proposed in the tender where those appear to be abnormally low, on the basis of a technical judgment on the congruity, seriousness, sustainability and feasibility of the tender.
2. Where the award criterion is the lowest price, the congruity of tenders is assessed on the tenders presenting a downward equal to or exceeding a determined threshold of anomaly, in order not to make the reference parameters for the calculation of the threshold pre-determinable by tenderers, the responsible official or the jury proceed to the draw, during the competition, of one of the following methods:
 - a) arithmetic average of the percentage downwards of all admitted tenders, with exclusion of the 20%, rounded to the superior unit, respectively of the highest downwards tenders and of the lowest downwards tenders, increased by the arithmetic average deviation of the percentage downwards exceeding the abovementioned average;

b) arithmetic average of the percentage downwards of all admitted tenders, with exclusion of the 20% respectively of the highest downwards tenders and of the lowest downwards tenders, rounded to the superior unit, taking into account that if the first figure following the decimal point, of the sum of the offered downwards by admitted tenderers is equal to zero the average remains unchanged; where the first figure following the decimal point of the sum of the offered downwards by admitted tenderers is odd, the average shall be percentage decremented of a value equal to that figure;

c) arithmetic average of the percentage downwards of all admitted tenders, increased by 15%;

d) arithmetic average of the percentage downwards of all admitted tenders, increased by 10%;

e) arithmetic average of the percentage downwards of all admitted tenders, with exclusion of 10%, rounded to the superior unit, respectively of the highest downwards tenders and of the lowest downwards tenders, increased by the arithmetic average deviation of the percentage downwards exceeding the abovementioned average, multiplied by a coefficient sorted by the jury, the responsible official, at the time of his settlement, between the following values: 0.6, 0.7, 0.8, 0.9.

3. Where the award criteria is the most economically advantageous tender, the congruity of the tenders shall be evaluated on the tenders presenting both the price-related points and the points related to the other evaluation elements, both of them equal to or exceeding the four fifths of the corresponding maximum points as provided for in the call for competition.

3-bis. The calculation referred to in paragraph 2 is made when the number of the admitted tenders is equal to or exceeding five.

4. The explanations referred to in paragraph 1 may, in particular, relate to:

(a) the economics of the manufacturing process of the products, services provided or of the construction method;

(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products, the provision of services or for the execution of works;

(c) the originality of the works, supplies or services proposed by the tenderer.

5. The contracting authority shall request in writing, giving the tenderer a period not shorter than fifteen days, the presentation, in writing, of the explanations. It excludes the offer only if the proof provided does not sufficiently justify the low level of prices or proposed costs, taking into account the elements referred to in paragraph 4 or if it has established, in the manner referred to in the first sentence, that the offer it is abnormally low because:

a) does not comply with the obligations referred to in Article 30, paragraph 3;

b) does not comply with the obligations set out in Article 105;

c) the corporate burdens of safety referred to in article 95, paragraph 10, are incongruent with respect to the size and characteristics of the works, services and supplies;

d) the cost of personnel is lower than the minimum wage salaries indicated in the appropriate tables referred to in Article 23, paragraph 16.

(a) non-compliance with obligations referred to in Article 30, paragraph 3;

(b) non-compliance with obligations referred to in Article 105;

6. No justifications are allowed in relation to minimum mandatory salary treatment established by law or sources authorized by law. Furthermore, no justifications are permitted in relation to the security charges referred to in the security and coordination plan provided for by article 100 of the Legislative Decree of 9 April 2008, no. 81. The contracting authority may in each case

evaluate the adequacy of each offer which, on the basis of specific elements, appears abnormally low.

7. The contracting authority, where it determines that a tender is abnormally low because the tenderer obtained a State aid may exclude this offer exclusively on that ground, only after having consulted the tenderer and if the tenderer is not able to demonstrate, within a sufficient time limit set by the contracting station, that the aid was compatible with the internal market within the meaning of Article 107 TFEU. The contracting station shall exclude an offer under those circumstances and shall inform the European Commission.

8. For works, services and supplies, when the award criterion is that of the lowest price and in any case for amounts below the thresholds referred to in Article 35, the contracting authority may provide in the announcement the automatic exclusion from tenders of tenders have a percentage of discount equal to or higher than the anomaly threshold identified in accordance with paragraph 2. In this case, paragraphs 4, 5 and 6 do not apply. However, the right of automatic exclusion cannot be used when the number of bids admitted is lower than ten.

9. The "Cabina di Regia" referred to in Article 212, upon request, makes available to other Member States, by means of administrative cooperation, any information at its disposal, such as laws, regulations, applicable collective agreements or national technical standards, relating to the evidences and documents produced in relation to details referred to in paragraphs 4 and 5.

Art. 98

Contract award notice

1. Contracting authorities or contracting entities that have awarded a public contract or concluded a framework agreement shall submit a notice in accordance with the modalities of publication, as of Article 72, in conformity with Annex XIV, Part I, letter D relating to the results of the award procedure, within 30 days from the award of the contract, the conclusion of the contract or the conclusion of a framework agreement.

2. Where the call for competition has been made in the form of a prior information notice and the contracting authority has decided that it will not award further contracts during the period covered by the prior information notice, the contract award notice shall contain a specific indication to that effect.

3. In the case of framework agreements concluded in accordance with Article 54, contracting authorities or contracting entities shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement and shall group notices of the results of the procurement procedure for contracts based on the framework agreement on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.

4. Contracting authorities or contracting entities shall send to the Publications Office of the European Union, in conformity with the provisions contained in Article 72, a contract award notice within 30 days after the award of each contract based on a dynamic purchasing system.

They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.

5. Without prejudice to what provided for in Article 53, certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement, would be contrary to the public interest, would harm the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators.

Art. 99

written reports on procurement procedures

1. For every contract or framework agreement equalling or exceeding the thresholds set out in Article 35 and every time a dynamic purchasing system is established, a contracting station shall draw up a written report which shall include at least the following:

- (a) the name and address of the contracting station, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;
- (b) where applicable, the results of the qualitative selection and/or reduction of numbers pursuant to Articles 91 and 92, namely:
 - (i) the names of the selected candidates or tenderers and the reasons for their selection;
 - (2) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (c) the reasons for the rejection of tenders found to be abnormally low;
- (d) the name of the successful tenderer and the reasons why its tender was selected and, where known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties; and, where known at the time of drawing out the report, the names of the main contractor's subcontractors, if any;
- (e) for competitive procedures with negotiations and competitive dialogues, the circumstances as laid down in Article 59 which justify the use of those procedures;
- (f) for negotiated procedures without prior publication of a contract notice, the circumstances referred to in Article 63 which justify the use of those procedures;
- (g) where applicable, the reasons why the contracting authority has decided not to award a contract, conclude a framework agreement or establish a dynamic purchasing system;
- (h) where applicable, the reasons why other means of communication than electronic means have been used for the submission of tenders;

TITLE V EXECUTION

Article 100

(Requisites for tender execution)

1. Contracting entities may request specific requirements for the performance of the contract, provided they are compatible with European law and the principle of equal treatment, non-discrimination, transparency, proportionality and innovation and are specified in the call for tender, or invitation in the case of procedures without notice or in the tender specifications. These conditions may, in particular, apply to ((social and environmental requirements.))

((2. During tendering economic operators state that they accept the special requirements in the event that they will become the awarded parties.))

Article 101

(Contracting entities)

1. The performance of works, services and supplies contracts is conducted by the sole project manager, who controls the quality levels. The sole project manager, during the execution phase, works with the executive director of the contract or the site manager, the health and safety coordinator during the performance provided for by Legislative Decree No. 81 of April 9 2008, as well as the tester or inspection board, and the compliance verifier, and ensures the proper and effective performance of the functions assigned to each of those awarded.

2. For the coordination, management and technical and accounting monitoring of the performance of public works contracts, the contracting entities identify, before the initiation of the procedures for the award, instigated by the sole project manager, a site manager that may be assisted, in relation to the complexity of the intervention, by one or more operational managers and building yard inspectors.

3. The site manager, with the works management office where he is established, is responsible for the technical, accounting and administrative control of the performance of the intervention so that the works are performed in accordance with the rules and in accordance with the project and the contract. The site manager is responsible for coordinating and supervising the activity of the entire works management office, and exclusively liaising with the performer regarding the technical and economic aspects of the contract. The site manager is specifically responsible for accepting materials, also based on the quantitative and qualitative control of the official inspections of the mechanical characteristics and in compliance with the provisions of the technical standards for construction in force. The site manager carries out all the activities and tasks expressly assigned to him by the Code as well as:

- a) Regularly verifying the possession and validity of the documentation of the performer and subcontractor under the laws in force regarding obligations to employees
- b) Maintaining constant validation of the maintenance programme, user manuals and maintenance manuals, modifying and updating the contents when work is completed
- c) Reporting to the person in charge of the proceedings of the breach by the performer of Article 105

d) ((Carrying out, if in possession of the requirements required by current safety regulations, the functions of coordinator for the performance of works)). In the event that the site manager does not carry out these functions the contracting entities provide for the presence of at least one operational manager in possession of the requirements laid down by law, to assign them to

4. Assistants with the role of operational manager collaborate with the site manager to verify that the individual jobs of the works to be completed are carried out properly and in compliance with the contractual clauses. The assistants are answerable for their activities directly to the site manager. Operational managers may be assigned the following tasks, among others, by the site manager:

- a) Verify that the performer carries out all the law enforcement practices relating to the denunciation of the calculations of the structures
- b) Plan and coordinate the works inspector activities
- c) Take care of the updating of the general and detailed time schedule of works and promptly report to the site manager any deviations from the contractual forecasts by proposing the necessary corrective interventions
- d) Assist the site manager to identify the interventions necessary to eliminate defects in the design or execution
- e) Identify and analyze the causes that negatively affect the quality of the work and propose appropriate corrective actions to the site manager
- f) Assist the testers in carrying out inspections
- g) Examine and approve the inspections programme and commissioning of installations
- h) Direction of specialist jobs

5. Assistants with building yard inspection functions shall collaborate with the site manager in the supervision of works in accordance with the requirements laid down in the special tender conditions. The position of inspector is covered by one person who carries out his activity in shifts. They are present full-time during the period that the work requiring day-to-day monitoring is carried out, as well as during testing and maintenance phases. They are answerable for their activities directly to the site manager. Among others, the following tasks may be entrusted to inspectors:

- a) Verification of the accompanying documents of supplies of materials to ensure that they comply with the requirements and are approved by the supplier's quality control structures
- b) Verification, before commissioning, that the materials, equipment and installations have passed the test stages prescribed by quality control, the applicable regulations or the contractual requirements under which they were built
- c) Control over subcontractor activities
- d) Control over the proper performance of works as regards drawings and contractual technical specifications
- e) Assistance in laboratory tests
- f) Assistance to the inspection of work and the commissioning and acceptance of installations tests
- g) The preparation of accounting records and the execution of the measurements when they have been delegated by the site manager
- h) Assistance to the coordinator for performance

6. For the functions of the coordinator for the performance of works Article 92 paragraph 1 of Legislative Decree No. 81 of 2008 applies.

((6-subsection 2. For services and supplies of particular importance, to be identified by the Decree referred to in Article 111, paragraph 1, first sentence, the contracting entity may, acting

on the advice of the executive director, appoint an assistant to the executive director, with the functions indicated by the same Decree.))

Article 102

(Testing ((and verification of compliance)))

1. The sole project manager shall monitor the performance of the contract jointly with the ((site manager for works and the executive director of the contract for services and supplies)).
2. Public contracts are subject to works testing and verification of compliance for services and supplies, to certify that the object of the contract in terms of performance, objectives and technical, economic and qualitative characteristics has been achieved and executed in accordance ((with the forecasts and the contractual clauses)). ((For public works contracts of more than 1 million euros and below the threshold referred to in Article 35, the certificate of inspection, in the cases expressly identified by the decree referred to in paragraph 8, may be replaced by the certificate of proper performance issued for the works by the site manager. For public works contracts of a value of less than or equal to 1 million euros, and for supplies and services below the threshold referred to in Article 35, it is always in the contracting entity's power to replace the test certificate or verification of compliance certificate with the certificate of proper performance issued for the works by the site manager, and for supplies and services by the sole project manager. In the cases referred to in this paragraph the certificate of correct execution shall be issued no later than three months from the date of completion of the services covered by the contract)).
3. Final testing ((or verification of compliance)) must take place no later than six months after the completion of the works ((or performance)), except for the cases specified in the decree of the Minister for Infrastructure and Transport referred to in paragraph 8, of particular complexity of the work ((or performances)) to be tested, for which the term may be increased up to one year. The test certificate ((or the verification of compliance certificate)) is provisional and becomes final two years after its issue. After the term has expired, the test is tacitly approved even if the formal act of approval has not been issued within two months of the expiry of this period.
4. ((PARAGRAPH REPEALED BY LEGISLATIVE DECREE NO. 56 OF 19 APRIL 2017))
5. Subject to the provisions of Article 1669 of the Civil Code, the contractor shall be liable for discrepancies and flaws in the work ((or performance)) that are still identifiable, provided they are reported by the contracting entity before the test certificate becomes final.
((6. In order to carry out the testing activities on the performance of the public contracts referred to in paragraph 2, the contracting entities shall appoint among their employees or employees of other public administrations between one and three staff members with qualifications that correlate to the type and characteristics of the contract, having the requisites of morality, competence and professionalism, and entered in the relevant national or regional register of inspectors as provided for in paragraph 8 of the Article. The remuneration for the testing activity for the employees of the contracting entity is within the scope of the incentive referred to in Article 113, while for the employees of other public administrations it is determined according to the applicable law at the contracting entities and in compliance with the

provisions of Article 61, paragraph 9, of Legislative Decree No. 112 of June 25 2008, converted amendments by Law No. 133 of August 6 2008. For the works, the structural tester for the static test drafting is appointed from employees of the contracting entity or employees of the other administrations. For the identified shortage in the staff of the contracting entity, or other administrations, the contracting entities identify the staff members with the procedures referred to in Article 31, paragraph 8.))

7. Testing and verification of compliance may not be entrusted to:

- a) Ordinary, administrative and accounting magistrates, and State solicitors and barristers, in service activities and, for public works contracts of an amount equal to or greater than the thresholds of Community relevance referred to in Article 35 to those in retirement in the region/regions where the service activity was carried out
- b) Employees with public administration roles ((in service, or)) in retirement pension in the case of public works contracts of an amount equal to or greater than the thresholds of Community importance referred to in Article 35 located in the region/regions where service activity ((is carried out for employees in service, or was carried out for those in retirement))
- c) Those who, during the preceding three years, have had self-employment or employment relationships with economic operators in any way involved in the performance of the contract
- d) Those who have, however, carried out or are carrying out control, verification, design, approval, authorization, supervision or direction activities on the contract to be tested ((D-subsection 2) Those who have taken part in the tender procedure))

8. By decree of the Minister for Infrastructure and Transport, upon the proposal of the Supreme Council of Public Works, after hearing ANAC, the technical methods for conducting the test are regulated and defined, as well as the cases where the certificate of works testing and the certificate of compliance verification may be replaced by a certificate of proper performance issued in accordance with paragraph 2. Until the date of entry into force of this decree, Article 216, paragraph 16 applies ((, also with reference to the certificate of proper performance, issued pursuant to paragraph 2. In the same decree, the methods and procedures for the preparation of tester registers at national and regional level are also regulated, as well as the criteria for enrolment according to the requirements of morality, competence and professionalism.)).

9. After the work is completed the following are drawn up:

- a) For cultural heritage assets, a scientific record drawn up by the site manager or, in the case of interventions on movable heritage, decorated surfaces of built heritage and historicized materials of fixed heritage of artistic or archaeological historic interest, by heritage restorers, according to current legislation, as the last stage in the process of knowledge and restoration and as a premise for the future programme of heritage intervention. The costs for the compilation of scientific evidence are provided in the economic framework of the intervention
- b) An up-to-date maintenance plan
- c) A technical and scientific report drafted by professionals pertaining to their respective skills, with clarification of the cultural and scientific results achieved

Article 103

(Final guarantees)

1. The contractor for the signing of the contract must provide a bond, called a "final guarantee" at his discretion in the form of a security or bond with the procedures laid down in Article 93, paragraphs 2 and 3, equal to 10% of the contractual amount and this obligation is stated in the deeds and documents relating to the assignment of works, services and supplies. In the case of tendering procedures carried out in aggregate by central purchasing bodies, the amount of the guarantee shall be indicated up to a maximum of 10% of the contract amount. In order to safeguard the public interest in concluding the contract in the terms and in the ways programmed in the case of an award with a rebate of more than 10%, the guarantee to be established is increased by as many percentage points as those that exceed the 10%. If the rebate is over 20%, the increase is two percentage points for each rebate point above the 20%. The security is provided as a guarantee for the fulfilment of all contractual obligations and compensation for damages arising from any breach of the obligations, as well as being a guarantee for the reimbursement of the extra sums paid to the performer compared to the final settlement records, without prejudice to any rights to claim compensation for further damage against the contractor. The guarantee ceases to have effect only on the date of issue of the provisional test certificate or the certificate of proper performance. The contracting entity may require the successful tenderer to reinstate the guarantee if it has failed to fulfil in whole or in part. In the case of non-compliance, reinstatement is carried out on the price rates to be paid to the performer. The reductions provided for in Article 93, paragraph 7 for the provisional guarantee apply to the guarantee in this Article.

2. The contracting entities have the right to use the security, within the limits of the maximum guaranteed amount, for any additional expenses incurred in completing the works ((, services or supplies)) in the event of the termination of the contract to the detriment of the performer, and are entitled to use the security to pay the amount owed by the performer for non-compliance resulting from the failure to comply with the rules and regulations of collective agreements, laws and regulations on the safeguarding, protection, insurance, physical assistance and safety of the workers who are present on site or in places where the service is provided in the case of service contracts. The contracting entities may forfeit the guarantee to pay the amount due by the successful tenderer for non-compliance resulting from the failure to comply with the rules and regulations of collective agreements, laws and regulations on the safeguarding, protection, insurance, physical assistance and safety of the workers involved in the performance of the contract.

3. Failure to provide the final guarantee as per paragraph 1 shall result in revocation of the award and the seizure of the provisional security filed by the contracting party at the time of bidding, which shall award the tender or the concession contract to the next tenderer in the ranking.

4. The performance bond as per paragraph 1 can be, according to the contractor's discretion, issued by the entities as per article 93, paragraph 3. Said bond must expressly provide for the waiver of the principal debtor's right to enforce preliminary payment, the waiver of the exception as per article 1957, para. 2, of the Italian Civil Code, as well as for the guarantee to be applied within fifteen days, further to a simple written request from the contracting party.

5. The guarantee as per paragraph 1 shall be progressively released according to the progress made in performing the obligation, up to a maximum of 80 percent of the initial guaranteed amount. The residual amount of the final security must remain until the date of issue of the provisional test certificate or the certificate of proper performance, or in any case up to 12 months from the date of completion of the work resulting from the relevant certificate. Withdrawal is automatic, without the need of the client's permission, with the sole condition of the prior delivery to the guarantor, from the contractor or concessionaire, of the state of

progress of the works or similar document, in the original or certified copy, attesting to the completion. This automatism also applies to supply and service contracts. Contrary agreements and derogations are void. Failure within fifteen days to deliver progress reports or similar documentation constitutes the default by the guarantor with regards to the undertaking for which the guarantee is provided.

6. Payment of the instalment is subject to the establishment of a security or bank or insurance fiduciary bond equal to the amount of the same instalment plus the legal interest rate applied for the period between the date of issue of the test certificate or verification of compliance in the case of service or supply contracts and the assumption of their finality.

7. The works performer is also obliged to set up and deliver to the contracting entity at least 10 days prior to the delivery of the works an insurance policy that covers the damage suffered by the contracting entities due to the damage or total or partial destruction of installations and works, also pre-existing, occurring during the performance of the works. The amount of the sum to be insured, which normally corresponds to the amount of the contract if there are no special circumstances justifying a higher amount to be secured, is established in the documents and in the tender or assignment deeds. The policy of this paragraph shall insure the contracting entity against third party liability for damages caused during the execution of the works, the ceiling of which is 5% of the sum insured for works with a minimum of 500,000 euros and a maximum of 5,000,000 euros. The insurance cover shall run from the date work is delivered until the provisional test certificate or the regular execution certificate is issued, or in any case twelve months subsequent to the date on which work was completed, as it appears in the pertinent certificate. If a guarantee period is provided, the insurance policy is replaced by a policy that takes care of the contracting entities from all risks associated with the use of guaranteed jobs or any replacement or refurbishment. The omission or late payment of sums due by way of prize or commission by the performer does not imply the ineffectiveness of the guarantee against the contracting entity.

8. For works of more than twice the threshold referred to in Article 35, the holder of the contract for the settlement of the instalment of the balance shall be obliged to stipulate, from the date of issue of the provisional test certificate or the certificate of proper performance or in any case 12 months from the date of completion of the works resulting from the relevant certificate, a 10 year indemnity insurance policy covering the risks of total or partial damage to the work, or risks arising from construction defects. The policy must contain the provision of the payment ((in the case of contractually due compensation)) in favour of the client as soon as the latter so requests, even on the basis of accountability and without the need for approvals and authorizations of any kind. The 10 year policy limit must not be less than 20% of the value of the work carried out and not more than 40%, respecting the principle of proportionality regarding the nature of the work. The performer of the works is also obliged to stipulate, for the works referred to in this paragraph, a liability insurance policy for damaged caused to third parties, with effect from the date of issue of the provisional test certificate or the certificate of proper performance for a term of 10 years and with compensation equal to 5% of the value of the work completed with a minimum of 500,000 euros and a maximum of 5,000,000 euros.

9. ((The fiduciary bonds and insurance policies provided for in this Code are in conformity with the approved type schemes)) by decree of the Minister for Economic Development in agreement with the Minister for Infrastructure and Transport, and previously agreed with the banks and insurers or their representatives

10. In the case of temporary groupings, the fiduciary bonds and insurance guarantees shall be submitted, on an irrevocable mandate, by the agent in the name and on behalf of all competitors, without prejudice to the joint and several liabilities of the undertakings".

11. In specific cases, the administration may not require a guarantee for contracts ((as referred to in Article 36, paragraph 2, letter (a), as well as for contracts)) to be carried out by certified economic operators as well as for supplies of goods that by their nature, or the special purpose they are intended for, must be purchased at the place of production or supplied directly by producers, or art products, machinery, tools and precision jobs, the performance of which must be entrusted to specialist operators. The exemption from the provision of the guarantee must be adequately reasoned and is subject to an improvement in the price of the award.

Article 104

(Guarantees for the performance of works of significant value)

1. In the case of contracts with general contractors of any amount and, where provided for in the call for tenders or the notice of invitation to tender, for tenders ((...)) of an auction amount of more than 100 million euros, the successful tenderer shall present in the form of a security or bond issued by the parties referred to in Article 93 paragraph 3, in place of the final guarantee provided for in Article 103, a guarantee of the fulfilment of all contractual obligations and compensation for damage resulting from the possible failure of the obligations, referred to as a "effective fulfilment guarantee" and a conclusion guarantee for the work in the case of the termination of the contract stipulated by the Civil Code and this Code, called a "termination guarantee".

2. In the case of assigning jobs to a new party, the new party also provides the guarantees provided for in paragraph 1

3. The effective fulfilment guarantee shall be determined in accordance in the manner provided for in Article 103 paragraphs 1 and 2, and shall be equal to a fixed 5% of the contractual amount resulting from the non-application of the rebate increments referred to in Article 103 paragraph 1 and shall remain until the date of issue of the provisional test certificate or certificate of proper performance, or in any case up to 12 months from the date of completion of the works resulting from the relevant certificate.

4. The fiduciary "termination guarantee", which is of an ancillary nature, works in cases of the termination of the contract provided by the Civil Code and this Code and is in the amount of 10% of the contractual amount, without prejudice to the fact that, if the amount in absolute value were to exceed 100 million euros, the guarantee would, however, be limited to 100 million euros.

5. The "termination" guarantee covers, within the limits of the damage actually incurred, the costs for the reassignment procedures by the contracting entity or the awarding party and the possible higher cost between the contractual amount resulting from the original award of the works and the contractual amount of the reassignment of the works, to which the sums of payments already made or to be made on the basis of the progress of work are added ((.))

6. The "termination guarantee" is effective from the conclusion of the contract and up to the date of issue of the work completion certificate, when it terminates automatically. The "termination guarantee" shall cease automatically except for its enforced payment pursuant to paragraph 1, even after three months from the date of the reassignment of the works.

7. ((The guarantees in this Article)) expressly provide for the waiver of the right to enforce prior payment by the principal debtor and the waiver of the objection referred to in Article 1957, second paragraph of the Civil Code.

8. In the event of enforcement, the payment shall be made within 30 days, by simple written request from the contracting entity or the awarding party indicating the title for which the contracting entity or the awarding party is requesting the enforcement.

9 The policy forms relating to the fiduciary bonds referred to in paragraph 1 shall be adopted in the manner provided for in Article 103, paragraph 9.

10. The guarantees referred to in this Article and Articles 93 and 103 provide for the reimbursement of the contractor and the right of recourse against the contracting entity or the awarding party for any unjust enrichment and may be issued jointly by several guarantors ((...)). The guarantors designate an agent or delegate for relations with the contracting entity or the awarding party.

Art. 105

subcontracting

1. The economic operators usually perform the works or works, services and supplies included in the contract. The contract cannot be assigned under penalty of nullity, without prejudice to the provisions of article 106, paragraph 1, letter d). Subcontracting is permitted according to the provisions of this article.

2. Subcontracting is the contract with which the contractor assigns to third parties the execution of part of the services or work covered by the contract. In any case, it is subcontracting any contract involving activities carried out anywhere that require the use of labor, such as supplies with installation and hot freight, if individually exceeding 2 per cent of the amount of the services provided or amount over 100,000 euros and if the cost of labor and personnel is higher than 50 percent of the contract amount to be awarded. Without prejudice to the provisions of paragraph 5, any subcontracting may not exceed 30 per cent of the total amount of the contract for works, services or supplies. The assignee informs the contracting authority, before the start of the service, for all sub-contracts that are not subcontracted, stipulated for the performance of the contract, the name of the sub-contractor, the amount of the sub-contract, the object of the work, service or supply entrusted. Furthermore, any changes to this information during the sub-contract are communicated to the contracting authority. It is also mandatory to acquire a new supplementary authorization if the subject of the subcontract is subject to change and the amount of the same is increased and the requirements of paragraph 7 have changed.

3. The following categories of supplies or services, due to their specific characteristics, are not classified as subcontracted activities:

a) the assignment of specific activities to self-employed workers, for which communication must be made to the contracting authority;

b) the sub-supply in the catalog of IT products;

c) the assignment of services of less than € 20,000.00 per year to agricultural entrepreneurs in the municipalities classified as totally mountain in the list of Italian municipalities prepared by the National Institute of Statistics (ISTAT), or included in the circular of the Ministry of finances n. 9 of June 14, 1993, published in the ordinary supplement no. 53 to the Official Journal of the Italian Republic n. 141 of 18 June 1993, as well as in the municipalities of the smaller islands referred to in Annex A annexed to the Law of 28 December 2001, n. 448;

c-bis) the services rendered in favor of the recipients by virtue of continuous contracts of cooperation, service and / or supply signed prior to the call for tenders for the award of the contract. The related contracts are deposited at the contracting authority either before or at the same time as the signing of the contract.

4. The parties entrusted with the contracts referred to in this code may subcontract the works or works, services or supplies included in the contract, subject to authorization by the contracting authority provided that:

a) the subcontractor has not participated in the procedure for awarding the contract;

b) the subcontractor is qualified in the relevant category;

c) at the time of the offer have been indicated the works or parts of works or services and supplies or parts of services and supplies that are intended to be subcontracted;

(d) the tenderer demonstrates the absence of subcontractors from the grounds for exclusion referred to in Article 80.

5. For the works referred to in Article 89, paragraph 11, and without prejudice to the limits provided for in the same paragraph, any subcontracting may not exceed thirty per cent of the amount of the works and can not be, without objective reasons, divided.

6. It is mandatory to indicate the triad of subcontractors when presenting the tender, where the works, services or supplies contracts are of an amount equal to or exceeding the thresholds set out in Article 35 or, regardless of the tender amount, regard activities most exposed to the risk of mafia infiltration, as identified by paragraph 53 of Article 1 of law n. 190 of 6 November 2012. In case of contracts having as object different types of performances, the triad of subcontractors shall be indicated with reference to each type of homogeneous performance provided for in the call for competition. In the call or notice the contracting authority or entity shall provide, for contracts below the thresholds set out in Article 35: the modalities and timeframes for the verification of the conditions of exclusion as referred to in Article 80 before the conclusion of the contract itself, for the contractor and subcontractors; the indication of the required means of proof, for the demonstration of the grounds of exclusion for serious professional misconducts as referred to in paragraph 13 of Article 80.

7. The contractor shall deposit the subcontracting contract with the contracting authority or entity at least 20 days before the date of effective start of the execution of the relevant provisions. At the moment of the deposit of the subcontracting contract with the contracting authority or entity the contractor shall also submit the certification testifying the possession by the subcontractor of the qualification requirements provided for in this Code in relation to the subcontracted provision and the declaration of the subcontractor testifying the absence for

subcontractors of the grounds of exclusion referred to in Article 80. The subcontracting contract, accompanied by the technical, administrative and graphic documentation directly derived from the acts of the awarded contract, shall precisely indicate the operative ambit of the subcontract both in the performance and economic terms.

8. The main contractor is exclusively responsible to the contracting authority or entity. The contractor is jointly responsible with the subcontractor in relation to social security and salary obligations, pursuant to Article 29 of legislative decree n. 276 of 10 September 2003. In the cases referred to in paragraph 13, letters (a) and (c), the contractor shall be freed from the joint responsibility referred to in the first period.

9. The contractor is required to fully observe the economic and regulatory treatment established by the national and territorial collective agreements in force for the sector and for the area in which the services are performed. It is also jointly and severally liable for compliance with the aforementioned rules by subcontractors in relation to their employees for the services rendered under the subcontract. The subcontractor and, through him, the subcontractors, transmit to the contracting authority before commencement of work the documentation of notification to the social security institutions, including the Building Fund, where present, insurance and accident prevention, as well as a copy of the plan referred to paragraph 17. For the purposes of payment of the services rendered within the scope of the contract or subcontracting, the contracting authority acquires the single valid contribution document relating to the contractor and all the subcontractors.

10. For contracts relating to works, services and supplies, in the event of delay in the payment of remuneration due to employees of the executor or subcontractor or subjects holding subcontracts and piecework, as well as in case of non-compliance resulting from the single document of contribution regularity, the provisions of article 30, paragraphs 5 and 6 apply.

11. In the case of formal objection to the requests referred to in the preceding paragraph, the person in charge of the proceeding shall forward the requests and disputes to the provincial directorate of labor for the necessary investigations.

12. The contractor shall substitute the subcontractors in reference to whom the specific verification has demonstrated the existence of the grounds of exclusion referred to in Article 80.

13. The contracting authority or entity directly corresponds to the subcontractor, piece workers, service provider and to the provider of goods or works, the sum due for the provisions executed by them in the following cases:

- a) when the subcontractor or piece worker is a micro-enterprise or a small enterprise;
- b) in case of failure by the contractor;
- c) upon request of the subcontractor and if the nature of the contract so permits.

14. The contractor must perform, for the services subcontracted, the same unit prices resulting from the award, with a reduction not exceeding twenty per cent, in compliance with the quality and performance standards provided for in the contract. The contractor shall pay the costs of safety and labor, relating to the services subcontracted to subcontractors, without any discount; the contracting authority, after consulting the construction manager, the safety coordinator in the execution phase, or the execution director, shall verify the effective application of this

provision. The contractor is jointly and severally liable with the subcontractor for the fulfillment by the latter of the security obligations required by current legislation.

15. For the works, the names of all the subcontractors must be indicated on the signs posted outside the building site.

16. In order to combat the phenomenon of undeclared and irregular work, Single Document of Contributive Regularity is inclusive of the verification of the adequacy of the incidence of the workforce related to the specific contract entrusted. This congruity, for construction works, is verified by the Construction Fund on the basis of the agreement taken at national level between the social partners signing the comparatively more national collective agreement for the construction sector and the Ministry of Labor and Social Policies; for non-construction works, it is verified in comparison with the specific collective agreement applied.

17. The security plans referred to in the legislative decree of 9 April 2008, n. 81 are made available to the competent authorities responsible for inspections of inspections of worksites. The assignee is required to take care of the coordination of all the subcontractors working on the site, in order to make the specific plans prepared by the individual subcontractors compatible with each other and consistent with the plan presented by the assignee. In the case of a temporary or consortium grouping, this obligation lies with the agent. The site technical director is responsible for the compliance of the plan by all the companies involved in the execution of the works.

18. The subcontractor who makes use of the subcontract or piece size must attach to the authentic copy of the contract the declaration about the existence or otherwise of any forms of control or connection pursuant to Article 2359 of the Civil Code with the subcontract holder or of the piece. A similar declaration must be made by each of the participants in the case of a temporary grouping, company or consortium. The contracting authority shall issue the authorization referred to in paragraph 4 within thirty days of the relevant request; this deadline may be extended once only if justified reasons are met. After this deadline has elapsed, the authorization is considered granted. For subcontracts or piecemeal work of less than 2 per cent of the amount of the services entrusted or less than 100,000 euros, the terms for the issue of the authorization by the contracting authority are reduced by half.

19. The execution of the subcontracted provisions shall not form the object of further subcontracts.

20. The provisions of this article also apply to temporary groupings and also to consortium companies, when the joined or associated companies do not intend to directly perform the unbundling services; they also apply to credit lines with a negotiated procedure. For the purposes of the application of the provisions of this article, by way of derogation from Article 48, paragraph 9, first sentence, the establishment of the association in participation is permitted when the member does not intend to directly perform the services contracted.

21. The faculty is reserved for the regions with special status and for the autonomous provinces of Trento and Bolzano, on the basis of their respective statutes and the related implementing

rules and in compliance with the Community legislation in force and with the principles of the Community legal order; to regulate further cases of direct payment by subcontractors.

22. The contracting authorities issue the certificates necessary for the participation and qualification referred to in Article 83, paragraph 1, and Article 84, paragraph 4, letter b), to the contractor, deducting the full value of the contract the value and the category of what was done through subcontracting. Subcontractors can ask the contracting authorities for certificates for the services actually performed.

Art. 106

Modification of contracts during their term

1. The modifications as well as the variants, of awarded contracts during their terms shall be authorised by the official responsible with the modalities provided in the regulations of the contracting station from whom the official responsible depends. The procurement contracts in the ordinary sectors and in the special sectors may be modified without starting a new procurement procedure in the following cases:

(a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal clauses, which may include price revision clauses. Such clauses shall state the scope and nature of possible modifications as well as the conditions under which they may be used, making reference to the variation of prices and standard costs, where defined. They shall not provide for modifications that would have the effect of altering the overall nature of the contract or the framework agreement. For works contracts, the variation of price, both increases or decreases, may be evaluated on the basis of the price list referred to in Article 23, paragraph 7, only with reference to the exceeding part with regard to the 10% of the original price and however at half the size. For services and supplies contracts concluded by aggregating entities the provisions in Article 1, paragraph 511 of law n. 208 of 28 December 2015 remain unaffected.

b) for additional works, services or supplies by the original contractor that have become necessary and that were not included in the initial procurement, where a change of contractor produces the following effects, without prejudice to what provided for in paragraph 7 for contracts in the ordinary sectors:

1) cannot be made for economic or technical reasons such as the respect of the requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and

2) would cause significant inconvenience or substantial duplication of costs for the contracting authority or the contracting entity.

In cases under paragraph 1, letters (b) and (c), for ordinary sectors the contract may be modified if the potential increase in price does not exceed 50% of the initial value of the original contract.

In case of several subsequent modifications, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Code;

c) where all of the following conditions are fulfilled, with the exception of what provided for contracts in the ordinary sectors under paragraph 7:

1) the need for modification has been brought about by unexpected and unpredictable circumstances for the contracting authority or contracting. In those cases the modifications to the object of the contract shall take the denomination of variant in the course of work. Among the abovementioned circumstances, it is possible to include also the emergence of new legislative or regulatory provisions or provisions of authorities or entities responsible for the protection of relevant interests;

2) the modification does not alter the overall nature of the contract;

d) where a new contractor replaces the one to which the contracting authority or entity had initially awarded the contract as a consequence of one of the following circumstances:

1) an unequivocal review clause in conformity with the provisions set out in letter (a);

2) succession into the position of the initial contractor, due to death or contract, also following corporate restructuring, including takeover, merger, division, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Code;

3) in the event that the contracting authority or contracting entity assumes the main contractor's obligations towards its subcontractors;

(e) where the modifications are not substantial within the meaning of paragraph 4. Contracting authorities or contracting entities may define in the procurement documents the thresholds to allow for modifications.

2. Contracts may equally be modified, in cases other than those provided in paragraph 1, without a new procurement procedure in accordance with this Code, where the value of the modification is below both of the following values:

a) the thresholds set out in Article 35;

b) 10 % of the initial contract value for service and supply contracts both in the ordinary sectors and special sectors, or below 15 % of the initial contract value for works contracts both in the ordinary and special sectors..However, the modification may not alter the overall nature of the contract or framework agreement. Where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications. Where the necessity to modify the contract derives from errors or omissions in the executive project, affecting in whole or in part the realization of the work or its use, it shall be allowed only within the quantitative limits referred to in this paragraph, without prejudice to the responsibility of external designers.

3. For the purpose of the calculation of the price mentioned in paragraphs 1, letters (b) and (c), 2 and 7, the updated price shall be the reference value when the contract includes an indexation clause.

4. A modification of a contract or a framework agreement during its term shall be considered to be substantial within the meaning of paragraph 1, letter (e), where it considerably alters the essential elements of the contract initially concluded. In any event, without prejudice to paragraphs 1 and 2, a modification shall be considered to be substantial where one or more of the following conditions is met:

(a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected

or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;

(b) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract;

(c) the modification considerably extends the scope of the contract;

(d) where a new contractor replaces the one to which the contracting authority or the contracting entity had initially awarded the contract in other cases than those provided for in paragraph 1, letter (d).

5. Contracting authorities or contracting entities having modified a contract in the cases set out under paragraph 1, letters (b) and (c) shall publish a notice to that effect in the Official Journal of the European Union. Such notice shall contain all the information set out in Annex XIV, part I, letter E, and shall be published in accordance with Article 72 for the ordinary sectors and Article 130 for the special sectors. For contracts with amounts below the threshold set out in Article 35, the publicity takes place at the national level.

6. A new procurement procedure in accordance with this Code shall be required for other modifications of the provisions of a public contract or a framework agreement during its term than those provided for under paragraphs 1 and 2.

7. In the cases referred to in paragraph 1, letters b) and c), for the ordinary sectors the contract may be modified if the eventual price increase does not exceed 50 percent of the value of the initial contract. In the case of several successive modifications, this limitation applies to the value of each modification. These subsequent changes are not intended to circumvent this code.

8. The contracting authority shall notify ANAC of the modifications to the contract referred to in paragraph 1, letter b) and paragraph 2, within thirty days of their completion. In case of failure or late communication, the Authority shall impose an administrative penalty on the contracting authority for an amount between 50 and 200 euros per day of delay. The Authority publishes on the section of the transparent Administration website the list of the contractual changes communicated, indicating the work, the administration or the contracting entity, the contractor, the designer, the value of the modification.

9. Designers are responsible for damages incurred by the contracting authorities as a result of errors or omissions in the design referred to in paragraph 2. In the case of contracts concerning the executive design and execution of works, the contractor is responsible for the delays and burdens resulting from the need to introduce variations during construction due to deficiencies in the executive project.

10. For the purposes of this article, the error or omission of design is considered to be an inadequate evaluation of the state of affairs, the lack of or incorrect identification of the binding technical regulations for design, failure to comply with pre-established functional and economic requirements and resulting from a written test, the violation of the rules of diligence in the preparation of the project drawings.

11. The duration of the contract may only be changed for contracts in progress if an extension option is provided for in the notice and in the tender documents. The extension is limited to the

time strictly necessary for the completion of the procedures necessary for the identification of a new contractor. In this case, the contractor is required to perform the services provided for in the contract at the same prices, terms and conditions or more favorable for the contracting authority.

12. If the contracting authority is required to increase or decrease its services up to the fifth of the contract amount during the execution, it may impose on the contractor the execution under the same conditions as the original contract. In this case the contractor can not assert the right to terminate the contract.

13. The provisions of the law of February 21, 1991, n. 52. For the purposes of the objection to the contracting authorities, the assignments of receivables must be concluded by means of a public deed or authenticated private deed and must be notified to the debtor administrations. Without prejudice to compliance with the traceability obligations, the assignment of receivables from tender, concession, design competition, are effective and enforceable to the contracting authorities that are public administrations if they do not refuse them with notification to be notified to the transferor and the transferee within forty-five days from the notification of the assignment. The public administrations, in the contract stipulated or in separate contextual act, can preventively accept the assignment by the executor of all or part of the credits that must come to maturity. In any case, the administration which has been notified of the assignment may oppose to the assignee all the objections opposable to the assignor on the basis of the contract relating to works, services, supplies, planning, with this stipulated.

14. For contracts and concessions with an amount below the Community threshold, the variations in progress of public contracts relating to works, services and supplies, as well as those for amounts less than or equal to 10 per cent of the original amount of the contract relating to contracts equal to or higher than the community threshold, are communicated by the RUP to the Observatory referred to in Article 213, through the regional sections, within thirty days from the approval by the contracting authority for evaluations and possible measures competence. For public contracts of an amount equal to or higher than the community threshold, the changes during construction of amounts exceeding 10% of the original amount of the contract, including the variations during construction referred to the priority infrastructures, are transmitted by the RUP to the ANAC, together with the executive project, at the time of validation and to a special report of the sole responsible of the procedure, within thirty days from the approval by the contracting authority. In the event that the ANAC ascertains the illegitimacy of the variant under construction approved, it shall exercise the powers referred to in Article 213. In the event of non-compliance with the obligations to communicate and transmit the variants during construction envisaged, the administrative pecuniary sanctions referred to in article 213, paragraph 13 apply.

Article 107

(Suspension)

1. In all cases in which there are special circumstances which temporarily prevent the work from being carried out by law, and which are not foreseeable at the time of the conclusion of the contract, the site manager may order the suspension of the performance of the contract, filling in, if possible, with the intervention of the performer or his legal representative, the suspension minutes, indicating the reasons for the interruption of the works and the state of progress of the works, the works whose performance remains interrupted and the precautions taken in order that upon resumption these can be continued and brought to completion without excessive burdens, the size of the workforce and the work equipment on site at the time of suspension. The report shall be forwarded to the person in charge of the proceedings within five days of the date of its drafting.

2. The suspension may also be arranged by the sole project manager for reasons of necessity or public interest, including the interruption of funding ((for the needs of public finances, provided by reasoned act of the competent authorities)).

If the suspension, or suspensions, last for more than one quarter of the total duration of the works, or in any case over six months, the performer may request termination of the contract without compensation; if the contracting entity is opposed, the performer has the right to reconsider the higher charges resulting from the extension of the suspension beyond the above terms. No compensation is due to the performer in the other cases.

3. The suspension is arranged for the time strictly necessary.

As soon as the grounds for the suspension have ceased to exist, the sole project manager shall arrange for the resumption of performance and specify the new contractual deadline.

4. In the event of unforeseeable causes or force majeure, after the delivery of the work, circumstances which partially impede the proper implementation of the works, the performer is obliged to continue the executable work, while partially suspending the non-executable work, acknowledging it in special minutes. The objections of the performer to the suspension of the work are recorded under penalty of forfeiture in the suspension and resumption of works minutes, subject to the initially legitimate suspensions, for which the entry in the minutes of the resumption of work is sufficient. If the performer does not intervene to sign the minutes or refuses to sign them, he must expressly notify of this in the accounting register. When the suspension exceeds 25% of the total contractual time the person in charge of the proceedings shall give notice to ANAC. In the case of a failure to notify or late notification ANAC shall establish an administrative penalty on the contracting entity amounting to between 50 and 200 euros per day of delay.

5. The performer which, due to causes not attributable to it is unable to complete the work within the prescribed time-limit may request the extension of the time-limit in good time before the expiry of the contractual term. In any case, the concession does not undermine the rights of the performer for any imputability of the longer duration of the contracting entity. The person responsible for the proceedings shall, after hearing the site manager, decide on the extension, within 30 days of its receipt. The performer must complete the work within the time limit set out in the contractual documents from the date of the acceptance report or, in the case of partial delivery, by the last of the acceptance reports. Completion of the work that has taken place shall be communicated by the performer in writing to the site manager, who immediately proceeds to the necessary joint findings. The performer is not entitled to the termination of the contract or

to any compensation if the work, for any cause not attributable to the contracting entity, is not completed within the contractual term and whatever the most time spent.

6. In the event of total or partial suspension of works arranged by the contracting entity for reasons other than those referred to in paragraphs 1, 2 and 4, the performer may request compensation for the damages incurred, quantified on the basis of the provisions of Article 1382 of the Civil Code ((and according to the criteria set out in the decree referred to in Article 111, paragraph 1)).

7. The provisions of this Article shall apply, as applicable, to service and supply contracts.

Art. 108 Termination

1. Without prejudice to what provided for in paragraphs 1, 2 and 4 of Article 107, contracting authorities or entities may terminate a public contract during its terms, where one or more of the following conditions is met:

(a) the contract has been subject to a substantial modification, which would have required a new procurement procedure pursuant to Article 106;

b) with reference to the modifications referred to in Article 106, paragraph 1, letters (b) and (c) have been exceeded the thresholds referred to in paragraph 7 of the abovementioned Article; with reference to the modifications referred to in Article 106, paragraph 1, letter (e) of the abovementioned Article, the possible thresholds established by contracting administrations or contracting entities have been exceeded; with reference to modifications referred to in Article 106, paragraph 2, the thresholds referred to in that paragraph 2, letters (a) and (b) have been exceeded;

c) the contractor has, at the time of contract award, been in one of the situations referred to in Article 80, paragraph 1, both in the ordinary sectors and for concessions, and should therefore have been excluded from the procurement procedure or the concession award procedure, or with reference to special sectors should have been excluded pursuant to Article 136, paragraph 1;

d) the contract should not have been awarded in view of a serious infringement of the obligations under the Treaties, as declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 TFEU.

1-bis. In the cases referred to in paragraph 1 the terms set forth in article 21-nonies of the Law of 7 August 1990 no. 241.

2. Contracting authorities must terminate a public contract during the period of effectiveness of the contract if:

a) against the contractor the forfeiture of the qualification certificate has taken place due to having produced false documentation or false declarations;

b) with regard to the contractor, a definitive provision has taken place which provides for the application of one or more preventive measures referred to in the anti-mafia laws and related prevention measures, or whether a sentence has passed that has been judged for the offenses referred to in Article 80.

3. The construction manager or the person in charge of the performance of the contract, if appointed, when he ascertains a serious breach of contractual obligations by the contractor, such as to jeopardize the success of the services, shall send the person in charge of the procedure a detailed report, accompanied by the necessary documents, indicating the estimate of the work carried out regularly, the amount of which may be recognized to the contractor. He also formulates a dispute against the contractor, assigning a period of no less than fifteen days for the submission of his counterarguments to the person responsible for the proceeding. Once the above-mentioned counter-deductions have been assessed and the deadline has expired without the contractor having replied, the contracting authority, upon proposal of the person in charge of the procedure, declares the contract terminated.

4. If, apart from the provisions of paragraph 3, the performance of delays due to the negligence of the contractor with respect to the provisions of the contract, the manager of the works or the sole responsible for the performance of the contract, if appointed assigns him a term, which, except in cases of urgency, can not be less than ten days, within which the contractor must perform the services. Once the assigned deadline has expired, and a verbal and contradictory process has been drafted with the contractor, if the non-fulfillment remains, the contracting authority resolves the contract, without prejudice to the payment of penalties.

5. In the event of termination of the contract, the contractor is only entitled to payment of the services relating to the works, services or supplies regularly executed, reduced by the additional costs deriving from the termination of the contract.

6. The sole responsible of the procedure in communicating to the contractor the determination of the termination of the contract, has, with twenty days' notice, that the director of the works will prepare the consistency of the works already carried out, the inventory of materials, machines and means of work and their taking over.

7. If appointed, the test body proceeds to draw up, after having obtained the state of consistency, a report of technical and accounting assessment according to the procedures set out in this code. The report verifies the correspondence between what was done until the contract was terminated and entered into the accounting and the provisions of the approved project as well as any variant appraisals; it is also established the presence of any works, reported in the state of consistency, but not provided for in the approved project as well as in any variant appraisals.

8. In the cases referred to in paragraphs 2 and 3, in the final settlement of the works, services or supplies referred to the contract solved, the burden to be borne by the contractor is also determined in relation to the greater expense incurred to assign to another company the works

where the contracting authority has not availed of the option provided for in article 110, paragraph 1.

9. In cases of termination of the procurement contract declared by the contracting authority, the contractor must provide for the collapse of the already set up sites and the clearing of the work areas and related appurtenances within the deadline assigned by the same contracting authority; in the event of failure to meet the deadline, the contracting authority shall provide the contractor with the related costs and expenses. The contracting authority, as an alternative to the execution of any precautionary jurisdictional measures, possessors or urgently called in any case that inhibit or delay the collapse of the building sites or the clearing of the work areas and related appurtenances, may deposit bail in favor of the contractor or provide bank guarantee or insurance policy in accordance with Article 93, equal to one per cent of the value of the contract. The right of the contractor to take action for compensation for damage remains.

Article 109

(Withdrawal)

1. Without prejudice to Article 88, paragraph 4, subsection 3 and 92, paragraph 4, of Legislative Decree No. 159 of September 6 2011, the contracting entity may withdraw from the contract ((at any time)) subject to payment of the work carried out or performance relating to services and supplies provided as well as the value of the useful materials available on-site in the case of work or in warehouse in the case of services or supplies, in addition to the tenth of the amount of works, services or supplies not carried out.
2. The tenth of the amount of works not carried out is calculated on the difference between the amount of four fifths of the price put out to tender, net of the bidding rebate and the net amount of works, services or supplies carried out.
3. Exercising the right of withdrawal is preceded by a formal notice to the contractor to be given with notice of not less than 20 days, after which the contracting entity takes delivery of the works, services or supplies and proceeds to the final acceptance and verifies the regularity of the services and supplies.
4. The materials, whose value is recognized by the contracting entity pursuant to paragraph 1, are only those already accepted by the site manager or ((executive director)) of the contract, if appointed, ((or by the sole project manager)) in his absence, prior to the notice referred to in paragraph 3.
5. The contracting entity may withhold provisional works and installations that are not totally or partially removable, if deemed still usable. In that case it pays a fee to the contractor for the value of the works and installations that have not depreciated over the course of the works performed, to be determined in the small sum between the cost of construction and the value of the works and installations at the time of the dissolution of the contract.
6. The contractor must remove from warehouses and building yards the materials not accepted by the site manager and place the warehouses and building yards at the disposal of the

contracting entity within the period established; otherwise the eviction is carried out automatically and at his own expense.

Article 110

(Award procedures in the event of the bankruptcy of the performer or the termination of the contract and extraordinary management measures).

1. The contracting entities in the event of bankruptcy, compulsory liquidation, voluntary arrangement with creditors, collective insolvency proceedings, the winding up of the contractor or the contract is terminated pursuant to Article 108, or the contract is cancelled pursuant to Article 88, paragraph 4, subsection 3, of Legislative Decree No. 159 of September 6 2011, or in the event of a judicial declaration of the nullity of the contract, progressively challenge the parties that participated in the original tendering procedure, resulting from the relevant ranking, in order to enter into a new tendering contract ((of the performance or completion of the works, services or supplies)).
2. The awarding takes place under the same conditions as already proposed by the original tenderer when the bid was made.
3. The insolvency administrator authorized to manage the undertaking on a provisional basis, or the company admitted to the arrangement with creditors without business interruption by permission of the court ((...)) may:
 - a) Participate in procedures for the award of concessions and contracts for works, supplies and services or to be awarded subcontracts
 - b) Perform contracts already stipulated by the failed company or admitted to the agreement with business continuity.
4. The company admitted to an arrangement with creditors without business interruption does not require pooling with third parties. The company admitted to the agreement with a sale of goods or that submitted an application for an agreement pursuant to Article 161, sixth paragraph, of Royal Decree No. 267 of March 16 1942, may carry out the contracts already concluded, upon the authorization of the Presiding Judge ((...)).
5. ANAC, after consulting with the Presiding Judge, may make participation in the tender, granting of sub-contracting and entering into the pertinent contracts conditional on the requirement that the insolvency administrator, or the undertaking admitted to arrangement with creditors, rely on another operator satisfying the general, financial, technical, economic and certification requirements set out in the Tender Notice, which undertakes vis-à-vis the Tenderer and the contracting authority to make available, throughout the term of the contract, the resources necessary to perform the contract and to replace the lead company if the latter, during the tender, or after the agreement has been entered into, is no longer able for any reason to ensure the proper performance of the tender or the concession, in the following cases.
 - a) If the undertaking is not up-to-date with the payments of employee salaries and social security contributions
 - b) If the undertaking does not have the additional requirements that ANAC identifies with specific guidelines

6. The provisions of Article 32 of Legislative Decree No. 90 of June 24 2014, converted with amendments by Law No. 114 of August 11 2014, on extraordinary measures of enterprise management in the area of corruption prevention remain valid.

Article 111

(Technical, accounting and administrative control)

1. By decree of the Minister for Infrastructure and Transport, to be adopted within 90 days from the date of entry into force of this Code, upon the proposal of ANAC, after consulting the competent parliamentary committees, and hearing the Supreme Council of Public Works ((and the Unified Conference referred to in Article 8 of Legislative Decree No. 281 of August 28 1997)), the guidelines are approved that identify the measures and, where appropriate, the type of acts through which the site manager carries out the activity referred to in Article 101, paragraph 3, so as to ensure transparency, simplification and IT streamlining, with particular reference to electronic methodologies and equipment also for accounting controls. ((With the decree referred to in the first sentence, the procedures for the operation of the verification of compliance check in course of performance and final, and the related timing, as well as the cases in which the executive director may be entrusted with the verification of compliance are also dealt with.

If the contracting authorities cannot carry out the management of the works, it shall be entrusted in the order to other public authorities, following a special agreement pursuant to Article 15 of Law No. 241 of August 7 1990, or understanding or agreement referred to in Article 30 of Legislative Decree No. 267 of August 18 2000; to the designer appointed; to other parties chosen under the procedures set out in this Code for the awarding of the design tasks.))

((1-subsection 2. The laboratory tests and compulsory technical tests relating to the activities referred to in paragraph 1, or specifically provided for in the special conditions governing works contracts, are arranged by the works management or testing body, charging the expenditure on the sums made available to that effect in the economic context. These expenses are not subject to rebate. The criteria for determining such costs are identified by decree of the Minister for Infrastructure and Transport, adopted upon the proposal of the Supreme Council of Public Works.))

2. The executive director of the contract for services or supplies shall be, as a rule, the sole project manager and shall provide ((, also with the assistance of one or more operational managers identified by the contracting entity in relation to the complexity of the contract,)) for the coordination, management and technical and accounting monitoring of the performance of the contract agreed upon by the contracting entity ensuring the proper performance by the performer in accordance with the contractual documents. With the same decree referred to in paragraph 1, guidelines are also approved which fully identify the procedures for carrying out the control procedures referred to in the previous sentence, in accordance with transparency and simplification criteria. Until the date of entry into force of the decree referred to in paragraph 1, Article 216, paragraph 17 shall apply.

Art. 112

reserved concessions and contracts

1. Without prejudice to the provisions in force for social cooperatives and social undertakings, contracting authorities or contracting entities may reserve the right to participate in contract or concession award procedures to economic operators and social cooperatives and consortia thereof whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide their execution in the context of sheltered employment programmes, provided that at least 30 % of the employees of those economic operators are disabled or disadvantaged workers [...].
2. For the purposes of this article, persons with disabilities are considered to be those referred to in Article 1 of the Law of 12 March 1999, n. 68, disadvantaged people, those provided for in Article 4 of the Law of 8 November 1991, n. 381, former patients of psychiatric hospitals, including judicial ones, subjects under psychiatric treatment, drug addicts, alcoholics, minors of working age in situations of family difficulties, persons detained or interned in prisons, convicted and interned admitted to alternative measures to detention and to work outside in accordance with article 21 of the law of 26 July 1975, n. 354 and subsequent modifications.
3. The contract notice or the prior information notice expressly notify that the contract or concession is reserved.

Art. 113. (Incentives for technical functions)

1. The costs related to the planning, the direction of the works or the execution manager, the supervision, the technical and administrative tests or compliance checks, static testing, studies and research related to the design of security plans and coordination and coordination of security during the execution phase when required pursuant to Legislative Decree 9 April 2008 n. 81, to the professional and specialist services necessary for the drafting of a complete executive project in every detail they charge the allocations foreseen for the single works, services and supplies contracts in the state of the expenditure estimates or in the budgets of the contracting stations.
2. With regard to the appropriations referred to in paragraph 1, contracting authorities shall allocate to a specific fund financial resources not exceeding 2 percent on the amount of works, services and supplies, based on the tender for technical functions carried out by the employees of the same exclusively for the planning activities of the investment expenditure, the preliminary

evaluation of the projects, the preparation and control of the tender procedures and the execution of public contracts, the RUP, the direction of the works or the execution direction and of technical administrative testing or verification of conformity, of a static tester where necessary to allow the execution of the contract in compliance with the documents based on the tender, the project, the times and costs established. This provision is not provided for by those contracting authorities for which contracts or agreements are in place which provide for different procedures for the remuneration of the technical functions performed by their employees. The institutions that make up or make use of a central purchasing body can allocate the fund or part of it to employees of this plant. The provision referred to in this paragraph applies to contracts relating to services or supplies in the event that the executing director is appointed.

3. Eighty percent of the financial resources of the fund set up pursuant to paragraph 2 shall be allocated, for each work or work, service, supply with the methods and criteria envisaged during the decentralized staff contracting agreement, on the basis of a specific regulation adopted by the administrations according to the respective laws, between the sole responsible of the proceeding and the subjects that perform the technical functions indicated in paragraph 2 as well as among their collaborators. The amounts also include social security and welfare expenses borne by the administration. The contracting authority or the contracting entity establishes the criteria and modalities for the reduction of the financial resources related to the single work or work against any increase in time or costs that do not comply with the provisions of this decree. The payment of the incentive is arranged by the manager or by the service manager in charge of the competent structure, after having ascertained the specific activities carried out by the aforementioned employees. The total incentives paid during the year to the individual employee, even by different administrations, can not exceed the amount of 50 percent of the total annual economic treatment. The shares of the incentive corresponding to benefits not performed by the same employees, as entrusted to personnel external to the same body of the same administration, or without the aforementioned assessment, increase the proportion of the fund referred to in paragraph 2. This paragraph does not applies to personnel with managerial qualifications.

4. The remaining 20 percent of the financial resources of the fund referred to in paragraph 2 with the exclusion of resources deriving from European funding or other restricted funding is intended for the purchase by the institution of assets, equipment and functional innovation projects also for the progressive use of specific electronic methods and tools for the electronic modeling of buildings and infrastructures, the implementation of databases for the control and improvement of spending capacity and IT efficiency, with particular reference to electronic methods and instruments for controls. A part of the resources can be used for the activation by the contracting authorities of training and orientation apprentices referred to in Article 18 of the Law of 24 June 1997, n. 196 o for conducting high-level research doctorates in the field of public contracts after signing special agreements with universities and higher education institutions.

5. For the tasks performed by the personnel of a single central purchasing body in the execution of procedures for the acquisition of works, services and supplies on behalf of other entities, a share may be recognized, at the request of the single central office, not more than a quarter, of the incentive provided for in paragraph 2.

Art. 113-bis. (Terms for issuing payment certificates relating to down payments)

1. The payment certificates relating to the advance payments of the contract price shall be issued within thirty days from the adoption of each stage of progress, unless otherwise expressly agreed by the parties and provided for in the tender documentation and provided that it is not grossly unfair to the creditor.

(paragraph thus replaced by Article 1, paragraph 586, Law No. 205 of 2017)

2. Contracts shall include penalties for delays in the performance of contractual services by the contractor commensurate with the days of delay and proportional to the contract amount or contract performance. The penalties due for the delayed fulfillment are calculated daily between 0.3 per thousand and 1 per thousand of the net contractual amount to be determined in relation to the extent of the consequences related to the delay and cannot however exceed, overall, 10 per cent of said net contractual amount.

3. At the positive outcome of the test or of the conformity check, the sole responsible of the procedure issues the payment certificate for the purpose of issuing the invoice by the contractor. The payment certificate is issued in accordance with the terms of article 4, paragraphs 2, 3, 4 and 5 of Legislative Decree 9 October 2002, n. 231, and does not constitute presumption of acceptance of the work, pursuant to Article 1666, second paragraph, of the Civil Code.

TITLE VI - SPECIAL PROCUREMENT SCHEMES

CHAPTER I - PROCUREMENT IN SPECIAL SECTORS

SECTION I - APPLICABLE PROVISIONS AND SCOPE

Art. 114

Subject-matter and scope

1. The following rules shall apply to the public contracts referred to in this Chapter and, as far as compatible, the provisions referred to in Articles 1 to 58, with the exception of the provisions relating to concessions. Article 49 applies with regard to Annexes 3, 4 and 5 and to the general notes of Appendix 1 of the European Union of the GPA and to the other international agreements to which the European Union is bound.

2. The provisions of this Chapter shall apply to contracting entities which are contracting authorities or public undertakings carrying out one of the activities set out in Articles 115 to 121; they also apply to all persons who, although not being contracting authorities or public enterprises, include among their activities one or more of the activities provided for by articles 115 to 121 and operate by virtue of special or exclusive rights.

3. For the purposes of this Article, ‘special or exclusive rights’ means rights granted by the State or local entities by way of any legislative, regulatory or published administrative provision compatible with the Treaties and having the effect of reserving the exercise of activities defined in Articles 115 to 121 and of substantially affecting the ability of other entities to carry out such activities.

4. Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute special or exclusive rights within the meaning of paragraph 3. For these purposes, besides the procedures in this Code, all the procedures referred to in Annex II of directive 2014/25/EU of the European Parliament and the Council which are able to ensure an adequate level of transparency shall constitute adequate procedures in order to exclude the subsistence of special or exclusive rights.

5. (repealed)

6. The provisions of Article 158 apply to research and development services.

7. For the purposes of Articles 115, 116 and 117, the term ‘supply’ shall include generation, production, as well as the wholesale and retail sale.

However, production of gas in the form of extraction falls within the scope of Article 121.

8. The rules set out in Articles 100, 105, 106, 108 and 112 shall apply to the execution of procurement contracts in the special sectors.

Art. 115

Gas and heat

1. As far as gas and heat are concerned, this Chapter shall apply to the following activities:

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;

(b) the supply of gas or heat to such networks.

2. The supply of gas or heat to fixed networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered to be a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

(a) the production of gas or heat by that contracting entity is the unavoidable consequence of carrying out an activity not referred to in paragraph 1 of this Article or in Articles 116 to 118;

(b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the contracting entity’s turnover, on the basis of the average for the preceding three years, including the current year.

Art. 116

electricity

1. As far as electricity is concerned, this Chapter shall apply to the following activities:
 - (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;
 - (b) the supply of electricity to such networks.
2. The supply of electricity to fixed networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered to be a relevant activity within the meaning of paragraph 1, where all of the following conditions are met:

Art. 117 Water

1. Without prejudice to the specific exclusions relating to concessions as referred to in Article 12, as far as water is concerned, this Chapter shall apply to the following activities:
 - (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water;
 - (b) the supply of drinking water to such networks.
2. This Chapter shall also apply to contracts or design contests awarded or organised by contracting entities which pursue an activity referred to in paragraph 1 and which are related to one of the following activities:
 - (a) hydraulic engineering projects, irrigation or land drainage, where the volume of water to be used for the supply of drinking water represents more than 20% of the total volume of water made available by such projects or irrigation or drainage installations,
 - (b) the disposal or treatment of sewage.
3. The supply of drinking water to fixed networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered to be a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:
 - (a) the production of drinking water by that contracting entity takes place because its consumption is necessary for carrying out an activity not referred to in Articles 115 to 118;
 - (b) the supply to the public network depends only on that contracting entity's own consumption and does not exceed 30% of that contracting entity's total production of drinking water, on the basis of the average for the preceding three years, including the current year.

Art. 118 Transport

1. Without prejudice to the exclusions referred to in Article 17, paragraph 1, letter (1), the provisions in this Chapter shall apply to activities relating to the provision or operation of

networks providing a service to the public in the field of transport by railway, tramway, trolley bus, as well as by bus, automated systems or cable systems.

2. As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by the competent authorities, such as conditions on the routes to be served, the available capacity of transport or the frequency of the service.

Art. 119

Ports and airports

1. The provisions in this Chapter shall apply to activities relating to the exploitation of a geographical area for the purpose of the provision of airports, maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

Art. 120

postal services

1. The provisions in this Chapter shall apply to activities relating to the provision of:

(a) postal services;

(b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of paragraph 2, letter (b), of this Article and provided that the conditions set out in Article 8 are not satisfied in respect of the services falling within paragraph 2, letter (b) of this Article.

2. For the purpose of this Code and without prejudice to what provided for in Legislative Decree n. 261 of 22 July 1999, it shall be intended as:

(a) 'postal item', an item addressed in the final form at the moment in which it is taken over, irrespective of its weight. In addition to items of correspondence, such items also include books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of their weight;

(b) 'postal services', services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within the scope of the universal service set up in conformity with Directive 97/67/EC of the European Parliament and the Council as well as those services excluded from this scope;

(c) 'other services than postal services', services provided in the following areas:

(i) postal service management, i.e. services both preceding and subsequent to despatch, including mailroom management services;

(ii) services concerning postal items other than those referred to in letter (a), such as direct mail bearing no address.

Art. 121

exploitation of a geographical area for the purpose of extracting oil or gas or coal or other solid fuels

1. The provisions in this Code shall apply to activities relating to the exploitation of a geographical area for the purpose of:
 - (a) extracting oil or gas;
 - (b) exploring for, or extracting, coal or other solid fuels.
2. Activities related to the exploitation of a geographical area, for the purpose of oil and natural gas exploration, as well as oil production, as activities directly exposed to competition in freely accessible markets, are excluded.

SECTION II - AWARDING PROCEDURES

Art. 122 (Applicable rules)

1. With regard to the procedures for the selection of the contractor, the contracting entities in the special sectors shall apply, to the extent compatible with the rules referred to in this Section, the following articles of Part II, Title III, Chapters II and III: 60, except the provision on the pre-information notice refers to the indicative periodic notice; 61, paragraphs 1 and 2, with the clarification that the 30-day term provided therein may be reduced up to fifteen days, as well as paragraphs 3 and 5; 64 with the clarification that the thirty-day deadline for the receipt of requests for participation referred to in paragraph 3 may be reduced up to fifteen days, if a periodic indicative notice has been published and an invitation to confirm interest has been sent; 65; 66; 67; 68; 69; 73 and 74. The provisions of Articles 123 to 132 also apply.

Art. 123

Choice of the procedure

1. When awarding supply, works or service contracts, contracting entities shall use open, restricted or negotiated procedures preceded by a call for tenders in accordance with the provisions of this section. Contracting entities may also use competitive dialogues and innovation partnerships in accordance with the provisions of this section.
2. Without prejudice to the provisions of article 122, the awarding procedures referred to in this chapter are preceded by the publication of a notice of call for tenders in the manner and in compliance with the terms established by this code.

3. The call for competition may be made by one of the following means:
- a) a periodic indicative notice pursuant to Article 127 where the contract is awarded by restricted procedure or negotiated procedure;
 - b) a notice on the existence of a qualification system pursuant to Article 134 where the contract is awarded by restricted procedure or negotiated procedure or by a competitive dialogue or an innovation partnership;
 - c) by means of a contract notice pursuant to Article 129.
4. In the case referred to in paragraph 3, letter (a), economic operators having expressed their interest following the publication of the periodic indicative notice shall subsequently be invited to confirm their interest in conformity with Article 131.

Art. 124

Negotiated procedure with prior call for competition

1. In negotiated procedures with prior call for competition, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting entity.
2. The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest was sent and shall in any event not be less than 15 days.
3. Only those economic operators invited by the contracting entity following its assessment of the information provided may participate in the negotiations. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 91.
4. The time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that they all have the same term to prepare and submit their tenders.
In the absence of agreement on the time limit for the receipt of tenders, the time limit shall not be less than 10 days from the date on which the invitation to tender was sent.

Art. 125

Use of the negotiated procedure without prior call for competition

1. Contracting entities may use a negotiated procedure without prior call for competition in the following cases:
 - (a) where, in response to a procedure with a prior call for competition, no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted provided that the initial conditions of the contract are not substantially altered;
A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting entity's needs and

requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned shall be excluded or may be excluded or does not meet the selection criteria laid down by the contracting entity pursuant to Articles 80, 135 and 136;

(b) where a contract is only intended for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, provided that award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;

(c) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:

1) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

2) competition is absent for technical reasons. The exception set out in this point shall only apply when no substitute or reasonable alternative exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

3) the protection of exclusive rights, including intellectual property rights. The exception set out in this point shall only apply when no substitute or reasonable alternative exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

d) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseen and unforeseeable by the contracting entity, including however those cases of cleaning and securing of contaminated sites within the meaning of Part IV, Title V of legislative decree n. 152 of 3 April 2006 and of concrete and actual danger of irreparable damages to cultural heritage, the terms established for the open procedures, restricted procedures, negotiated procedures with a prior call for competition cannot be respected. The circumstances invoked to justify extreme urgency shall not in any case be attributable to the contracting entity.

(e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

(f) for new works or services consisting in the repetition of similar works or services assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works or services conform to a basic project for which a first contract was awarded according to a procedure in accordance with Article 123.

The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the contracting entities, when applying Article 35, shall take into account the total cost estimated for subsequent works or services;

(g) for supplies quoted and purchased on a commodity market;

(h) for bargain purchases, where it is possible, in presence of a particularly advantageous opportunity available for a very short time, to procure supplies at a price considerably lower than normal market prices;

(i) for purchases of supplies or services under particularly advantageous conditions from either a supplier which is definitively winding up its business activities or the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedures;

(j) where the service contract concerned follows a design contest organised in accordance with the provisions in this Code and is intended to be awarded, under the rules provided for in the design contest, to procure supplies to the winner or to one of the winners of that contest; in the latter case, all the winners shall be invited to participate in the negotiations.

Art. 126

communication of technical specifications

1. On request from economic operators interested in obtaining a contract, contracting entities shall make available the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts for which the call for competition is a periodic indicative notice. Those specifications shall be made available by electronic means through unrestricted and full direct access free of charge.
2. However, the technical specifications shall be transmitted by other means than electronic means where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in the second subparagraph of Article 40(1) or where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because contracting entities intend to apply Article 39(2).
3. Where the technical specifications are based on documents available by electronic means through unrestricted and full direct access free of charge to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

Art. 127

Periodic indicative notices

1. The provisions of articles 73 and 74 and those of the articles referred to in this section shall apply to the publicity of the documents of the procedures for the selection of the contractor of special sectors.
2. Contracting entities may make known their intentions of planned procurement through the publication of a periodic indicative notice, possibly by 31 December of each year. Those notices, containing the information set out in Annex XIV, part II, section A, shall be published by the contracting entity on its buyer profiles. For contracts whose amount is equal to or exceeds the threshold set out in Article 35, the notices shall also be published by the Publications Office of the European Union. For this purpose, contracting entities shall send a notice of the publication of the periodic indicative notice on a buyer profile to the Publications Office of the European Union in accordance with Annex , point 2, letter (b) and point 3. Those notices shall contain the information set out in Annex XIV, part II, section C.

3. When a call for competition is made by means of a periodic indicative notice in respect of restricted procedures and negotiated procedures with prior call for competition, the notice shall meet all the following requirements:

(a) it refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;

(b) it indicates that the contract will be awarded by restricted procedure or negotiated procedure without further publication of a call for competition and invites interested economic operators to express their interest;

(c) it contains, in addition to the information set out in Annex XIV, Part II, Section A, the information set out in Annex XIV, Part II, Section B;

(d) it has been sent for publication between 35 days and 12 months prior to the date on which the invitation to confirm interest is sent.

4. Notices referred to in paragraph 2 may be published on a buyer as an additional publication at national level. The period covered by the periodic indicative notice shall be a maximum of 12 months from the date the notice is transmitted for publication.

Art. 128

Notices on the existence of a qualification system

1. Contracting entities may set up and operate their own qualification system for economic operators. Such a system shall be noticed by means of a notice as referred to in Annex XIV, Part II, letter H, indicating the purposes of the qualification system and the modalities useful to know the rules concerning its operation.

2. If a call for tenders is announced with a warning on the existence of a qualification system, the bidders, in a restricted procedure, or the participants, in a negotiated procedure, shall be selected from among the candidates qualified with such a system.

3. Contracting entities shall indicate the period of validity of the qualification system in the notice on the existence of the system. For contracts whose amount is equal to or exceeding the thresholds set out in Article 35, they shall notify the Publications Office of the European Union of any change in period of validity, using the following standard forms:

Art. 129

Contract notice and Contract award notices

1. Contract notices may be used as a means of calling for competition in respect of all procedures. They shall contain the information set out in the relevant part of Annex XIV, Part II and shall be published in accordance with Article 130.

2. Not later than 30 days after the conclusion of a contract or of a framework agreement following the decision to award or conclude it, contracting entities shall send a contract award notice containing the results of the procurement procedure. Such notice shall contain the information set out in Annex XIV, Part II, letter G and shall be published in accordance with Article 130. Provisions in Article 98, paragraphs 2, 3, 4 and 5 shall also apply.

3. In the case of contracts for research-and-development services ('R&D services'), the information concerning the nature and quantity of the services may be limited to:

- (a) the indication 'R&D services' where the contract has been awarded by a negotiated procedure without a call for competition in accordance with Article 125;
- (b) information at least as detailed as was indicated in the notice that was used as a means of calling for competition.

Art. 130.

Drafting and methods of publication of notices and notices

1 Notices referred to in Articles 127 to 129 containing the information set out in Annex XIV, Part II, letters A, B, D, G e and H and in the format of standard forms, including standard forms for corrigenda are drawn up in conformity to those drawn up by the Commission and submitted to the Publications Office of the European Union by electronic means and published in conformity with Annex V.

2. Notices drawn up and transmitted with the modalities referred to in paragraph 1 shall be published not later than five days after they are sent, without prejudice to provisions on their publication by the Publications Office of the European Union.

3. Notices and calls shall be published in full in one of the official language(s) of the Union chosen by the contracting authorities or entities; that language version shall constitute the sole authentic text. Italian contracting authorities or entities shall choose the Italian language, without prejudice to the norms in force in the autonomous Province of Bolzano in the field of bilingualism. A summary of the important elements of each notice shall be published by the contracting authorities or entities out of respect for the principles of transparency and non-discrimination, in the other official languages.

4. The Publications Office of the European Union shall ensure that the full text and summary of the indicative periodic notices referred to in Article 127, of calls for tenders for calls for tenders establishing a dynamic purchasing system as referred to in Article 55, and notices on the existence of a qualification system used as a call for tender referred to in Article 123, paragraph 3, letter b), continue to be published:

- (a) in the case of indicative periodic notices: for twelve months or until receipt of an award notice referred to in Article 129 indicating that no other contract will be awarded in the twelve months covered by the call for competition. However, in the case of contracts for social services and other specific services referred to in Annex IX, the periodic indicative notice referred to in Article 142, paragraph 1, letter b), shall continue to be published until the expiration of the validity period initially indicated or until receipt of a contract award notice as required by

Article 129, indicating that no further contracts will be awarded in the period covered by the call for tender;

b) in the case of calls for tenders for calls for tenders establishing a dynamic purchasing system: for the period of validity of the dynamic purchasing system;

c) in the case of notices on the existence of a qualification system: for the period of validity.

5. Confirmation of receipt of the notice and of the publication of the transmitted information, with mention of the date of publication, issued by the Publications Office of the European Union to the contracting entities shall be valid as a proof of publication.

6. Contracting entities may publish notices for works, supply or service contracts that are not subject to the publication requirements laid down in this decree, provided that they are sent to the Publications Office of the European Union by electronic means in accordance with the format and procedures for transmission indicated in Annex V.

7. Article 73 applies to publication at national level

Art. 131

Invitations to candidates

1. In restricted procedures, competitive dialogue procedures, innovation partnerships and competitive procedures with negotiation, contracting authorities or entities shall simultaneously and in writing invite, usually through electronic means, the selected candidates to submit their tenders or negotiate or, in the case of a competitive dialogue, to take part in the dialogue or to negotiate. With the same modalities contracting authorities or entities shall invite, where a prior information notice is used as a call for competition, the economic operators which have already expressed their interest to confirm their continuing interest.

2. In restricted procedures, competitive dialogue procedures, innovation partnerships and competitive procedures with negotiation, contracting authorities shall specify the electronic address on which the procurement documents have been made directly available by electronic means and shall include the information mentioned in Annex XV, part II. Where those documents have not been the subject of unrestricted and full direct access, free of charge, pursuant to Article 74 and have not been made available with other means, invitations are accompanied by procurement documents in digital format, or where this is not possible, in paper format.

3. In negotiated procedures without prior call for competition, the selected economic operators are invited by certified e-mail or similar tool in the other Member States or, when this is not possible, by letter. The invitations contain the essential elements of the requested service.

Art. 132

Informing applicants for qualification, candidates and tenderers

1. With regard to information to applicants for qualifications, candidates and tenderers shall be subject to the provisions of Article 76 and the following paragraphs
2. Contracting entities which establish or operate a system of qualification shall inform applicants of their decision as to qualification within a period of six months from the presentation of the request. If the decision on the qualification will take longer than four months, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.
3. Applicants whose qualification is refused shall be informed of the refusal decision and the reasons for that decision within 15 days from the date of the refusal decision. The reasons shall be based on the criteria for qualification referred to in Articles 134 and 136.
4. Contracting entities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in Articles 134 and 136. Any intention to bring the qualification to an end shall be previously notified in writing to the economic operator at least 15 days before the date on which the qualification is due to end, together with the reason or reasons justifying the proposed action.

SECTION III - SELECTION OF PARTICIPANTS AND OFFERS AND UNIQUE REPORTS

Art. 133

(General principles for the selection of participants)

1. For the purpose of selecting participants in the award procedures, the following rules shall all apply:
 - (a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with Article 135 or Article 136 shall exclude economic operators identified in accordance with such rules and fulfilling such criteria;
 - (b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to Articles 135 and 136;
 - (c) in restricted procedures, in negotiated procedures with a call for competition, in competitive dialogues and in innovation partnerships, they shall where appropriate reduce and in accordance with Article 135 the number of candidates selected pursuant to points (a) and (b).
3. When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in award procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:

- (a) qualify economic operators in accordance with Article 134;
 - (b) apply to such qualified economic operators those provisions of paragraph 1 that are relevant to restricted or negotiated procedures, to competitive dialogues or to innovation partnerships.
4. When selecting participants for a restricted or negotiated procedure, a competitive dialogue or an innovation partnership, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities:
- a) shall not impose administrative, technical or financial conditions on certain economic operators without imposing them on others;
 - b) shall not require tests or evidence which are already present in the documentation already available;
5. For the purposes of acquiring information and documentations from candidated economic operators, contracting entities shall use the database referred to in Article 81, or accept self-declaration and require integrations pursuant to Article 85, paragraph 5.
6. Contracting entities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in Articles 95 and 97.
7. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply with the applicable obligations referred to in Article 30.
7. In open procedures, contracting entities may decide to examine tenders before verifying the suitability of tenderers. Where they choose to make use of this possibility, contracting authorities shall ensure that the verification on the absence of the grounds of exclusion and the respect of the selection criteria is made in an impartial manner, in a way that any contract will be awarded to a tenderer which would have been excluded in accordance with Article 80 or which does not meet the selection criteria established by the contracting entity..
8. In open procedures, contracting entities may decide that tenders will be examined before verification of the eligibility of tenderers. This right may be exercised if specifically provided for in the contract notice or in the notice with which the tender is announced. If they make use of this possibility, contracting authorities shall ensure that the verification of the absence of grounds for exclusion and compliance with the selection criteria is carried out impartially and transparently, so that no contract is awarded to a bidder who should have been excluded in accordance with Article 136 or which does not meet the selection criteria established by the contracting authority.

Art. 134

system of qualification of economic operators

1. Contracting entities may establish and operate a system of qualification of economic operators.
In such a case, those entities shall ensure that economic operators are at all times able to request qualification.
2. The system under paragraph 1 may involve different qualification stages.

Contracting entities shall establish objective rules and criteria for the exclusion and selection of economic operators requesting qualification and objective criteria and rules for the operation of the qualification system, covering matters such as inscription in the system, periodic updating of the qualifications, if any, and the duration of the system.

Where those criteria and rules include technical specifications, Articles 68, 69 and 82 shall apply. The criteria and rules may be updated as required.

3. The criteria and rules referred to in paragraph 2 shall be made available to economic operators on request, and shall be communicated to interested economic operators.

A contracting entity may use the qualification system established by another contracting entity or a third body, giving adequate communication to interested economic operators.

4. Contracting entities shall establish and update a list of economic operators, which may be divided into categories according to the type of contracts for which the qualification is valid.

5. The criteria and norms referred to in paragraph 3 shall include the exclusion criteria set out in Article 136.

6. In the case of the establishment and management of a qualification system referred to in paragraph 1, the contracting entities shall observe:

a) Article 128 as regards the existence of a qualification system;

b) Article 132, as regards information to those who have requested a qualification.

7. The contracting entity which establishes and manages the qualification system shall establish the documents, certificates and substitutive declarations which must accompany the application for registration, and may not ask for certificates or documents which reproduce valid documents already in the availability of the contracting entity . The documents, certificates and substitutive declarations, if written in a language other than Italian, are accompanied by an Italian translation certified according to the original text by the Italian diplomatic or consular authorities of the country in which they were written, or by a official translator.

8. When a call for competition is made by means of a notice on the existence of a qualification system, specific contracts for the works, supplies or services covered by the qualification system shall be awarded by restricted procedures or negotiated procedures, in which all tenderers and participants are selected among the candidates already qualified in accordance with such a system.

9. Any charges that are billed in connection with requests for qualification or with updating or conserving an already obtained qualification pursuant to the system shall be proportionate to the generated costs.

Art. 135

Criteria for qualitative selection and Reliance on the capacities of other entities

1. Contracting entities may establish objective rules and criteria for the exclusion and selection of tenderers or candidates; those rules and criteria shall be available to interested economic operators.
2. Where contracting entities need to ensure an appropriate balance between the particular characteristics of the procurement procedure and the resources required to conduct it, they may, in restricted or negotiated procedures, in competitive dialogues or in innovation partnerships, establish objective rules and criteria that reflect this need and enable the contracting entity to reduce the number of candidates that will be invited to tender or to negotiate. The number of candidates selected shall, however, take account of the need to ensure adequate competition.
3. When the bidder intends to rely on the financial or technical professional capacity requirements of other entities, Article 89 applies.

Art. 136

(Applicability of exclusion reasons and selection criteria of the ordinary sectors to qualification systems)

1. The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system and the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures, in competitive dialogues or in innovation partnerships may include the exclusion grounds listed in Article 80 on the conditions set out therein.
Where the contracting entity is a contracting authority, those criteria and rules shall include the exclusion grounds listed in Article 80 on the conditions set out in that Article.
2. The criteria and rules referred to in paragraph 1 may include the selection criteria set out in Article 83 on the conditions set out therein, notably as regards the limits to requirements concerning yearly turnovers, as provided for under the paragraph 5 of that Article.
3. For the purpose of paragraphs 1 and 2, Articles 85, 86 and 88 shall apply.

Art. 137

Offers containing products originating in third countries)

1. Without prejudice to the obligations taken in respect of third countries, this Article shall apply to tenders covering products originating in third countries with which the Union has not

concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Union undertakings to the markets of those third countries.

2. Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council, exceeds 50 % of the total value of the products constituting the tender.

For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.

3. Subject to what provided for in this paragraph, third period, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 95, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2 of this Article. The value of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

4. For the purposes of this article, to determine the part of products originating in third countries referred to in paragraph 2, third countries are excluded, to which, by decision of the Council of the European Union pursuant to paragraph 1, the benefit of this code.

Art. 138

Relations with third countries as regards works, supplies and service contracts

1. The Cabina di Regia referred to in Article 212 shall inform the European Commission of any general, factual or legal difficulty upon notification by the Ministry of Economic Development or the Ministry of Foreign Affairs and International Cooperation , encountered by Italian companies in obtaining the award of service contracts in third countries and referring to them with particular reference to non-compliance with the international labor law provisions listed in Annex X.

Art. 139

Individual reports on procedures for the award of contracts

1. Contracting entities shall keep appropriate information on each contract or framework agreement covered by the present Code and each time a dynamic purchasing system is established. This information shall be sufficient to permit them at a later date to justify decisions taken in connection with:

- (a) the qualification and selection of economic operators and the award of contracts;
- (b) the use of negotiated procedures without a call for competition by virtue of Article 125;
- (c) the non-application of the provisions on techniques and tools for electronic and aggregated procurement and tools and the provisions on the procedures for the selection of the contractor of this code in light of the exceptions provided for therein;

(d) where necessary, the reasons why other means of communication than electronic means for the electronic submission have been used.

2. To the extent that the contract award notice drawn up pursuant to Article 129 or Article 140 (3) contains the information required in this paragraph, contracting entities may refer to that notice.

3. Contracting entities shall document the progress of all procurement procedures, whether or not the procedures are conducted by electronic means. To that end, they shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiation if any, selection and award of the contract. The documentation shall be kept for at least five years from the date of award of the contract or in the event of a dispute pending, until the relevant sentence has passed.

4. The information or documentation or the main elements shall be communicated to the Cabina di Regia referred to in Article 212, for any subsequent communication to the Commission or to the competent authorities, bodies or structures.

SECTION IV - SOCIAL SERVICES, DESIGN CONTEST AND RULES ON EXECUTION

Art. 140. (Rules applicable to social services and other services specific to special sectors)

1. Contracts for social and other specific services listed in Annex IX shall be awarded in accordance with the Articles 142, 143, 144, without prejudice to what provided for in this Article. The provisions of article 142, paragraph 5-octies, apply to the services referred to in Article 142, paragraph 5-bis, in special sectors, for amounts below the threshold referred to in Article 35, paragraph 2, letter c). With regard to the regulation of publication of notices and notices, contracting entities wishing to award a contract for the services referred to in this paragraph shall make known their intention by one of the following methods:

- a) by means of a contract notice;
- b) by means of a periodic indicative notice, which is published on an ongoing basis. The indicative periodic notice refers specifically to the types of services that will be the subject of the contracts to be awarded. It indicates that the contracts will be awarded without subsequent publication and invites the economic operators concerned to express their interest in writing;
- c) through a notice on the existence of a qualification system that is published on an ongoing basis.

2. Paragraph 1 shall not apply where a procedure negotiated without prior notice of tender has been used, in accordance with Article 63, for the award of public service contracts.

3. Contracting entities which have awarded a contract for the services referred to in this Article shall make the result known by an award notice. However, they may group these notices on a quarterly basis. In this case they shall send the group notices at the latest thirty days after the end of each quarter.

Art. 141

Rules governing design contests in special sectors

1. In the design contests and ideas in special sectors the provisions of articles 152, paragraphs 1, 2, 3 and 5, first, second, third and fourth periods, 153, paragraph 1, 154, paragraphs 1, apply. 2, 4 and 5, 155 and 156.
2. Contracting entities that have held a design contest shall make the results known by means of a notice.
3. The call for competition shall include the information set out in Annex XIX and the notice of the results of a design contest shall include the information set out in Annex XX in the format of standard forms. The Commission shall establish those standard forms by means of implementing acts.
4. The notice of the results of a design contest shall be forwarded to the Publication Office of the European Union within 30 days of the closure of the design contest. Article 153, paragraph 2, second period shall apply.

CHAPTER II - PROCUREMENT OF SOCIAL SERVICES AND OTHER SERVICES IN THE ORDINARY SECTORS

Art. 142. (Publication of notices and notices)

1. Contracting stations intending to award a public contract for the services referred to in Annex IX shall make known their intention by any of the following means:
 - (a) by means of a contract notice, which shall contain the information referred to in Annex XIV, letter F, in accordance with the standard forms referred to in Article 72;
 - (b) by means of a prior information notice, which shall be published continuously and contain the information set out in Annex XIV, Part I. The prior information notice shall refer specifically to the types of services that will be the subject of the contracts to be awarded. It shall indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing.
2. Paragraph 1 shall not apply where a negotiated procedure without prior publication has been used in conformity with the requirements provided for in Article 63 for the award of a public service contract.

3. Contracting stations that have awarded a public contract for the services referred to in Annex IX shall make known the results of the procurement procedure by means of a contract award notice, which shall contain the information referred to in Annex XIV, Part I, letter H, in accordance with the standard forms referred to in Article 72. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.

4. For contracts equal to or higher than the thresholds referred to in Article 35, the model forms referred to in paragraphs 1 and 3 of this Article, are established by the Commission by means of implementing acts.

5. The notices referred to in this Article shall be published in accordance with Article 72.

5-bis. The provisions referred to in paragraphs 5-ter to 5-octies shall apply to the following services, as identified in Annex IX in the ordinary sectors: health services, social services and related services; social security services; other public services, social and personal, including services provided by trade unions, political organisations, youth organisations and other services of associative organisations.

5-ter. The award of services referred to in paragraph 5-bis shall ensure the quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, taking into account the specific needs of different categories of users, including disadvantaged groups, and promoting the involvement and empowerment of the users.

5-quater For the purposes of applying Article 21, contracting authorities shall approve planning tools in compliance with the provisions of state and regional sectoral legislation.

5-quinquies The purposes set out in articles 37 and 38 are also pursued through the forms of aggregation provided for by sector regulations with particular regard to social-health districts and similar institutions.

5-sexies. The award procedures referred to in Articles 54 to 58 and 60 to 65 shall apply.

5-septies. Besides what provided for in paragraphs 1 to 5-sexies, provisions in Articles 68, 69, 75, 79, 80, 83 and 95 shall be also applied for the award, adopting the award criterion of the most economically advantageous tender identified on the basis of the best quality/price ratio.

5-octies The service contracts referred to in paragraph 5-bis, of an amount lower than the threshold referred to in Article 35, paragraph 1, letter d), are entrusted in compliance with the provisions of Article 36.

5-nonies. The provisions referred to in paragraphs 5-ter to 5-octies shall apply to the services referred to in Article 144, consistently with the provisions in that same Article.

Art. 143

Contracts reserved for certain services.

1. Contracting Authorities may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to CPV 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, da 85000000-9 a 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8.

2. The awards referred to in paragraph 1 shall fulfil all of the following conditions:

(a) the organization has as its statutory objective the pursuit of a public service mission linked to the delivery of the services referred to in paragraph 1;

(b) profits of the organization are reinvested with a view to achieving the organisation's objective. Where profits are distributed or redistributed, this should be based on participatory considerations;

(c) the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders;

d) the concerned contracting authority has not awarded to the organisation a contract for the services concerned pursuant to this Article within the past three years.

3. The maximum duration of the contract shall not exceed three years.

4. The call for competition shall be drawn up with reference to this Article.

Article 144.

Catering services

1. Catering services indicated in Annex IX are awarded in accordance with provisions in Article 95, paragraph 3. The evaluation of the technical offer shall take into account, in particular, the aspects relating to factors such as the quality of foodstuffs, with particular reference to biologic, typical or traditional products, protected designation of origin, as well as products coming from short distribution chains or operators in social agriculture, the respect of environmental provisions with reference to green economy, minimum environmental criteria as referred to in Article 34 of this Code and the quality of the training of operators. This without prejudice to the provisions in Article 4, paragraph 5-quarter of law-decree n. 104 of 12 September 2013, converted with modifications, by law n. 128 of 8 November 2013, as well as in Article 6, paragraph 1, of law n.141 of 18 August 2015.

2. By means of decrees of the Minister of Health, in agreement with the Minister of Environment and the Protection of Land and Sea and the Minister of Agricultural, Food and Forest Policies, the national guidelines for hospital, assistential and school catering shall be defined and updated. Until the adoption of those guidelines, Article 216, paragraph 18 shall apply.

3. The activity of issuing food-stamps, consisting on the activity aimed at delivering through authorized retailers the service substituting the company's canteen, shall be exclusively delivered by companies with share capital with a paid-up share capital not lower than €750,000 having as their social object the exercise of the activity aimed at delivering the service substituting the canteen through food-stamps and other forms of identification representing services. The budget of the societies referred to in this paragraph shall be accompanied by a report drafted by a firm of auditors enrolled in the registry established at the Ministry of Justice pursuant to Article 2409-bis of the Civil Code.

4. The economic organisms operating in the sector of the issuance of food-stamps incorporated in other Member States of the European Union may exercise the activity referred to in paragraph 3 where they are authorised to do so on the basis of the norms of their country of origin. The societies referred to in paragraph 3 may exercise the activity of issuance of food-stamps after certified notice of start of the activity by legal representatives proving the possession of the requirements referred to in paragraph 3 and submitted pursuant to Article 19 of law n. 241 of 7 August 1990 and subsequent modifications, to the Ministry of Economic Development.

5. By means of a decree of the Minister of Economic Development, in agreement with the Ministry of Infrastructures and Transports, after having heard ANAC, the retailers which are authorised to exercise the substitutive catering service through food-stamps, the characteristics of the food-stamps and the content of the agreements concluded between the societies issuing food-stamps and the owners of the authorisable retailers shall be identified.

6. The award of substitutive catering services exclusively shall occur by making reference to the most economically advantageous tender identified on the basis of the best quality/price ratio. The call for competition establishes the relevant evaluation criteria of the tenders, including:

- a) the downward on the nominal value of the food stamp, however to an extent not exceeding the unconditional discount to retailers;
- b) the network of retails to be authorised;
- c) the unconditional discount to retailers;
- d) the terms of payment to authorised retailers;
- e) the technical project.

7. For the purpose of the possession of the network of retails through which the substitutive catering service potentially required as a criterion for participation or as an award criteria, it is sufficient for the candidate to take the commitment to activate that network within an adequate time limit since the moment of the award set out in the call. Failure to activate this network within the indicated time limit results in the decadence of the award.

8. Contracting authorities or entities purchasing the food-stamps, the societies issuing the food-stamps and the authorised retailers shall allow, each of them in the exercise of its own contractual activity and of its own obligations, the possibility to use the food-stamp for the whole face value.

CHAPTER III - PROCUREMENT IN THE FIELD OF CULTURAL HERITAGE

Art. 145. (Common rules applicable to contracts in the cultural heritage sector)

1. The provisions of this Chapter establish the regime on public contracts regarding cultural heritage protected in accordance with Legislative Decree No. 42 of 22 January 2004, which contains the Code of Cultural Heritage and Landscape.
2. The provisions of this Chapter shall also apply to the excavation of archeological sites, including underwater sites.
3. The relevant provisions of this Code shall apply, unless otherwise provided by this Chapter.

Art. 146. (Qualification)

1. In conformity with what is provided by Articles 9-bis and 29 of Legislative Decree No. 42 of 22 January 2004, for the works set forth in this Chapter specific and suitable qualification is required to ensure the protection of the assets that are the object of such intervention.
2. The works set forth in this Chapter may be used, with respect to qualification, exclusively by the operator who effectively performed them. Their use, as a technical requirement, is not conditioned on criteria of time validity.
3. In view of the specific nature of the sector in accordance with Article 36 of the Treaty on the Functioning of the European Union, pooling, provided by Article 89 of the Code, shall not apply to the contracts set forth in this Chapter.
4. A Decree of the Minister of Culture and Tourism, together with the Minister of Infrastructures and Transportation, to be issued within six months from the date of entry into force of this Code, shall establish the qualification requirements for technical directors and whoever performs the work and the control procedures for purposes of certification. The technical director of the economic operator entrusted with the works set forth in Article 147, paragraph 2, second clause, must nevertheless hold the qualification as a restorer of cultural assets in accordance with current law. Article 216, paragraph 19 shall apply through the date the Decree set forth in this paragraph enters into force.
(Ministerial Decree No. 154 of 22 August 2017 was published in the Official Bulletin No. 252 of 27 October 2017)

Art. 147. (Levels and content of the project design)

1. The Decree provided by Article 146, paragraph 4 shall also establish the levels and content of the project design regarding the cultural assets set forth in this Chapter, including archeological excavations, as well as the roles and responsibilities of the parties entrusted with the project design, direction of the work and testing in relation to the specific characteristics of the cultural asset that is the object of the intervention, as well as the organizational standards for the site management offices.
2. For work regarding cultural assets, at the time of the feasibility study it is necessary to prepare a technical data sheet aimed at identifying the characteristics of the cultural assets that are the object of the intervention, prepared by a professional having specific technical skills in relation to the object of the work. The Decree set forth in Article 146, paragraph 4, defines the work related to moveable cultural assets, decorated surfaces of architectural property and historical materials of real property of historic, artistic or archeological interest, for which the form must be prepared by the restorers of cultural assets who are qualified in accordance with current law.
3. For work related to the monitoring, maintenance or the restoration of moveable cultural assets, decorated surfaces of architectural property and historical materials of real property of historic, artistic or archeological interest, the feasibility study shall include, in addition to the technical data sheet set forth in paragraph 2, preliminary research, explanatory reports and the summary calculation of costs. The final project shall review the studies conducted with a feasibility study, identifying, including through diagnostics and multi-disciplinary cognitive tests, the deterioration factors and methods of intervention. The executive project shall indicate, in detail, the precise working methods, the materials to be used and the technical-executive procedures for the work and shall be prepared based on direct investigation and adequate sampling of the work, justified by the uniqueness of the conservation work. The executive project shall also contain a Monitoring and Maintenance Plan.
4. The work set forth in paragraph 3 and archeological excavations, including underwater, as well as work related to historic green areas set forth in Article 10, paragraph 4, clause f) of the Code of Cultural Heritage and Landscape, shall normally be contracted based on an executive project.
5. If the sole person in charge of the procedure determines that the nature and characteristics of the asset, or its state of conservation, do not allow exhaustive analysis and surveys to be carried out, or solutions arise that can only be determined while the work is being performed, it is possible to supplement the design during the work, whose cost must have corresponding coverage in the economic framework.
6. The direction of the works, technical support for the activities of the sole person in charge of the procedure and the competent manager for the preparation of the three-year program, as well as the testing body, shall include a cultural heritage restorer who is qualified in accordance with current law, or, according to the type of job, other professionals set forth in Article 9-bis of the Code of Cultural Heritage and Landscape who have at least five years' experience and specific skills consistent with the work.

Art. 148. (Award of the contract)

1. Work regarding moveable assets, decorated surfaces of architectural property and historical materials of real property of historic, artistic or archeological interest, archeological excavations, including underwater, as well as work related to villas, parks and gardens as set forth in Article 10, paragraph 4, clause f) of the Code of Cultural Heritage and Landscape, shall not be awarded jointly with work regarding other categories of general and special work, unless there are justified and exceptional needs to coordinate the work, determined by the person in charge of the procedure, and in any case not regarding occupational safety in accordance with Legislative Decree No. 81 of 9 April 2008, that require a joint appointment. This is without prejudice to what is provided by Article 146 on the qualification prerequisites established in this Chapter.

2. In no case may the specialized work set forth in paragraph 1 be included in another category or omitted in the indication of the works that are part of the intervention, independently from the percentage that the value of the specialized work has with respect to the overall amount. For such purpose the contracting authority shall indicate separately, in the tender documents, the activities regarding monitoring, maintenance, and the restoration of the assets set forth in paragraph 1, with respect to those of a structural and plant engineering nature, as well as functional adjustments inherent to real property protected in accordance with the Code of Cultural Heritage and Landscape.

3. For works contracts whose object is the staging of the institutes and places of culture set forth in Article 101 of the Code of Cultural Heritage and Landscape, and for the maintenance and renovation of villas, parks and gardens set forth in Article 10, paragraph 4, clause f) of the Code of Cultural Heritage and Landscape, the contracting authority, upon a reasoned measure of the person in charge of the procedure, can apply the regime related to services or supplies when the services or supplies are qualitatively predominant for purposes of the object of the contract, independently from the cost of the work.

4. The parties who perform the works set forth in paragraph 1 must in any case have the qualification prerequisites established by this Chapter.

5. Article 28 shall apply to anything not otherwise governed by paragraphs 1, 2 and 3.

6. The works set forth in paragraph 1 shall normally be contracted on a unit-price basis, independently from the relative amount. For the work set forth in this Chapter, in derogation of the provision set forth in Article 95, paragraph 4, the criterion of the lowest cost for the work can be used for amounts equal to or less than 500,000 Euro.

7. The performance of the works set forth in this Chapter is allowed in extremely urgent situations, in which any delay may be prejudicial to the public wellbeing or to the protection of the asset, up to the amount of three hundred thousand Euro, in the manner set forth in Article 163 of this Code. Within the same limits of the amount, the performance of work on an urgent basis is also allowed in relation to particular types of interventions specified by the Decree set forth in Article 146, paragraph 4.

Art. 149. (Variants)

1. Work ordered by the site manager to resolve details aimed at preventing and reducing the dangers of damage or deterioration of the protected assets is not considered to be a variant during work in progress, if it does not qualitatively modify the work and does not result in a variation as an increase or decrease greater than twenty percent of the value of each individual category of work, within the limit of ten percent of the overall contractual amount, if there is financial availability in the economic framework of the amounts available to the contracting authority.

2. Variants during the work in progress are allowed, within the limit of twenty percent more than the contractual amount, which are required due to the nature and specific characteristics of the assets that are the object of the intervention, based on events that occur while the work is being performed, unforeseen discoveries or events that were unforeseeable during the design phase, or to adjust the project if necessary to safeguard the asset and to achieve the objectives of the intervention, as well as variants that are justified by the development of the standards of the regime on restoration.

Art. 150. (Testing)

1. Testing while the work is in progress is mandatory for work related to the assets set forth in this Chapter, unless the conditions exist for a certificate of proper execution of the work to be issued.

2. By means of the Decree set forth in Article 146, paragraph 4, specific provisions shall be established concerning the testing of interventions on cultural assets based on their characteristics.

Art. 151. (Sponsorships and special forms of partnership)

1. The regime set forth in Article 19 of this Code applies to sponsorship agreements for works, services or supplies related to the cultural assets set forth in this Chapter, as well as to sponsorship agreements aimed at supporting the institutions and cultural sites set forth in Article 101 of Legislative Decree No. 42 of 22 January 2004 and subsequent modifications, containing the Code of Cultural Heritage and Landscape, lyrical-symphonic foundations and traditional theaters.

2. The administration entrusted with the protection of cultural heritage shall establish the opportune requirements with respect to the design, performance of the work and/or supplies as well as the direction of the work and testing.

3. To ensure the enjoyment of Italy's cultural heritage and also to promote scientific research as applied to protection, the Ministry of Cultural Heritage and Tourism can implement special forms of partnership with public entities and bodies and with private parties, aimed at allowing the recovery, restoration, scheduled maintenance, management, openness to public enjoyment and the enhancement of immovable cultural property, through simplified procedures to identify similar or additional private partners with respect to those provided for in paragraph 1.

CHAPTER IV Rules governing design contests

Art. 152 Scope

1. This Chapter shall apply:

(a) to design contests organised as part of a procedure leading to the award of a public service contract;

(b) to design contests providing for prizes of participation or payments to participants.

2. In the cases referred to in paragraph 1, letter (a), the threshold referred to in Article 35 is calculated on the basis of the estimated value net of VAT of the public service contract, including any possible prizes or payments to participants. In the case referred to in letter (b) the threshold set out in Article 35 shall be equal to the total amount of the prizes and payments, including the estimated value net of VAT of the public services contract which might subsequently be concluded under Article 63, paragraph 4, if the contracting station has not excluded to award such contract in the contest notice.

3. This Chapter does not apply:

(a) design contests entrusted pursuant to Articles 14, 15, 16 and 161;

b) competitions held to perform an activity on which the applicability of Article 8 has been established by a Commission decision, or the aforementioned article is considered applicable in accordance with the provisions of paragraph 7, letter b), of the same article.

4. In the design competition related to the public works sector, only projects or plans are required with the level of in-depth analysis equal to that of a technical and economic feasibility project, except in the case of two-stage competitions referred to in Article 154, paragraph 5, and 156, paragraph 7. In the cases in which the level of the technical and economic feasibility project is foreseen in successive phases, the competitor develops the feasibility document of the project alternatives, referred to in article 23, paragraph 5; the administration chooses the best proposal, subject to the opinion of the commission referred to in Article 155; the winner of the competition, within the following sixty days from the date of approval of the ranking, perfects the proposal presented, providing it with all the projects envisaged for the second phase of the technical and economic feasibility project. If the design competition concerns an intervention to be assigned in concession, the ideational proposal also contains the preparation of an economic and financial study for its construction and management.

5. With the payment of the premium the contracting authorities acquire ownership of the winning project. Where the contracting authority does not entrust the subsequent levels of planning internally, they are entrusted with the negotiated procedure referred to in Article 63, paragraph 4, or, for special sectors, in Article 125, paragraph 1, letter l) , to the winner or to the winners of the design competition, if they meet the requirements of the call for tenders and if the contracting authority has foreseen this possibility in the call for tenders. In such cases, for the purposes of calculating the threshold referred to in Article 35, the total value of the premiums and payments shall be calculated, including the estimated value net of VAT of the public service contract which could subsequently be awarded pursuant to Article 63, paragraph 4, or, for special sectors, article 125, paragraph 1, letter l). In order to demonstrate the requirements for the assignment of the executive design, the winner of the competition may constitute a temporary grouping between the subjects referred to in paragraph 1 of article 46, indicating the parts of the service that will be performed by the individual subjects gathered.

Art. 153

Contract notice

1. Contracting authorities that intend to carry out a design contest shall make known their intention by means of a contest notice. Where they intend to award a subsequent service contract pursuant to Article 63, paragraph 4, this shall be indicated in the design contest notice or call.

2. Contracting authorities that have held a design contest shall send a notice of the results of the contest in accordance with provisions of Article 72 and shall be able to prove the date of dispatch. Where the release of information on the outcome of the contest would impede law enforcement, would be contrary to the public interest or would prejudice the legitimate commercial interests of a particular enterprise, whether public or private, or might prejudice fair competition between service providers, such information may be withheld from publication.

3. The notices and calls referred to in this Article shall contain all the information included in Annexes XIX and XX, in conformity to the standard forms established by the European Commission in the acts of execution, and shall be published in accordance with Articles 71, 72 and 73.

Art. 154

Organising design contests and selection of participants

1. When organising design contests, contracting authorities or contracting entities shall apply procedures which are in line with the provisions of Titles I, II, III and IV of Part II and this Chapter.
2. The admission of participants to design contests shall not be limited:
 - (a) by reference to the territory of the Republic or a part thereof;
 - (b) on the grounds that participants shall be either natural or legal persons.
- 3 The subjects possessing the requirements established in the decree referred to in Article 24, paragraph 2 are admitted to participate to design contests for works. The qualification requirements shall however allow conditions of access and participation for small and medium economic operators in the technical area and for young professionals.
4. In case of work of particular relevance and complexity, the contracting authority may proceed with the experiment of a design competition divided into two grades. The second degree, concerning the acquisition of the feasibility project, takes place among the subjects identified through the evaluation of proposals for ideas presented in the first degree and selected without the formation of merit rankings and awarding of prizes. The winner of the competition, if in possession of the requisites envisaged, can be entrusted with the task of definitive and executive design, on the condition that said possibility and the relative fee are foreseen in the announcement.
5. The contracting stations, after adequate justification, may proceed with the experiment of a two-stage competition, the first having the object of the presentation of a feasibility project and the second having as object the presentation of a definitive project at an architectural level and feasibility project level for the structural and plant engineering part. The announcement may also provide for the direct assignment of the assignment relative to the executive design to the person who presented the best definitive project.

Art. 155

Jury for design contest

1. The jury shall be composed exclusively of natural persons, to whom the requirements on incompatibility and abstention as referred to in Article 77, paragraph 6, as well as Article 78.
2. Where to the participants to a design contest is required a particular professional qualification, at least a third of the members of the jury shall have that qualification or an equivalent qualification.
- 3 The jury shall be autonomous in its decisions or opinions.
4. The members of the jury shall examine the plans and projects submitted by candidates anonymously and solely on the basis of the criteria indicated in the contest notice. In particular, the jury:
 - a) shall verify the conformity of the projects with the requirements in the notice;

- b) shall examine the projects and collegially evaluate each of them;
 - c) shall express its judgments on each project on the basis of the criteria set out in the notice, with specific justification;
 - d) shall take the decisions also by majority vote;
 - e) shall draw up the minutes of each meeting;
 - f) shall draw up the final report, containing the rank, with justification for all the candidates;
 - g) shall deliver the acts of its work to the contracting station.
- Anonymity shall be respected until the jury has reached its opinion or decision.

5. Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspect of the projects. Complete minutes shall be drawn up of the dialogue between jury members and candidates.

Art. 156. (Creative competition)

1. The provisions of this Chapter shall also apply to creative competitions aimed at acquiring a creative proposal to be remunerated by recognition of a suitable prize.
2. In addition to the parties allowed to participate in design competitions, the following shall also be allowed to participate in the creative competition: employees qualified to exercise a profession who are enrolled in the relative professional list in accordance with the national order to which they belong, in compliance with the rules governing the employment relationship, with the exclusion of employees of the contracting authority that organizes the competition.
3. The competitors shall prepare a creative proposal in the most suitable form for its correct representation. The notice of the competition cannot request plans for the work of a level equal to or greater than those required for the technical and economic feasibility study. The deadline for the presentation of the proposal must be established in relation to the importance and complexity of the theme and cannot be less than sixty days from the publication of the notice of the competition. Participation must be in an anonymous form.
4. The notice of the competition must provide for a suitable prize for the party or parties who have drawn up the ideas considered to be the best.
5. The award-winning idea or ideas shall be acquired by the contracting authority, subject to any definition of the technical aspects, which can be used as the basis for a design competition or for a contract award of design services. The winners shall be allowed to participate in the tender procedure if they have the relative subjective prerequisites.
6. The contracting authority can entrust to the winner of the creative competition with the realization of the subsequent levels of design, through a negotiated tender procedure without a public call to tender, on the condition that such option was explicitly stated in the notice of the competition, and that the party has the required professional, technical and economic skills provided in the notice in relation to the design levels to be developed.

7. In the case of interventions of particular importance and complexity, the contracting authority can conduct a design competition articulated in two phases. The second phase, whose object is the presentation of the feasibility study, or of a final project at an architectural level and at the level of a feasibility study for the structural and plant engineering part, shall take place among the parties identified up to a maximum of ten, through the evaluation of creative proposals submitted during the first phase and selection, without creating rankings of merit and the award of prizes. Among the parties selected to participate in the second phase, at least 30 percent of the parties who receive assignments, individually or in an associated form, must be enrolled for less than five years in their relative professional registers. In the case of a team, the above requirement must be held by the head of the team. A reimbursement of expenses equal to 50 percent of the amounts envisaged for expenses as calculated by the Decree on professional fees set forth in paragraph 8 of Article 24 shall be paid to the selected parties who have been enrolled for less than five years. For the other selected parties, whether individuals or in an associated form, the above reimbursement shall be equal to 25 percent. The winner of the competition, if in possession of the prerequisites, can be entrusted with the assignment for the executive design, on the condition that such possibility and the relative consideration are provided for in the notice of the competition.

Art. 157. (Other design and related assignments)

1. The design assignments related to works which are not included among what is set forth in paragraph 2, first clause of Article 23 as well as the coordination of security during the design phase, the direction of the work, the direction of the execution of the work, and the coordination of security during the execution and testing phase for an amount equal to or greater than the thresholds set forth in Article 35, shall be awarded in the manner set forth in Part II, Titles I, II, III and IV of this Code. If the value of the design activities, coordination of security during the design phase, direction of the work, direction of the execution of the work and the coordination of security during the execution phase is equal to or greater overall than the threshold set forth in Article 35, the direct award of the direction of the work and coordination of security during the execution phase to the project designer is allowed only for specific and justified reasons and if expressly provided by the notice of the design competition.

2. The appointments for the design, coordination of security during the design phase, direction of the work, direction of the execution of the work, coordination of security during the execution and testing phase for an amount equal to or greater than 40,000 and less than 100,000 Euro can be awarded by the contracting authorities by the person in charge of the procedure, in compliance with principles of non-discrimination, equal treatment, proportionality and transparency, and in accordance with the procedure provided by Article 36, paragraph 2, clause b). The invitation shall be sent to at least five parties, if there are such number of suitable candidates in accordance with the criteria on the rotation of invitations. Assignments for an amount equal to or greater than 100,000 Euro shall be awarded in the manner set forth in Part II, Titles III and IV of this Code.

3. The award of the design activities, direction of the work, direction of the execution of the work, coordination of security in the design phase, coordination of security in the execution, testing, and investigation phases and supporting activities by means of a fixed-term contract or other procedures other than those provided for by this Code shall be prohibited.

CHAPTER V - RESEARCH AND DEVELOPMENT SERVICES

Art. 158. (Research and development services)

1. With respect to research and development services, the provisions set forth in this Code apply exclusively to contracts for research and development services identified by the CPV codes from 73000000-2 through 73120000-9, 73300000-5, 73420000-2 or 73430000-5, as long as both of the following conditions are met:

- a) the results belong exclusively to the contracting authority or to the contracting entity, so that they can be used in the exercise of their activity;
- b) the provision of the service is paid entirely by the contracting authority or the contracting entity.

2. The contracting authorities can use, in compliance with the principles set forth in Article 4 of this Code, pre-commercial public procurements intended to obtain results that do not exclusively regard the pre-commercial contracting authority or contracting entity for use in the exercise of their activity and for which the provision of the service is not entirely paid by the contracting authority or contracting entity, as defined in the European Commission Communication COM 799 (2007) of 14 December 2007, in cases in which the need cannot be met using solutions that are already available in the market.

CHAPTER VI - CONTRACTS AND PROCEDURES IN SPECIFIC SECTORS

FIRST SECTION - DEFENSE AND SECURITY

Art. 159. (Defense and security)

1. The provisions of this Code do not apply to public tenders and to design competitions not otherwise excluded from its scope of application in accordance with Article 1, paragraph 6, to the extent in which the protection of the State's essential security interests cannot be guaranteed by less invasive measures, also aimed at protecting the confidentiality of the information that the contracting administrations make available in a procedure for the award of a public contract.

2. The award of concessions in the fields of defense and security set forth in Legislative Decree No. 208 of 15 November 2011 is subject to part III of this Code, except for concessions related to the cases to which Legislative Decree No. 208 of 15 November 2011 does not apply pursuant to Article 6 of the cited Legislative Decree.

3. By way of derogation from Article 31, the defense administration, in consideration of the hierarchical structure of its technical bodies, in lieu of a single person in charge of the procedure, can appoint a person in charge of the procedure for each individual phase of the implementation process: planning, design, award and execution. The sole person in charge of the procedure, or the persons in charge of each individual phase, shall be specialists chosen within the Ministry of

the Defense. The person in charge of the procedure for the award phase can be an employee specialized in legal and administrative matters.

4. By Decree of the Minister of the Defense, together with the Minister of Infrastructures and Transportation, having heard ANAC, to be adopted within ninety days from the date of the entry into force of this Code, the general guidelines shall be defined for the regulation of the activities of the Ministry of the Defense in relation to public contracts and concessions other than those falling within the scope of Legislative Decree No. 208 of 15 November 2011. The general directives shall also regulate interventions to be carried out in Italy or abroad as a result of international, multilateral or bilateral agreements, as well as low-cost work performed by the troops and divisions of the Directorate of Military Engineering for which the amount thresholds set forth in Article 36 do not apply. Article 216, paragraph 20 shall apply until the date of entry into force of the decree set forth in this paragraph.

5. For purchases made abroad by the defense administration related to machinery, instruments and precision objects, which can only be provided with the technical requirements and necessary degree of perfection from foreign economic operators, advance payments of an amount not to exceed one third of the total amount of the contractual price can be granted, upon the establishment of a suitable guarantee.

Art. 160. (Mixed contracts regarding aspects of defense and security)

1. The following provisions shall apply to mixed contracts involving contracts and concessions falling within the scope of this Code and contracts governed by article 346 TFEU or by Legislative Decree No. 208 of 15 November 2011.

2. If the different parts of a specific contract or concession are objectively severable, paragraphs 3 to 5 shall apply. If they are not separable, paragraph 6 applies.

3. If the contracting authorities choose to award a separate contract or concession for separate parties, the legal regime applicable to each of those separate contracts shall be determined based on the characteristics of the separate party.

4. If the contracting authorities choose to award a single contract or a single concession, the relevant legal regime shall be determined based on the following criteria:

a) If part of the contract or concession is governed by Article 346 TFEU, the single contract or the single concession may be awarded without applying this Decree or Legislative Decree No. 208 of 15 November 2011, provided that the respective awards are justified by objective reasons;

b) If a part of a contract or concession is governed by Legislative Decree No. 208 of 15 November 2011, the single contract or the single concession may be awarded in accordance with that Decree, provided that the respective awards are justified by objective reasons. They are subject to the thresholds and exclusions provided for by the same Legislative Decree.

5. The decision to award a single contract or a single concession may not be adopted in order to exclude the application of this Code or of Legislative Decree No. 208 of 15 November 2011.

6. If the different parts of a contract or concession are objectively non-separable, the contract or concession may be awarded without applying this Decree if it includes items to which Article 346 TFEU applies; otherwise, it may be awarded in accordance with Legislative Decree No. 208 of 15 November 2011.

Art. 161. (Contracts and design competitions awarded or organized according to international standards)

1. This Code shall not apply to public tenders and design competitions and concessions in the field of defense or security set forth in Legislative Decree No 208 of 15 November 2011, if they are governed by:

a) specific procedural rules based on an international agreement or arrangement stipulated in accordance with the Treaties of the European Union, between the State and one or more third-party countries or related offices, concerning works, supplies or services intended for the common realization or common management of a project;

b) specific procedural rules based on an international agreement or arrangement related to the presence of stationed troops and relating to undertakings of a Member State or a third-party country;

c) specific procedural rules of an international organization in the case of contracts;

d) specific procedural rules of an international organization that procures for its own purposes or concessions that must be awarded by a Member State in conformity with such rules.

The agreements or arrangements set forth in clause a) related to contracts shall be communicated to the Commission.

2. This Code shall not apply to public tenders and design competitions relating to aspects of defense or security that the contracting authority awards based on the public contract rules provided by an international organization or by an international financing institution, when the public tenders and design competitions in question are entirely funded by such organization or institution. In the case of public tenders and design competitions co-financed predominantly by an international organization or by an international financing institution, the parties shall agree on the applicable tender procedures.

Art. 162. (Sealed contracts)

1. The provisions of this Code relating to tender procedures can be waived:

a) for contracts whose object, acts or manner of execution is attributed with a secrecy classification;

b) for contracts whose execution must be accompanied by special security measures, in accordance with legislative, regulatory or administrative provisions.

2. For purposes of the derogation set forth in paragraph 1, clause a), the user administrations and entities shall attribute, by a reasoned measure, the secrecy classifications in accordance with Article 42 of Law No. 124 of 3 August 2007, or other current regulations. For purposes of the derogation set forth in paragraph 1, clause b), the user administrations and entities shall declare, by a reasoned measure, the works, services and supplies to be provided using special security measures identified in the above measure.

3. The contracts set forth in paragraph 1 shall be carried out by economic operators who have the prerequisites provided by this Decree and the security clearance, in accordance with and within the limits set forth in Article 42, paragraph 1-bis of Law No. 124 of 2007.

4. The award of the contracts set forth in this Article shall take place after an informal tender for which at least five economic operators are invited, if there are that number of qualified parties in relation to the object of the contract and as long as the negotiation with more than one economic operator is compatible with the needs of secrecy and security.

5. The Court of Accounts, through one of its offices organized in such a way as to safeguard the needs for secrecy, shall exercise preventive control on the legitimacy and regularity of the contracts set forth in this Article, as well as on the regularity, fairness and effectiveness of the management. The activity set forth in this paragraph shall be accounted for within 30 June of each year in a report to Parliament.

(The office was established by a resolution of the Court of Accounts on 8 June 2016, in Official Journal No. 151 of 30 June 2016)

Art. 163. (Procedures in cases of extreme urgency and civil protection)

1. In extremely urgent situations that do not allow any delay, either the person in charge of the procedure or the specialist of the competent administration who first arrives at the site can order, at the same time as the preparation of the record that indicates the reasons for the state of urgency, the reasons that caused it and the work necessary to remove it, the immediate execution of the work within the limit of 200,000 Euro or the amount that is indispensable to remove the state of danger to public and private safety.

2. The execution of the urgent work can be entrusted directly to one or more economic operators chosen by the person in charge of the procedure or by the specialist of the competent administration.

3. The consideration for the services ordered shall be determined consensually with the awarded party. In the lack of a prior agreement, the contracting authority can order the awarded party to execute the work or provide the materials based on the prices determined using the official price lists of reference reduced by 20 percent, which are nevertheless admitted in the accounting

records. If the awarded party does not enter a reserve in the accounting records, the prices shall be considered to be definitively accepted.

4. The person in charge of the procedure or the specialist of the competent administration shall prepare within ten days from the order to execute the work an expert report justifying such work and shall send it, together with the record of the extreme urgency, to the contracting authority, which shall cover the expense and approve the work. If the competent administration is a local entity, the coverage of the expense shall be ensured in the manner provided for in Articles 191, paragraph 3, and 194 paragraph 1, clause e) of Legislative Decree No. 267 of 18 August 2000 and subsequent modifications and integrations.

5. If a work or job, ordered for reasons of urgency, does not indicate the approval of the competent body of the administration, the relative implementation shall be immediately suspended and, after securing the construction site, the work shall be suspended and the consideration due for the part that was performed shall be paid.

6. The occurrence of the events set forth in Article 2, paragraph 1 of Law No. 225 of 24 February 1992, (read: Art. 7 of Legislative Decree No. 224 of 2018), or the reasonable expectation, in accordance with Article 3 of such law, of the imminent occurrence of such events that requires the adoption of measures that cannot be postponed, shall also be considered to be circumstances of extreme urgency for the purposes of this Article, within the limits of what is strictly necessary pursuant to such measures. In such cases, the urgent circumstance shall be considered to persist until the dangerous or harmful situation for public or private safety deriving from the event has been eliminated, or in any case for a period not to exceed fifteen days from when the event occurs, or within the deadline established by any declaration of the state of emergency set forth in Article 5 of Law No. 225 of 1992. In such circumstances and within the same time periods, the contracting authorities can award the works, services and supplies using the procedure provided for in this Article.

7. If award procedures are used in the urgent situations provided for by this Article, as well as, limited to civil protection emergencies, the procedures set forth in Article 63, paragraph 2, clause c), and there is a compelling need to ensure the timely performance of the contract, the awarded parties shall declare, by means of self-certification, issued in accordance with Decree No. 445 of the President of the Republic of 28 December 2000, that they possess the participation prerequisites for the award of contracts of an equal amount by means of the ordinary procedure, which the contracting authority controls within a reasonable term, compatibly with the management of the urgent situation in course, however not to exceed sixty days from the award. The contracting authority shall report, with adequate justification, in the first act following the controls performed, that the relevant prerequisites exist. In any case, it is not possible to make payment, including partial payment, in the lack of the relative controls having a positive outcome. Whenever it is determined after the control that the award was made to an operator lacking the above prerequisites, the contracting authorities shall withdraw from the contract, except for the payment of the value of the work already performed and the reimbursement of expenses that may already have been incurred for the execution of the remaining part, within the limits of the usefulness achieved, and they shall notify the competent authorities.

8. On an exceptional basis, to the extent strictly necessary, a direct award can also be authorized above the limits set forth in paragraph 1, for a limited time period, however not to exceed thirty days and only for individual specific cases that cannot be postponed, and within the limits of the maximum amounts established in the measures set forth in paragraph 2 of Article 5 of Law No. 225 of 1992 (read: Art. 24 of Legislative Decree No. 224 of 2018). The direct award for the reasons set forth in this Article is not, however, allowed for contracts having a value equal to or greater than the European threshold.

9. Limited to public contracts for supplies and services set forth in paragraph 6, for an amount equal to or greater than 40,000 Euro, for which no final price lists are available through the use of official price lists of reference, if the time required by the extremely urgent circumstance does not allow the use of the ordinary procedure, the awarded parties undertake to provide the services and supplies requested for a provisional price established consensually between the parties and to accept the definitive determination of the price after a specific assessment of fairness. For such purpose, the person in charge of the procedure shall communicate the provisional price, together with the explanatory documents of the award, to ANAC, which shall issue its opinion on the fairness of the price within sixty days. The normal remedies of law can be used to oppose ANAC's decision, by means of recourse to the competent administrative courts. While waiting to obtain the opinion on fairness, 50% of the provisional price shall be paid.

10. The acts related to the awards set forth in this Article shall be published on the contracting authority's profile, with the details of the awarded party, the manner in which the choice was made and the reasons that did not permit the use of the ordinary procedures. At the same time, and in any case within a reasonable period compatible with the management of emergencies, they shall be sent to ANAC for the controls for which it is responsible, without prejudice to the controls of the lawfulness of the acts provided by current regulations.

PART III - CONCESSION CONTRACTS

TITLE I - GENERAL PRINCIPLES AND SPECIFIC SITUATIONS

CHAPTER I - GENERAL PRINCIPLES

Art. 164. (Object and scope of application)

1. Without prejudice to the provisions set forth in Article 346 of TFUE, the provisions set forth in this Part define the rules applicable to the tender procedures for concession contracts for public works or services called by the contracting authorities, as well as by the contracting entities if the work or services are intended for one of the activities set forth in Annex II. Nevertheless, the provisions of this Part shall not apply to the measures, however denominated,

by which the contracting authorities, upon the request of an economic operator, authorize an economic activity, establishing the relative terms and conditions, that can also be carried out by the use of installations or other public real estate.

2. Tender procedures for the award of concession contracts for public works or services shall be subject, to the extent compatible, to the provisions set forth in Part I and Part II of this Code with respect to the general principles, exclusions, manner and procedures for the award, the manner of publication and preparation of the notices and calls for tender, general and special requirements, grounds for exclusion, award criteria, manner of communication with candidates and bidders, the qualification prerequisites for the economic operators, the deadlines for the receipt of the requests to participate in the concession and for the bids, and terms for performance.

3. Non-economic services of general interest do not fall within the scope of application of this Part.

4. The provisions of this Code shall apply to public works contracts awarded by concessionaries who are the contracting authorities, except for derogations in this Part.

5. The concessionaries of public works that are not the contracting authorities, for work contracts entrusted to third parties, must comply with this Part as well as with the provisions set forth in Parts I and II on subcontracting, design, testing and safety plans, that are not expressly derogated from in this Part.

Art. 165. (Risk and economic-financial equilibrium in the concessions)

1. In the concession contracts defined in Article 3, paragraph 1, clauses uu) and vv), most of the operating revenue of the licensee derives from the sale of services provided to the market. Such contracts involve the transfer to the licensee of the operating risk defined by Article 3, paragraph 1, clause zz) concerning the possibility that, in normal operating conditions, variations related to costs and proceeds that are the object of the concession shall impact the equilibrium of the financial-economic plan. The variations must, in any case, be capable of significantly impacting the current net value of the licensee's total investments, costs and revenue.

2. The financial-economic equilibrium defined in Article 3, paragraph 1, clause fff) represents the premise for the proper allocation of the risks set forth in paragraph 1 above. For the sole purpose of achieving the above-mentioned equilibrium, at the time of the tender the contracting authority can also establish a price which consists of a public contribution or the assignment of real property. The contribution, if functional to maintaining the financial-economic equilibrium, can be made by means of rights of enjoyment to real property available to the contracting authority whose use is instrumental and technically related to the licensed work. In any case, the payment of the price, in addition to the value of any public guarantees or additional financing mechanisms borne by the public administration, cannot exceed forty-nine percent of the cost of the overall investment, inclusive of any financial charges.

3. The stipulation of the concession contract can only take place after approval of the final project and the presentation of suitable documentation concerning the financing of the work. In order to facilitate the granting of the financing for the work, the calls for tender and the relative annexes, including, as appropriate, the draft contract and the financial-economic plan, shall be defined in such a way as to ensure adequate levels of bankability, such term meaning the availability in the financial market of resources proportionate to needs, the sustainability of such resources and the fair return on the invested capital. For concessions to be awarded using a restricted procedure, the call to tender may provide that the contracting authority may organize, prior to the expiration of the term for the submission of bids, preliminary consultation with the economic operators invited to submit bids, in order to verify the lack of the critical nature of the project on which the tender is based from a financing standpoint. After the consultation it may adjust the acts of the tender, updating the term for the submission of bids, which cannot be less than thirty days starting from the relative communication to the parties concerned. The amount of the tax exemptions set forth in Article 18 of Law No. 183 of 12 November 2011, and Article 33 of Law Decree No. 179 of 18 October 2012, converted, with modifications, by Law No. 221 of 17 December 2012, as well as the amount of public contributions, where provided, cannot be the object of the consultation.

4. The call for tender can provide that the bid be accompanied by a declaration signed by one or more lender institutions manifesting an interest in financing the transaction, also in consideration of the content of the draft contract and the financial-economic plan.

5. The contracting authority shall provide in the call to tender that the concession contract establish the termination of the contract in the case of the failure to stipulate the loan agreement, as well as in the case of the failure to place bonds issued by the project companies set forth in Article 185, within a reasonable period established by the call to tender, however not to exceed eighteen months, starting from the date of stipulation of the concession contract. The licensee shall continue to be entitled to find the liquidity necessary for the realization of the investment through other forms of financing provided by current law, as long as stipulated within the same term issued by operators set forth in Article 106 of Legislative Decree No. 385 of 1° September 1993. In the case of termination of the contract in accordance with the first clause and paragraph 3, the licensee shall not be entitled to any reimbursement of the expenses incurred, including those relating to the final project. The call to tender can also provide that in the case of the partial financing of the project, and in any case for a portion of it that is technically and economically functional, the concession contract shall remain effective limited to the part that governs the realization and management of such functional portion.

6. The occurrence of facts not attributable to the licensee that impact the equilibrium of the financial-economic plan can result in its revision, to be implemented by the redetermination of the conditions of equilibrium. The revision must allow the permanence of the risks transferred to the economic operator and the financial-economic conditions of equilibrium relating to the contract. For the purposes of the protection of public finance closely linked to maintaining the above risk allocation, in cases of works of State interest or that are financed with a State contribution, the review is subject to the prior evaluation by the Consulting Unit for the implementation of the guidelines for the regulation of services of public utility (NARS). In the other cases, the contracting authority is entitled to submit the review to the prior evaluation of NARS. In the case of failure to agree on the rebalancing of the financial-economic plan, the

parties can withdraw from the contract. The licensee shall be reimbursed the amounts set forth in Article 176, paragraph 4, clauses a) and b), with the exclusion of the charges deriving from the early dissolution of contracts for hedging the risk of fluctuation of the interest rate.

Art. 166

Principle of free administration by public authorities

1. Contracting authorities and contracting entities are free to organize the procedure leading to the choice of concessionaire, subject to compliance with the rules set out in this Part. They are free to decide the best way to manage the execution of the works and the provision of the services in order to ensure in particular a high degree of quality, safety and accessibility, the equal treatment and the promotion of the universal access and of the rights of users in public services

Art. 167

methods for calculating the estimated value of concessions

1. The value of a concession, for the purposes of Article 35, shall be the total turnover of the concessionaire generated over the duration of the contract, net of VAT, as estimated by the contracting authority or the contracting entity, in consideration for the works and services being the object of the concession, as well as for the supplies incidental to such works and services.

2. The estimated value shall be valid at the moment at which the concession notice is sent or, in cases where such notice is not provided for, at the moment at which the contracting authority or the contracting entity commences the concession award procedure.

3. If the value of the concession at the time of the award is more than 20 % higher than its estimated value, the valid estimate shall be the value of the concession at the time of the award.

4. The estimated value of the concession shall be calculated using an objective method specified in the concession documents. When calculating the estimated value of the concession, contracting authorities and contracting entities shall, where applicable, take into account in particular:

(a) the value of any form of option or of other forms, however nominated, of extension of the duration of the relevant effects;

- (b) revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the contracting authority or contracting entity;
 - (c) payments or any financial advantage in any form whatsoever made by the contracting authority or contracting entity or any other public authority to the concessionaire, including compensation for compliance with a public service obligation and public investment subsidies;
 - (d) the value of grants or any other financial advantages, in any form, from third parties for the performance of the concession;
 - (e) revenue from sales of any assets which are part of the concession;
 - (f) the value of all the supplies and services that are made available to the concessionaire by the contracting authorities or contracting entities, provided that they are necessary for executing the works or providing the services;
 - (g) any prizes or payments or different economic advantage however nominated to candidates or tenderers.
6. The choice of the method used to calculate the estimated value of a concession shall not be made with the intention of excluding it from the scope of this Code. A concession shall not be subdivided with the effect of preventing it from falling within the scope of this Code, unless justified by objective reasons, evaluated at the moment of the preparation of the contract notice by the contracting authority or contracting entity.
7. Where a proposed work or service may result in concessions being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots.
8. Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 35, this Code shall apply to the awarding of each lot.

Art. 168

Duration of the concession

1. The duration of concessions shall be limited in the contract notice by the contracting authority or the contracting entity depending on the works or services required to the concessionaire. The same is commensurate to the value of the concession, as well as to the organizational complexity of the same.
2. For concessions lasting more than five years, the maximum duration of the concession shall not exceed the period that is reasonably necessary to the concessionaire to recoup the investments, together with a return on invested capital, taking into account the investments required to achieve the specific contractual objectives as resulting from the economic-financial plan. The investments taken into account for the purposes of the calculation shall include those actually supported by the concessionaire, both initial investments and investments during the life of the concession.

Art. 169
Mixed contracts

1. Concessions which have as their subject-matter both works and services shall be awarded in accordance with the provisions applicable to the type of concession that characterises the main subject-matter of the contract in question. In the case of mixed concessions consisting partly of social and other specific services listed in Annex IX the main subject-matter shall be determined on the basis of the higher estimated value among the respective services.
2. Where the different parts of a given contract are objectively separable, paragraphs 5, 6 and 9 shall apply. Where the different parts of a given contract are objectively not separable, paragraphs 8 and 10 shall apply.
3. Where part of a given contract, or one of the concerned activities, are covered by Article 346 TFEU or by Legislative Decree n. 208 of 15 November 2011, Article 160 shall apply.
4. In the case of contracts having as a subject-matter different activities, one of them being disciplined by Annex II, contracting entities may choose to award separate concessions for separate parts or to award a single concessions. If contracting entities choose to apply separate concessions, the decision determining which legal regime shall apply to each of these concessions is adopted on the basis of the characteristics of the separate activity.
5. In the case of contracts which have as their subject-matter both elements covered by this Code and other elements, contracting authorities or contracting entities may choose to award separate contracts for the separate parts or to award a single concession. Where contracting authorities or contracting entities choose to award separate contracts, the decision as to which legal regime applies to any one of such separate concessions shall be taken on the basis of the characteristics of the separate part concerned.
6. Where contracting authorities or contracting entities choose to award a single concession, this code shall apply, unless otherwise provided in Article 160 or in paragraph 9, to the ensuing mixed concession, irrespective of the value of the parts that would otherwise fall under a different legal regime and irrespective of which legal regime those parts would otherwise have been subject to.
7. The choice between the award of a single concession or multiple concessions cannot be made in order to circumvent the application of this Code.
8. If the different parts of a given contract are objectively non-separable, the applicable legal regime is determined on the basis of the main object of the contract in question.
9. In the case of mixed contracts containing elements of concessions as well as elements of public contracts in ordinary and special sectors, the mixed contract shall be awarded in accordance with the provisions applicable to contracts in the ordinary and special sectors.
10. In the event a mixed contract involves both elements of a services concession and of a supply contract, the main subject-matter shall be determined according to which of the estimated values of the respective services or supplies is the higher.
- 11.
12. In the case of concessions for which it is objectively impossible to determine which activities are principally intended, the applicable rules shall be determined in accordance with points (a), (b) and (c):
 - (a) the concession is awarded in accordance with the provisions governing the concessions awarded by the contracting authorities if one of the activities to which the concession is awarded

is subject to the provisions applicable to the concessions awarded by the contracting authorities and the other activity is subject to the provisions relating to the concessions awarded by the contracting entities;

(b) the concession is awarded in accordance with the provisions governing contracts in the ordinary course of trade if one of the activities is governed by the provisions relating to the award of concessions and the other by the provisions relating to the award of contracts in the ordinary course of business;

(c) the concession is awarded in accordance with the provisions governing the concessions if one of the activities to which the concession is intended is governed by the provisions relating to the award of concessions and the other is not subject either to the concessions or to the concession arrangements, awarding contracts in the ordinary or special sectors.

CHAPTER II

Procedural guarantees

Art. 170

Technical and functional requirements

1. Technical and functional requirements of the works to be executed or of the services to be provided that are the subject-matter of the concession shall be set out in the concession documents.

Those characteristics may also refer to the specific process of production or execution of requested works or of provision of requested services provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives. The technical and functional characteristics may include, on the basis of the requests made by the contracting authorities or entities, quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, terminology, symbols, testing and test methods, marking and labelling, or user instructions.

2. Unless justified by the subject-matter of the contract, technical and functional requirements shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific production with the effect of favouring or eliminating certain undertakings or certain products. Such a reference, on an exceptional basis, shall be permitted where a sufficiently precise and intelligible description of the subject-matter of the contract is not possible; such reference shall be accompanied by the expression "or equivalent".

3. Contracting authority or contracting entity shall not reject a tender on the grounds that the works and services tendered for do not comply with the technical and functional requirements required in the tender documents, once the tenderer proves in its tender, by any appropriate

means, that the solutions it has proposed through its tender satisfy in an equivalent manner the technical and functional requirements.

1. Concessions shall be awarded on the basis of the award criteria set out by the contracting authority or entity in accordance with Article 173, provided that all of the following conditions are fulfilled:

a) the tender complies with the minimum requirements set out by the contracting authority or entity;

(b) the tenderer complies with the conditions for participation as referred to in Article 172;

c) the tenderer is not excluded from participating in the award procedure in accordance with Article 172.

2. The minimum requirements referred to in point 1, letter (a) shall provide for conditions and technical, physical, functional and legal characteristics that any tender should meet or possess.

Art. 171

Procedural guarantees in Award criteria

1. Concessions shall be awarded on the basis of the award criteria set out by the contracting authority or entity in accordance with Article 173, provided that all of the following conditions are fulfilled:

a) the tender complies with the minimum requirements set out by the contracting authority or entity;

(b) the tenderer complies with the conditions for participation as referred to in Article 172;

c) the tenderer is not excluded from participating in the award procedure in accordance with Article 172.

2. The minimum requirements referred to in point 1, letter (a) shall provide for conditions and technical, physical, functional and legal characteristics that any tender should meet or possess.

3. The contracting authorities or entities shall also provide:

a) in the concession notice, a description of the concession and of the conditions of participation;

b) in the concession notice, in the invitation to submit a tender or in other concession documents, a description of the award criteria and, where applicable, the minimum requirements to be met.

4. The contracting authority or contracting entity may limit the number of candidates or tenderers to an appropriate level, on condition that this is done in a transparent manner and on the basis of objective criteria. The number of candidates or tenderers invited shall be sufficient to ensure genuine competition.

5. The contracting authority or entity shall communicate to all participants the modalities of the procedure and an indicative completion deadline. Any possible modification shall be communicated to all participants and, to the extent that they concern elements disclosed in the concession notice, advertised to all economic operators.

6. The contracting authority or entity shall ensure the traceability of the acts concerning every single stage of the procedure using the means it judges appropriate, subject to compliance with Article 53.

7. The contracting authority or entity may freely hold negotiations with candidates and tenderers. The subject-matter of the concession, the award criteria and the minimum requirements shall not be changed during the course of the negotiations.

Art. 172

Selection of and qualitative assessment of candidates

1. Contracting authorities or entities shall verify the conditions for participation relating to the technical and professional ability and the financial and economic standing of the candidates or tenderers, on the basis of self-declarations, on the basis of references or self-references or certifications to be submitted as proof. The conditions for participation shall be related and proportionate to the need to ensure the ability of the concessionaire to perform the concession, taking into account the subject-matter of the concession and the purpose of ensuring genuine competition.

2. With a view to meeting the conditions for participation laid down in paragraph 1, where appropriate and in case of a particular concession, an economic operator may rely on the capacities of other entities, regardless of the legal nature of its links with them. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority or the contracting entity that it will have at its disposal, throughout the period of the concession, the necessary resources. With regard to financial standing, the contracting authority or entity may require that the economic operator and those entities are jointly liable for the execution of the contract.

Art. 173

Time-limits, general principles and award criteria

1. Concessions shall be awarded on the basis of the principles set out in Article 30.
2. Where the procedure takes place in successive steps, the minimum time limit for the receipt of initial tenders shall be of twenty-two days. Article 79, paragraphs 1 and 2 shall apply
3. If the contracting authority or entity receives a tender which proposes an innovative solution with an exceptional level of functional performance which could not have been foreseen by using ordinary diligence, the contracting authority or entity may, exceptionally, modify the ranking order of the award criteria referred to in paragraph 2, to take into account that innovative solution. In that case, the contracting authority or entity shall inform all tenderers about the modification of the order of importance of the criteria and shall issue a new invitation to submit tenders, in respect of the minimal time limits of twenty-two days pursuant to the abovementioned paragraph 2, third period. Where the award criteria have been published at the moment of the publication of the concession notice, the contracting authority or entity shall publish a new concession notice, in respect of the minimum time limits of thirty days pursuant to paragraph 2, second period.
The modification of the ranking order shall not result in discrimination.

Chapter III

RULES ON PERFORMANCE OF CONCESSIONS

Art. 174

Subcontracting

1. Without prejudice to the provisions referred to in Article 30, to subcontracting in the matter of concessions the present article shall apply.
2. Economic operators shall indicate when submitting tenders the parts of the concession contract that they wish to subcontract to third parties. Are not considered to be third parties the undertakings that have grouped or have constituted consortia in order to obtain the concession, nor to affiliated undertakings; if the concessionnaire has formed a project company pursuant to Article 184, are not considered to be third parties the partners, at the conditions referred to in paragraph 2 of Article 184. When presenting the tender, economic operators that are not micro-enterprises, SMEs, for the work, service and supply concessions for an amount equal or higher than the threshold referred to in Article 35(1), letter (a), indicate three names of subcontractors in the following cases:
 - a) work, service and supply concessions for which no particular specialization is needed;
 - b) work, service and supply concessions for which it is possible to find on the market three names of subcontractors to indicate, given the significant number of economic operators performing such activities.
3. The tenderer shall be obliged to prove, in the cases referred to in para. 2, the absence of exclusion grounds for the subcontractors indicated and to replace the subcontractors for which a

specific verification has demonstrated the existence of reason for exclusion referred to in Article 80

4. In the case of works concessions and in respect of services to be provided at the facility under the oversight of the contracting authority or entity, after the award of the concession and at the latest when the performance of the concession commences, the concessionaire indicates to the contracting authority or entity the name, contact details and legal representatives of its subcontractors, involved in such works or services, insofar as known at that point in time. The concessionaire notifies to the contracting station any changes to that information during the course of the concession as well as of the required information for any new subcontractors which it subsequently involves in such works or services.

5. The concessionaire remains exclusively liable towards the contracting entity. The concessionaire is obliged jointly with the subcontractor to the employees of the subcontracting company for the remuneration and contribution obligations provided for by the legislation in force.

6. The execution of the subcontracted performances shall not be the subject-matter of another subcontract.

7. Where the nature of the contract so permits, the contracting authority or entity shall directly proceed to the payment of subcontractors, always, in case of micro-enterprises, of small enterprises and, for others, in case of breaches by the contractor or in case of request by the subcontractor. The direct payment is however subject to the verification of the remuneratory and contributory regularity of the subcontractor. In case of direct payment the concessionaire is free from the joint obligation as referred to in paragraph 5.

8. Provisions in paragraphs 10, 11 and 17 of Article 105 shall also apply.

Art. 175

Modification of contracts during their term

1. Concessions may be modified without a new award procedure in any of the following cases:

a) where the modifications, irrespective of their monetary value, have been provided for in the initial award documents in clear, precise and unequivocal clauses, which may state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications that would alter the overall nature of the concession. In any case, these same clauses cannot provide for the prorogation of the duration of the concession;

b) for additional works or services by the original concessionaire that have become necessary and that were not included in the initial concession where a change of concessionaire cannot be made for economic or technical reasons such as the respect for requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial concession and would cause for the contracting authority or entity significant delay or substantial duplication of costs;

c) where all of the following conditions are simultaneously fulfilled:

- 1) the need for modification has been brought about by circumstances which a contracting authority or entity could not foresee using ordinary diligence;
- 2) the modification does not alter the overall nature of the concession;
- d) where a new concessionaire replaces the one to which the contracting authority or entity had initially awarded the concession as a consequence of either:
 - i) an unequivocal review clause or option in conformity with point (a)
 - 2) to the initial concessionaire succeeds, at the universal or partial level, following corporate restructuring, including takeover, merger, acquisition or insolvency, another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Code, without prejudice to the authorization of the concessionaire, where required on the basis of the sectorial regulation;
- 3) in the event that the contracting authority or entity itself assumes the main concessionaire's obligations towards its subcontractors;
- e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph 7.

2. In the case of hypothesis under paragraph 1, letters (a), (b) and (c), for concessions awarded by contracting authorities, for the purposes of pursuing an activity other than those referred to in Annex II, any increase in value shall not exceed 50 % of the value of the original concession, intended as the value resulting after the award of contract or services or supplies that constitute the subject-matter of the concession. Such consecutive modifications shall not be aimed at circumventing this Code.

3. Contracting authorities stations having modified a concession in the cases set out under paragraph 1, letters (b) and (c) shall publish, in accordance with what provided for in Article 72, a notice in the Official Journal of the European Union containing the information set out in Annex XI.

4. Concessions may be modified without need of a new concession award procedure, nor to verify if the conditions provided for in paragraph 7, letters (a) to (d) are respected where the modification is below both of the following values:

- a) the threshold set out in Article 35(1), letter (a);
- b) 10% of the value of the initial concession.

5. The modification referred to in paragraph 4 may not alter the overall nature of the concession. In case of successive modifications, the value shall be assessed on the basis of the net cumulative value of the successive modifications.

6. For the purpose of the calculation of the value referred to in paragraphs 1, letters (a), (b) and (c), 2 and 4 the updated value shall be the reference value when the concession includes an indexation clause. If the concession does not include an indexation clause, the updated value shall be calculated taking into account the inflation calculated by ISTAT.

7. A modification of a concession during its term shall be considered to be substantial where it significantly alters the substantial elements of the contract that has been initially concluded. In any event, without prejudice to paragraphs 1 and 4, a modification shall be considered to be substantial where one or more of the following conditions is met:

- a) the modification introduces conditions which, had they been initially included, would have allowed for the admission of applicants other than those initially selected or for the acceptance of a tender other than that originally accepted, or would have allowed wider participation to the award procedure;

- b) the modification changes the economic balance of the concession in favour of the concessionaire in a manner which was not provided for in the initial concession;
 - c) the modification considerably extends the scope of the concession;
 - d) where a new concessionaire replaces the one to which the contracting authority or entity had initially awarded the concession in cases other than those provided for under paragraph 1, letter (d).
8. A new concession award procedure shall be required for other modifications of the provisions of a concession during its term than those provided for under paragraphs 1 and 4.

Art. 176. (Termination, automatic revocation, termination for breach and subentry)

1. Without prejudice to the exercise of the powers of self-protection, the concession can be terminated, specifically when:
- a) the licensee should have been excluded in accordance with Article 80;
 - b) the contracting authority, with reference to the tender procedure, breached European Union law as ascertained by the European Union's Court of Justice pursuant to Article 258 of the Treaty on the functioning of the European Union;
 - c) the concession has undergone a modification that requires a new tender procedure in accordance with Article 175, paragraph 8.
2. In the cases set forth in paragraph 1, the terms provided by Article 21-nonies of Law No. 241 of 7 August 1990 shall not apply.
3. Paragraph 4 shall apply if the automatic cancellation is due to a fault that is not attributable to the licensee.
4. If the concession is terminated due to the breach of the contracting authority or the latter revokes the concession for reasons of public interest, the licensee shall be entitled to:
- a) the value of the works realized plus accessory costs, net of depreciation, or if the work has not yet passed the testing phase, the costs effectively incurred by the licensee;
 - b) the penalties and other costs incurred or to be incurred as a result of the termination, including costs deriving from the early termination of the contracts hedging the risk of fluctuation in the interest rate;

c) compensation for lost profits equal to 10 percent of the value of the works still to be carried out or, if the work has passed the testing phase, the current value of the revenue resulting from the financial-economic plan annexed to the concession for the residual years of operation.

5. The amounts set forth in paragraph 4 and paragraph 7 are primarily intended to pay the credits of the licensee's lenders and holders of securities issued pursuant to Article 185, limited to bonds issued following the date of the entry into force of this provision and are unavailable to the latter until the complete payment of such credits.

5-bis. Without prejudice to the payment of the amounts set forth in paragraph 4, in all cases of the termination of the concession other than termination due to breach by the licensee, the licensee shall have the right to continue the ordinary operation of the work, collecting the revenue resulting therefrom, until the effective payment of the above amounts through the successor, except for any unpostponable investments determined by the licensor together with the arrangements for financing the related costs.

6. The effectiveness of the revocation of the concession is subject to the condition of payment by the contracting authority or by the contracting entity of the amounts provided for in paragraph 4.

7. If the concession is terminated due to breach by the licensee, Article 1453 of the Italian Civil Code shall apply.

8. In cases involving the termination of a concession for causes attributable to the licensee, the contracting authority shall communicate in writing to the licensee and the financing institutions the intention to terminate the contract. The lender institutions, including the holders of bonds and similar securities issued by the licensee, within ninety days from receipt of the communication, can indicate an economic operator who shall succeed to the concession, who shall have the technical and financial characteristics corresponding or similar to those provided in the call for tender or in the acts pursuant to which the concession was awarded, with respect to the progress of the object of the concession on the date of the subentry.

9. The successor economic operator must ensure the resumption of the execution of the concession and the precise compliance originally requested of the licensee it substitutes within the term indicated by the contracting authority. The subentry of the economic operator shall take force from the moment in which the contracting authority gives its consent.

10. The contracting authority shall provide in the tender documentation for the right of subentry granted to the lender institutions set forth in paragraph 8.

10-*bis*. This Article shall apply to concession contracts and public – private partnerships and to the economic operators holding such contracts.

Art. 177. (Award of licensed concessions)

1. Except for what is provided by Article 7, private or public parties, holders of concessions for works, public services or supplies already in place on the date of entry into force of this Code, that were not awarded with the project financing formula, or by public tender procedures in accordance with European Union law, are obliged to award a share equal to eighty percent of the contracts for the works, services and supplies relating to concessions for an amount equal to or greater than 150,000 Euro and relating to concessions by public procedures, introducing social clauses and clauses for the stability of employees and to safeguard professionalism. The remainder can be realized by in-house companies as set forth in Article 5 for public parties, or by companies that are directly or indirectly controlled by or affiliated with private parties, or by operators chosen through a public procedure, including simplified procedures. For holders of highway concessions, without prejudice to the other provisions of this paragraph, the share set forth in the first clause shall be equal to sixty percent.

(paragraph as modified by Art. 1, paragraph 568 of Law No. 205 of 2017)

2. The concessions set forth in paragraph 1 already in place shall comply with the above provisions within twenty-four months from the date of the entry into force of this Code.

3. The verification of compliance with the limits set forth in paragraph 1 by the responsible parties and ANAC shall be carried out annually, in the manner indicated by ANAC in specific guidelines, to be adopted within ninety days from the date of the entry in force of this provision. Any imbalances with respect to the indicated limits must be rebalanced within the following year. In the case of unbalanced situations repeated for two consecutive years, the licensor shall apply a penalty equal to 10 percent of the overall amount of the works, services or supplies that should have been awarded by a public procedure.

(paragraph as substituted by Art. 1, paragraph 568 of Law No. 205 of 2017)

Art. 178. (Rules on highway concessions and specific transitional regimes)

1. For the highway concessions that, as of the date of the entry into force of this Code, have expired, the licensor who has not yet done so shall prepare the call to tender for the award of the concession, according to the rules for public procedures provided for by Part III of this Code,

within the mandatory term of six months from the above date, notwithstanding the possibility of an in-house award in accordance with Article 5. If there is an in-house award in accordance with Article 5, the tender procedures shall be concluded within thirty-six months from the date of the entry into force of this Code. Without prejudice to what is provided for the award of concessions set forth in Article 5 of this Code, the extension of highway concessions is prohibited.

2. The reciprocal obligations, for the period necessary for completion of the procedure set forth in paragraph 1, shall be governed in accordance with the existing contractual conditions.

3. For highway concessions that will expire in the twenty-four months following the date of the entry into force of this Code, the licensor shall initiate the procedure to determine the successor licensee by means of a public tender, in accordance with the provisions of Part III of this Code, without prejudice to the possibility of an in-house award in accordance with Article 5. If the above term is less than twenty-four months from the date of entry into force of this Code, the tender procedure shall be initiated as soon as possible, in such a way as to avoid continuity between the two concession regimes.

4. The licensor shall initiate the public procedure for the award of the new highway concession, in conformity with the provisions of Part III of this Code, within the term of twenty-four months prior to the expiration of the current concession, without prejudice to the possibility of an in-house award in accordance with Article 5.

5. If the tender procedure does not conclude within the expiration date of the concession, the outgoing licensee remains obligated to continue the ordinary administration until the transfer of operations. The provisions of paragraph 2 shall apply to such period.

6. At least two years before the expiration date of the concession, the licensor shall conduct, in the presence of the licensee, all of the controls required to assess the overall technical status of the infrastructure and shall order, if appropriate, the necessary restoration and changes to the state of the places in accordance with the contractual commitments.

7. For the works allowed that the licensee has already performed but not yet depreciated at the time of the expiration of the concession, the outgoing licensee shall be entitled to compensation

for such investment line items by the successor, equal to the cost effectively incurred, net of depreciation of revertible assets not yet depreciated as resulting from the financial statements as of the date on which the concession ends and any changes made for regulatory purposes. The amount of the value of the subentry shall be borne by the successor licensee.

8. Without prejudice to the contracts of public-private partnerships with an availability charge for highway concessions, the risk set forth in Article 3, paragraph 1, clause zz) is inclusive of the traffic risk. The administration may request a prior opinion on the draft conventions to be signed from the Transportation Authority.

8-bis. The administrations cannot award highway concessions that have expired, or which are about to expire, using the procedures set forth in Article 183.

8-ter. The highway concessions relating to motorways that involve one or more regions can be awarded by the Ministry of Infrastructure and Transportation to in-house companies of other public administrations, even those specifically established. For such purpose, the analogous control set forth in Article 5 on the above in-house company can be exercised by the Ministry of Infrastructures and Transportation through a committee governed by a specific agreement in accordance with Article 15 of Law No. 231 of 7 August 1990, which shall exercise the powers set forth in cited Article 5 on the in-house company.

PART IV - PUBLIC-PRIVATE PARTNERSHIPS AND GENERAL CONTRACTOR AND OTHER PROCEDURES FOR AN AWARD

Art. 179. (Common applicable regime)

1. The provisions set forth in Part I, III, V and VI shall apply to the tender procedures set forth in this Part, to the extent compatible.

2. The provisions of Part II, title I shall also apply, to the extent compatible with the provisions of this Part, according to which the amount of the work is equal to or greater than the threshold set forth in Article 35, or lower, as well as the further provisions of Part II set forth in Article 164, paragraph 2.

3. The provisions of this Part shall also apply to services, to the extent compatible.

TITLE I - PUBLIC-PRIVATE PARTNERSHIPS

Art. 180. (Public-private partnerships)

1. The partnership agreement shall be the agreement for consideration set forth in Article 3, paragraph 1, clause eee).

2. In public-private partnership agreements, the operating revenue of the economic operator derives from the fee granted by the granting authority and/or any other form of economic consideration received by such economic operator, including in the form of direct income from the operation of the service for external users. The partnership agreement can be used by the granting administrations for any type of public work.

3. In the public-private partnership agreement, the transfer of the risk to the economic operator results in allocating to the latter, in addition to the construction risk, the risk of availability or, in cases of profitable activity towards third parties, the risk of demand of the services provided, for the operating period of the work as defined, respectively, by Article 3, paragraph 1, clauses aaa), bbb) and ccc). The content of the agreement is determined between the parties in such a way that the recovery of the investments made and costs incurred by the economic operator to perform the work or provide the service depends on the actual provision of the service or possibility to use the work, or by the volume of the services provided with respect to demand, and in any case, by compliance with the contracted quality levels, provided that the evaluation occurs *ex ante*. The public-private partnership agreement shall also regulate the risks which impact the consideration, deriving from acts not attributable to the economic operator.

4. With respect to the availability of the work or demand for services, the contracting authority can choose to pay a fee to the economic operator that is proportionally reduced or cancelled during periods of reduced or unavailability of the work, as well as reduced or lack of services. If the reduced or unavailability of the work or service is attributable to the operator, such

variations of the fee must in any case be capable of significantly impacting the current net value of the overall investments, costs and revenue of the economic operator.

5. The contracting authority can also choose, in the case of the availability of the work or demand for the service, that a different economic benefit be paid, as long as agreed upon *ex ante*, or it can allow remuneration for the service to be exploited directly by the economic operator, who therefore assumes the risk of negative fluctuations in market demand for such service.

6. The financial-economic equilibrium, as defined in Article 3, paragraph 1, clause fff), represents the premise for the proper allocation of the risks set forth in paragraph 3. For the sole purposes of achieving the above equilibrium, at the time of the tender the contracting authority can also establish a price consisting of a public contribution or in the transfer of real property that no longer fulfill public interest functions. A contribution can consist of a right of enjoyment, whose use is instrumental and technically related to the work to be awarded as a concession. The manner in which the real property can be used shall be determined by the contracting authority and shall be one of the premises that determines the financial-economic equilibrium of the concession. Regardless, any payment of the price, added to the value of any public guarantees or additional financing mechanisms borne by the public administration, cannot exceed forty-nine percent of the cost of the overall investment, inclusive of any financial costs.

7. The provisions of Article 165, paragraphs 3, 4 and 5 of this Code shall apply.

8. The type of contract set forth in paragraph 1 shall include project financing, building and operating concessions, the concession of services, the financial leasing of public works, availability contracts and any other procedure to realize as a partnership works or services having the characteristics set forth in the above paragraphs.

Art. 181. (Tender procedures)

1. The choice of economic operator shall be made using public tenders, including through competitive negotiation.

2. The contracting authorities shall award contracts basing the tender on the final project and a draft contract and financial-economic plan that govern the allocation of risks between the contracting authority and the economic operator.

3. The choice shall be preceded by an adequate preliminary review with reference to an analysis of the supply and demand, and the financial-economic and social-economic sustainability of the transaction, the nature and intensity of the different risks present in the partnership transaction, including by using evaluation techniques through comparison tools to verify the convenience of the use of forms of public-private partnership in alternative to direct realization using normal tender procedures.

4. The contracting authority shall exercise control over the activity of the economic operator through the preparation and implementation of monitoring systems, in the manner defined by the guidelines adopted by ANAC, having heard the Ministry of the Economy and Finance, within ninety days from the entry into force of this Code, verifying in particular the permanence of the risks transferred to the economic operator. The economic operator is obliged to collaborate and actively contribute to such systems.

Art. 182. (Project financing)

1. Contracts can be financed using suitable tools such as, among others, project financing. The financing may also regard the award of public and private assets. The remuneration of the invested capital shall be established in the contract.

2. The contract shall establish the transferred risks, the manner of monitoring their permanence in the lifecycle of the contractual relationship, and the consequences deriving from the early termination of the contract, that would result in the permanence of the risks transferred to the economic operator.

3. The occurrence of events not attributable to the economic operator that affect the equilibrium of the financial-economic plan can result in its revision, to be implemented through the redetermination of the conditions of equilibrium. The revision must allow the permanence of the risks transferred to the economic operator and the conditions of financial-economic equilibrium related to the contract. For purposes of the protection of public finance closely

connected to maintaining the above risk allocation, in cases of work of State interest or that are financed by a State contribution, the revision is subject to the prior assessment by the Consulting Nucleus for the Implementation of the Guidelines for the regulation of public utility services (NARS). In other cases, the contracting authority may decide to submit the revision to the prior assessment of NARS. In the case of a failure to agree on the rebalancing of the financial-economic plan, the parties can withdraw from the contract. The economic operator shall be reimbursed the amounts set forth in Article 176, paragraph 4, clauses a) and b), except for the costs deriving from the early termination of contracts hedging the risk of fluctuation of the interest rate.

Art. 183. (Project financing)

1. For the realization of public works or works of public utility, including work related to structures dedicated to recreational boating, included in programming instruments formally approved by the contracting authority on the basis of current law, including Port Plans, that can be financed in whole or in part with private capital, the contracting authorities can, as an alternative to an award through concession in accordance with Part III, can award a concession basing the tender on the feasibility study, by publication of a call to tender aimed at the presentation of bids that contemplate the use of resources that are wholly or in part borne by the bidders. In any case, for infrastructures relating to in-line works, the relative proposals must be included in the programming instruments approved by the Ministry of Infrastructures and Transportation.

2. The call to tender shall be published in the manner set forth in Article 72 or set forth in Article 36, paragraph 9, depending on the value of the work, basing the tender on the feasibility study prepared by the contracting authority. The feasibility study to be used as the basis for the tender shall be prepared by staff of the contracting authority having the necessary subjective prerequisites needed to prepare it according to the different specializations involved with the multi-disciplinary approach of the feasibility study. If there are no suitably qualified personnel available, the contracting authorities can entrust the preparation of the feasibility study to third parties, chosen through the process provided by this Code. The costs related to the assignment of activities to third parties can be included in the economic framework of the work.

3. The call to tender, in addition to the content provided by annex XXI, shall specify:

a) that the contracting authority has the possibility to request the chosen promoter, set forth in paragraph 10, clause b), to make modifications to the final project submitted by it that occurred during the phase of approval of the project, including for the purpose of issuing maritime State concessions, if necessary, and that in such case the concession shall be awarded to the promoter only after the latter's acceptance of the project modifications as well as the consequent adjustment of the economic-financial plan;

b) that in the case of the promoter's refusal to modify the final project, the administration shall be entitled to progressively request the bidders who follow in the ranking to accept the modifications to make to the final project submitted by the promoter on the same conditions proposed to the promoter which it did not accept.

4. The contracting authorities shall evaluate the tenders submitted with the criterion of the most economically advantageous tender identified based on the best quality/price ratio.

5. In addition to what is provided by Article 95, the review of the proposals shall extend to aspects related to the quality of the final project submitted, the economic and financial value of the plan and the content of the draft agreement. With respect to structures dedicated to recreational boating, the review and evaluation of the proposals shall also be made with reference to the greatest suitability of the chosen initiative to satisfy public interests in the tourism and economic development of the area concerned, landscape and environmental protection, and navigational safety.

6. The call to tender shall indicate the criteria, according to the order of importance attributed to them, on the basis of which the comparative evaluation shall be made among the various proposals. The publication of the call to tender, in the case of structures intended for recreational boating, shall satisfy the obligation of public notice provided for the issue of the State maritime concession.

7. The regulations of the call to tender, expressly referred to in the call to tender, shall indicate, in particular, the location and description of the intervention to be realized, the urban planning use, the consistency, and the type of service to be operated, in such a way as to allow the proposals to be submitted based on homogeneous conditions.

8. Only parties having the prerequisites for the licensees shall be allowed to participate in the tender, including in association or as a consortium with other parties, without prejudice to the lack of reasons for exclusion set forth in Article 80.

9. The tenders must contain a final project, a draft agreement, an economic-financial plan certified by a credit institute or by a service company established by such credit institute and registered with the general list of financial intermediaries, in accordance with Article 106 of Legislative Decree No. 385 of 1° September 1993, or by an auditing firm pursuant to Article 1 of

Law No. 1966 of 23 November 1939, as well as specification of the characteristics of the service and operations, and shall report on the preliminary involvement of one or more lender institutions in the project. The financial-economic plan, in addition to providing for the reimbursement of the expenses incurred to prepare the feasibility study on which the tender is based, shall include the amount of the expenses incurred to prepare the bids, including for the rights to the creative works set forth in Article 2578 of the Italian Civil Code. The overall amount of the expenses set forth in the above clause cannot exceed 2.5 percent of the value of the investment, as can be inferred from the feasibility study on which the tender is based. In the case of structures to be used for recreational boating, the final project must establish the qualitative and functional characteristics of the work and the framework of the needs to be satisfied and the specific services to be provided, must contain a study with the description of the project and the information needed to identify and evaluate the main effects that the project might have on the environment, and must be integrated with the specific requests made by the Ministry of Infrastructure and Transportation through its decrees.

10. The contracting authority:

- a) shall examine the tenders received within the term indicated in the call to tender;
- b) shall prepare a ranking and appoint as promoter the party that has submitted the best bid; the appointment of the promoter can also be made when there is only one bid;
- c) shall approve the final project submitted by the promoter, in the manner indicated in Article 27, including for the purpose of the subsequent issue of the State maritime concession, if necessary. In such phase the promoter shall be responsible for making the project modifications required for the approval of the project, as well as all legal requirements, including for the purpose of the environmental impact assessment, without this resulting in any additional compensation, nor increase of the expenses incurred to prepare the tenders indicated in the financial plan;
- d) when the project does not require project modifications, it can proceed directly with the stipulation of the concession;
- e) if the promoter does not agree to modify the project, it is entitled to progressively request the subsequent tenderers in the ranking to accept the modifications to the project submitted by the promoter in accordance with the same conditions proposed to the promoter which it did not accept.

11. The stipulation of the concession contract can only occur after the positive conclusion of the approval process for the final project and acceptance of the project modifications by the promoter, or by the different successful tenderer. The issue of the State maritime concession, if necessary, shall be made based on the final project, prepared in conformity with the approved feasibility study.

12. If a party other than the promoter is awarded the concession, the promoter shall be entitled to the payment, by the successful tenderer, of the expenditure set forth in paragraph 9, third clause.

13. The tenders shall be supported by the guarantee set forth in Article 93 and by additional security established by the call to tender in the amount of 2.5 percent of the value of the investment, as inferred by the feasibility study on which the tender procedure is based. The successful tenderer must provide the final security set forth in Article 103. Starting from the date of commencement of the service, the licensee must pay security to guarantee the penalties related to the lack of compliance with or breach of any contractual obligations related to operating the work, to be provided in the amount of 10 percent of the annual operating cost and in the manner set forth in Article 103; the failure to provide such security shall be a material contractual breach.

14. If necessary, the provisions set forth in Decree No. 327 of the President of the Republic of 8 June 2001 and subsequent modifications shall apply.

15. The economic operators can present proposals to the contracting authorities related to the realization in concession of public works or works of public utility, including structures dedicated to recreational boating, not included in the programming instruments approved by the contracting authority based on current law. The proposal shall contain a feasibility study, a draft agreement, the financial-economic plan certified by one of the parties set forth in paragraph 9, first clause, and the specification of the characteristics of the service and operations. In the case of structures to be used for recreational boating, the feasibility study must establish the qualitative and functional characteristics of the work and the framework of the needs to be satisfied and the specific services to be provided, must contain a study with the description of the project and the information required to identify and evaluate the principal effects that the project might have on the environment, and must be integrated with the specific requests made by the Ministry of Infrastructure and Transportation by its decrees. The financial-economic plan shall include the amount of the expenses incurred to prepare the proposal, including for the rights to creative work set forth in Article 2578 of the Italian Civil Code. The proposal shall be accompanied by the self-certifications related to the prerequisites set forth in paragraph 17, the security set forth in Article 93, and the commitment to provide security in the amount set forth in paragraph 9, third clause, in the case the tender procedure is called. The contracting authority shall evaluate, within the mandatory term of three months, the feasibility of the proposal. For such purpose, the contracting authority can request the tenderer to make modifications to the feasibility study required for its approval. If the tenderer does not make the modifications requested, the proposal cannot be assessed positively. The feasibility study, which may be modified, shall be included in the programming instruments approved by the contracting authority based on current law, and shall be approved in the manner provided for the approval of projects. The tenderer must make any further modifications requested at the time of approval of the project; in the lack therefore,

the project shall be considered as not having been approved. The approved feasibility study shall be the basis of the tender, to which the tenderer is invited to participate. In the call to tender the contracting authority can request the tenderers, including the proponent, to present any variants to the project. The call to tender shall specify that the promoter can exercise its preemption right. The tenderers, including the promoter, must possess the prerequisites set forth in paragraph 8, and must submit a tender containing a draft agreement, the financial-economic plan certified by one of the parties set forth in paragraph 9, first clause, the specification of the characteristics of the service and its operation, as well as any changes to the feasibility study; clauses 4, 5, 6, 7 and 13 shall apply. If the promoter is not the successful tenderer, it can, within fifteen days from the communication of the award, exercise the preemption right and become the successful tenderer if it declares that it undertakes to comply with the contractual obligations on the same conditions offered by the successful tenderer. If the promoter is not awarded the tender and does not exercise its preemption right, it is entitled to the payment, to be borne by the successful tenderer, of the amount of the expenses to prepare the proposal, within the limits indicated in paragraph 9. If the promoter exercises its preemption right, the original successful tenderer shall be entitled to payment, by the promoter, of the amount of the expenses incurred to prepare the offer within the limits set forth in paragraph 9.

16. The proposal set forth in paragraph 15, first clause, can regard, alternatively with respect to the concession, all public-private partnership agreements.

17. The proposals set forth in paragraph 15, first clause, can be submitted by parties having the prerequisites set forth in paragraph 8, as well as by parties having the prerequisites to participate in tenders for public contracts, including for design services that may be associated or in consortiums with the lender institutions and the operator of the service. The realization of public works or works of public utility shall be included among the sectors allowed that are set forth in Article 1, paragraph 1, clause *c-bis*) of Legislative Decree No. 153 of 17 May 1999. The chambers of commerce, within the scope of social utility and the promotion of economic development that they pursue, can join in the submission of proposals for the realization of the public works set forth in paragraph 1, without prejudice to their decision-making autonomy.

18. To ensure adequate levels of bankability and the involvement of the banking system in the transaction, the provisions of Article 185 shall apply, to the extent compatible.

19. Limited to the cases set forth in paragraphs 15 and 17, the parties that submit proposals can withdraw from the composition of the proponents at any stage of the procedure until publication of the call to tender, as long as such withdrawal does not result in the lack of the prerequisites for qualification. In any case, the lack of prerequisites by individual parties shall result in the exclusion of such parties without affecting the validity of the proposal, on the condition that the remaining members have the prerequisites needed for qualification.

20. In accordance with Article 2 of this Code, with respect to structures dedicated to recreational boating, the regions and autonomous provinces of Trento and Bolzano shall adapt their rules to the principles set forth in this Article.

Art. 184. (Project companies)

1. The call to tender for the award of a concession for the realization and/or management of an infrastructure or new service of public utility must provide that the successful tenderer shall be entitled, after the award, to set up a project company in the form of a share capital company or a limited liability company, including a consortium. The call to tender shall indicate the minimum amount of the company's share capital. In the case of a tenderer consisting of more than one party, the bid shall indicate the shareholding of each party. The above provisions shall also apply to the tender set forth in Article 183. The company thus established shall become the licensee, replacing the successful tenderer in the concession without the need for approval or authorization. Such replacement does not constitute the assignment of a contract. The call to tender can also provide that the establishment of the company is an obligation for the successful tenderer.

2. The works to be performed and the services to be provided by the companies governed by paragraph 1 shall be realized and provided by them, even if they are entrusted directly by the above companies to their shareholders, as long as they have the prerequisites established by current legislation and regulations. The above is without prejudice to the legislative, regulatory and contractual provisions that provide for obligations to award the work or the services to third parties.

3. As a result of the replacement set forth in paragraph 1, which does not constitute an assignment of the contract, the project company becomes the original licensee and substitutes the successful tenderer in all relations with the granting authority. In the case of the payment of a price by the public administration while the work is being performed, the shareholders of the company shall be jointly liable with the project company with respect to the administration for any refund of the contribution received. Alternatively, the project can provide the public administration with bank and insurance guarantees for the refund of amounts paid as part of the price while the work is in progress, thus releasing the shareholders. The above guarantees shall cease on the date of the issue of the testing certificate for the work. The concession agreement shall establish the manner in which any transfer can be made of the shares of the project company, without prejudice to the fact that the shareholders who participated to satisfy the qualification prerequisites must participate in the company and guarantee, within the above limits, proper compliance with the licensee's obligations until the date of issue of the testing certificate for the work. The entry of the project company in the share capital and the

disinvestment of the shareholdings by banks and other institutional investors who did not participate to satisfy the qualification prerequisites can, however, take place at any time.

Art. 185. (Issue of bonds and debt securities by the project company)

1. In order to create a single infrastructure or a new service of public utility, the project company set forth in Article 184, as well as the companies who are parties to a public-private partnership agreement in accordance with Article 3, paragraph 1, clause eee), can issue bonds and debt securities, including in derogation of the limits set forth in Articles 2412 and 2483 of the Italian Civil Code, provided they are intended to be underwritten qualified investors as defined pursuant to Article 100 of Legislative Decree No. 58 of 24 February 1998, except that the above qualified investors shall be understood in any case as also including the companies and other legal entities that are controlled by qualified investors in accordance with Article 2359 of the Italian Civil Code. Such bonds and debt securities can be dematerialized and may not be transferred to parties who are not qualified investors as defined above. Articles 2413, 2414-*bis*, first and second paragraphs, and from 2415 to 2420 of the Italian Civil Code, shall not apply to the securities issued in accordance with this Article.

2. The tender documentation must clearly indicate and distinctly highlight a warning regarding the high-risk profile associated with the transaction.

3. The bonds and debt securities, until the start of the licensee's operation of the infrastructure or until the expiration of such bonds and debt securities, can be guaranteed by the financial system, by foundations and private funds, in the manner established by a Decree of the Minister of the Economy and Finance, together with the Minister of Infrastructures and Transportation.

4. The provisions set forth in paragraphs 1, 2 and 3 shall also apply to the companies operating in the management of the services set forth in Article 3-*bis* of Law Decree No. 138 of 13 August 2011, converted, with modifications, by Law No. 148 of 14 September 2011, the companies holding authorizations for the construction of infrastructures for the transportation of gas and storage concessions set forth in Articles 9 and 11 of Legislative Decree No. 164 of 23 May 2000, the companies holding authorizations for the construction of infrastructures that are part of the Development Plan of the National Electricity Grids, the companies holding authorizations for the realization of electronic communications networks set forth in Legislative Decree No. 259 of 1° August 2003, and the companies that hold individual licenses for the installation and supply of

public telecommunications networks set forth in the above Decree No. 259 of 2003, as well as holders of the authorizations set forth in Article 46 of Law Decree No. 159 of 1° October 2007, converted, with modifications, by Law No. 222 of 29 November 2007. For the purposes of this paragraph, the decree set forth in paragraph 3 shall be adopted together with the Minister of Economic Development.

5. The guarantees, collateral and personal security, and of any other nature including assignments of collateralized credit, for purposes of guarantees assisting the bonds and debt securities can be set up in favor of the underwriters or even of one of their representatives, who shall be entitled to exercise in the name and on behalf of the underwriters all of the substantive and procedural rights related to such guarantees.

6. The provisions set forth in this Article shall not affect Article 194, paragraph 12, of this Code, in relation to the general contractor's right to issue bonds as established herein.

Art. 186. (Preferential credits)

1. The credits of the parties that finance or refinance, in any manner, including by underwriting bonds and similar securities, the realization of public works, works of public interest or the management of public services shall have a general preference, in accordance with Articles 2745 et seq. of the Italian Civil Code, on the moveable assets, including receivables, of the licensee and project company that are licensees or the successful tenderers of public-private partnerships or general contractors, in accordance with Article 194.

2. The preference, on penalty of nullity, must be set forth in a written instrument. The act must precisely describe the original lenders of the receivables, the debtor, the amount of principal of the loan or the line of credit, as well as the elements that constitute the loan.

3. The enforcement by third parties of a preference on assets is subject to the transcription of the act from which the preference arises in the register indicated in Article 1524, paragraph 2, of the Italian Civil Code. The establishment of the preference shall be reported by publication in the Official Journal of the Italian Republic; the notice must indicate the details of the transcription made. The transcription and publication must be made care of the competent offices of the place where the financed company has its registered office.

4. Without prejudice to what is provided by Article 1153 of the Italian Civil Code, the preference can also be exercised with respect to third parties who have acquired rights to the assets that are the object of the preference after the transcription provided in paragraph 3. In the case in which it is not possible to enforce the preference with respect to a third-party buyer, the preference shall be transferred to the consideration.

Art. 187. (Financial leasing of public works or works of public utility)

1. For the realization, acquisition and completion of public works or works of public utility, the principals who must apply this Code can also use financial leasing contracts, which constitute public works contracts, unless the latter have a merely accessory nature with respect to the main object of such contract.

2. In the cases set forth in paragraph 1, the call to tender, without prejudice to the other indications provided by this Code, shall establish the subjective, functional, economic, technical-operational and organizational requirements for participation, the technical and aesthetic characteristics of the work, the costs, timeframe and guarantees for the transaction, as well as the technical and financial-economic assessment parameters of the most advantageous economic offer.

3. The tenderer set forth in paragraph 2 can also be a temporary joint venture composed of the lender and the party carrying out the work, each responsible, in relation to the specific obligation undertaken, or a general contractor. In the case of bankruptcy, breach or the occurrence of any event that would impede compliance with the obligation by one of the two parties that compose the temporary joint venture, the other can substitute it, with the consent of the principal, with another party having the same prerequisites and characteristics.

4. The fulfilment of the commitments of the contracting authority shall, however continue to be conditioned on the positive outcome of the control of the realization and functional management of the work in the manner prescribed.

5. The lender, authorized in accordance with Legislative Decree No. 385 of 1° September 1993 and subsequent modifications, must demonstrate to the contracting authority that it has the necessary means to perform the contract, if such is the case using the resources of other parties, including in temporary joint venture with an operational party. The tenderer can also be a general contractor.

6. The contracting authority shall base the tender at least on a feasibility study. The successful tenderer shall prepare the following design levels and the performance of the work.

7. The work that is the object of the financial leasing contract can follow the regime on public works for urban planning, construction and expropriation purposes; the work can be realized in an area available to the successful tenderer.

Art. 188. (Availability contract)

1. The successful tenderer for the availability contract shall be paid the following consideration, subject to monetary adjustment according to the contractual provisions:

a) an availability fee, to be paid only when the work is effectively available; the fee shall be proportionally reduced or cancelled in periods of reduced availability of the work or its unavailability due to maintenance, defects or any other reason that is not among the risks to be borne by the contracting authority in accordance with paragraph 3;

b) any payment of a contribution while the construction work is being performed, however not to exceed fifty percent of the construction cost for the work, in the case of transfer of ownership to the work to the contracting authority;

c) a possible transfer price, parameterized in relation to the fees already paid and any contribution while the construction work is being performed set forth in clause b) above, at the residual market value of the work, to be paid at the end of the contract, in the case of the transfer of ownership to the work to the contracting authority.

2. The successful tenderer assumes the risk of construction and the technical management of the work for the period it is made available by the contracting authority. The contract shall determine the manner in which risks are allocated among the parties, which might result in changes in the fees due for events impacting the project, realization or technical operation of the work, deriving from intervening binding rules or measures of public authorities. Unless in the case of different contractual provisions and without prejudice to what is set forth in paragraph 5, the risks of construction and the technical management of the work deriving from the lack of or delayed issue of authorizations, opinions, clearance and any other act of an administrative nature shall be borne by the contracting authority.

3. The call to tender shall be published in the manner set forth in Article 72 or Article 36, paragraph 9, depending on the amount del contract, using performance specifications as the basis of the tender procedure prepared by the contracting authority which indicates, in detail, the technical and functional characteristics that the built work must have and the manner for determining the reduction of the availability fee, within the limits set forth in paragraph 6. The tenders must contain a feasibility study corresponding to the characteristics indicated at the time of the tender and be accompanied by the guarantees set forth in Article 93; the successful tenderer must provide the security defined in Article 103. Starting from the date of availability for the successful tenderer, security shall be due to guarantee the penalties related to the breach of or imprecise compliance with all of the contractual obligations related to the availability of the work, to be provided in the amount of ten percent of the annual operating cost and in the manner set forth in Article 103; the failure to provide such security shall be material contractual breach. The contracting authority shall evaluate the tenders submitted using the criterion of the most economically advantageous offer, determined based on the best quality/price ratio. The call to tender shall indicate the criteria, in the order of importance attributed to them, on the basis of which the comparative evaluation shall be made of the different tenders. The costs related to any expropriations shall be considered in the economic framework of investments and financed in the context of the availability contract.

4. The provisions of this Code on the general requirements for participation in the tender and the qualification of the economic operators shall apply to the availability contract.

5. The final project, the executive project and any variants while the work is in progress shall be prepared by the successful tenderer; the successful tenderer is entitled to introduce any variants aimed at greater cost savings for the construction or management, in compliance with the technical-economic feasibility study approved by the contracting authority and the current and

supervening rules and measures of public authorities. The final project, the executive project and variants while the work is in progress shall be approved to all effects by the successful tenderer, upon communication to the contracting authority, which can object within thirty days for cause if they do not comply with the performance specifications, as well as, if prescribed, to the competent third-party authorities. The risk of rejection or delayed approval by the competent third-party authorities of the designs and any variants shall be borne by the successful tenderer. The contracting authority can attribute the successful tenderer with the role of expropriating authority in accordance with the Uniform Text set forth in DPR No. 327 of 8 June 2001.

6. The testing activity, to be done by the contracting authority, shall verify the realization of the work in order to ascertain precise compliance with the specifications and the mandatory rules and provisions, and can propose to the contracting authority, only for such purpose, modifications, variants and the reconditioning of the work performed, or, as long as the essential functional characteristics are ensured, the reduction of the availability fee. The contract shall specify, also as protection of the lender institutions and the holders of the securities issued in accordance with Article 186 of this Code, a limit on the reduction of the availability fee, and after such limit has been exceeded the contract shall be terminated. Fulfilment of its commitments by the contracting authority shall in any case be conditioned on the positive outcome of the control of the realization of the work and its being made available in the manner provided by the availability contract.

Art. 189. (Interventions of horizontal subsidiarity)

1. The areas reserved to urban public greenery and buildings of rural origin, reserved to collective social and cultural activities for the neighborhood, with the exclusion of buildings for scholastic and sports use, transferred to the municipality in the context of the conventions and rules prescribed in implementing urban planning instruments, however named, can be contracted with respect to maintenance management, with a preemption right for citizens residing in the districts object of the above conventions and where the above assets or areas exist, in compliance with principles of non-discrimination, transparency and equal treatment. For such purpose, citizens who are residents can create a district consortium that reaches at least 66 percent of the ownership of the subdivision. The regions and municipalities can provide incentives for the direct management of the areas and property set forth in this paragraph by the citizens who have created consortium, including through the reduction of their taxes.

2. With respect to the realization of works of local interest, groups of organized citizens can formulate operational proposals to the competent territorial local entity that can be promptly realized, in compliance with current urban planning instruments or protection clauses of the urban planning instruments that have been adopted, indicating the costs and means of financing, without costs for such entity. The local entity shall act on the proposal, with the involvement, if necessary, of any parties, entities and offices concerned providing restrictions and assistance. The local entities can prepare specific regulations to regulate the activities and processes set forth in this paragraph.

3. After two months have passed from the presentation of the proposal, such proposal shall be considered to have been rejected. Within the same term the local entity can, with a reasoned decision, provide for approval of the proposals formulated in accordance with paragraph 2, also regulating the essential stages of the realization process and time of execution. The realization of the interventions set forth in paragraphs 2 through 5 that regard buildings subject to historical-artistic or landscape-environmental protection shall be subject to the prior issue of the opinion or authorization required by the provisions of current law. Specifically, the provisions of the Code of Cultural Heritage and Landscape, set forth in Legislative Decree No. 42 of 22 January 2004, shall apply.

4. The works that are realized shall be acquired with an original right as part of the non-transferable patrimony of the competent entity.

5. The realization of the works set forth in paragraph 2 cannot in any case result in fiscal or administrative charges to be borne by the implementing group, except for value added tax. The expenses to formulate the proposals and for the realization of the works shall be, until the implementation of fiscal federalism, allowed as a deduction from the income tax of the parties who have incurred them, to the extent of 36 percent, in compliance with the limits on the amount and in the manner set forth in Article 1 of Law No. 449 of 27 December 1997 and relative implementing measures, and for the period of application of the benefits provided by such Article 1. Subsequently, a deduction from the taxes of the competent entity shall be provided.

6. The above is without prejudice to the provisions set forth in Article 43, paragraphs 1, 2, and 3 of Law No. 449 of 27 December 1997 with respect to the enhancement and increase of the patrimony of urban green areas.

Art. 190. (Administrative barter)

1. The territorial entities shall define by a specific resolution the criteria and conditions for social partnership agreements, based on the projects presented by individuals or associated citizens, as long as chosen in relation to a precise territorial area. The agreements can regard the cleaning, maintenance, landscaping of green areas, squares or roads, or their enhancement through various kinds of cultural initiatives, urban decoration, recovery or reuse having purposes of general interest, of unusable areas and real property. In relation to the type of interventions, the territorial entities shall determine reductions or exemptions from taxes corresponding to the type of activity performed by the private party or association, or which are in any case useful to the community of reference from the standpoint of the recovery of the social value of citizen participation.

Art. 191. (Sale of real property in exchange for work)

1. The call to tender can provide as consideration, in all or in part, for the transfer to the successful tenderer or, if the successful tenderer is interested, to a third party that it indicates, as long as such party has the prerequisites set forth in Article 80, of the ownership to the real property belonging to the contracting authority, already indicated in the three-year program for works or in the pre-information notice for services and supplies, which, based on a reasoned assessment by the contracting authority or contracting entity, no longer has public interest functions.

2. Real property that is already included in divestment plans can also be transferred, as long as prior to the publication of the call to tender or notice of transfer, or if the divestment procedure had a negative result.

2-bis. The value of the real property to be transferred after the tender procedure shall be established by the RUP based on the market value determined through the competent offices that own the property that is the object of the transfer.

3. The call to tender can provide that the transfer of the real property and consequent entry into possession occurs prior to the completion of the work, subject to the provision of a suitable performance bond for a value equal to the value of such real property. The performance bond issued by the parties set forth in Article 93, paragraph 3, shall expressly provide for the waiver of

the benefit of the prior enforcement against the main debtor, waiver of the exception set forth in Article 1957, paragraph 2 of the Italian Civil Code, as well as the enforcement of such guarantee within 15 days upon the simple written request of the contracting authority. The performance bond shall be progressively released in the manner provided with reference to the final security.

TITLE II - IN HOUSE

(see also Legislative Decree No. 175 of 2016)

Art. 192. (Special regime for in-house awards)

1. ANAC shall create, also to guarantee adequate levels of public notice and transparency in public contracts, a list of the contracting authorities and contracting entities operating through direct awards to their in-house companies as set forth in Article 5. Entry in the list is done upon request, after the existence of the prerequisites has been established, in the manner and in accordance with the criteria that the Authority shall determine by its own act. The Authority for the collection of information and control of the above requirements shall act using IT procedures, including through connection, based on specific conventions with the relative systems used by other Public Administrations and other parties operating in the public contracts sector. The application for registration allows the contracting authorities and contracting entities, under their responsibility, to make direct awards of contracts to the instrumental entity. The above is without prejudice to the obligation of publication of the acts related to the direct award in accordance with paragraph 3.

2. For purposes of an in-house award of a contract whose object regards services available in the market in a free market regime, the contracting authorities shall make a prior assessment of the economic fairness of the offer of the in-house parties, considering the object and value of the service, and reporting in the justification of the award measure the reasons why recourse was not made to the market, as well as benefits to society of the prechosen form of management, including with reference to objectives of universality and sociality, efficiency, cost-effectiveness and the quality of the service, as well as the optimum use of public resources.

3., All acts related to the award of public works contracts and concession agreements among entities in the public sector, if not classified as confidential in accordance with Article 162, shall be published and updated, in accordance with the provisions set forth in Legislative Decree No.

33 of 14 March 2013, in open-data format, in the principal's profile in the transparent Administration section.

Art. 193. (Public project company)

1. If the feasibility study of the contracting authority or contracting entity provides, for purposes of the best use of the infrastructure and related assets, for the coordinated activity of various public parties, a program agreement shall be stipulated among such public parties, and, if opportune, through the establishment of a public project company that is nonprofit, including a consortium, held by the contracting parties and by other public parties concerned. The public project company shall be attributed with the necessary powers to realize the work and instrumental or related works, as well as the expropriation of the areas concerned and their use, as well as the use of other sources of self-financing induced by the infrastructure. The public project company shall be the expropriation authority in accordance with the uniform text of the legislative and regulatory provisions on expropriation for public utility set forth in DPR No. 327 of 8 June 2001. The public project company shall realize the work in its name and on behalf of its shareholders and principals, using financing deliberated for such purpose, and shall also act to reduce the cost for the public finance.

2. The provisions of this Code shall be applied by public project companies to carry out the responsibilities set forth in the second clause of paragraph 1.

3. Chambers of commerce and bank foundations can hold interests in the public project company.

4. The public project company shall be established for the purpose of guaranteeing coordination among public parties, aimed at promoting the realization and afterwards the management of the infrastructure, as well as to promote participation in the funding. The company shall be a public law body and a contracting authority pursuant to this Code.

5. The public entities involved with the realization of an infrastructure can participate, through a program agreement, in its financing, including through the transfer to the contracting authority or to the public project company of real property that it owns or has expropriated for such purpose using its own financial resources.

6. For purposes of the financing set forth in paragraph 5, public entities can contribute for the entire duration of the financial-economic plan to the contracting authority or public project company, devolving the proceeds from their own taxes or other sources of income, among which:

a) from municipalities, revenue from additional flows from urbanization or infrastructure charges and IMU [real property tax], induced by the infrastructure;

b) from the chamber of commerce, a share of the registration fee, increased for such purpose, in accordance with Law No. 580 of 29 December 1993.

7. The realization of infrastructures constitutes a permissible sector, with respect to which the bank foundations can allocate income in the manner and forms provided by current law.

8. Private parties interested in the realization of an infrastructure can contribute to it through the transfer of real property that they own or by undertaking to contribute to the expense using specific procedural agreements.

TITLE III - THE GENERAL CONTRACTOR

Art. 194. (Award to a general contractor)

1. By means of a single contract to a general contractor, the contracting authority can award to a party having adequate organizational, technical-implementation and financial capability the realization of the work using any means, in compliance with the needs specified in the final project prepared by the contracting authority and on which the tender is based, in accordance with Article 195, paragraph 2, against consideration paid in all or in part after the completion of the work.

2. The general contractor shall provide for:

- a) the preparation of the executive project and the administrative technical activities necessary for the contracting authority to approve it;
- b) the acquisition of land. The delegation set forth in Article 6, paragraph 8 of DPR No. 327 of 8 June 2001, in the absence of a licensee, can be granted to the general contractor;
- c) the execution of the works using any means;
- d) the pre-financing, in whole or in part, of the work to be realized;
- e) if necessary, the determination of the manner in which the work shall be managed and the selection of the operators;
- f) the indication to the contracting authority of the plan of awards, expropriations, supplies of material and all other elements useful for preventing criminal infiltration, in the manner established by the latter and the relevant competent bodies.

3. The contracting authority shall provide for:

- a) the approval of the executive project and any variants;
- b) the appointment of the site supervisor and testers, as well as high surveillance of the realization of the work, ensuring constant monitoring of the work, including through a permanent committee composed of its representatives and representatives of the contracting party;
- c) the testing the works;
- d) the stipulation of specific agreements with the competent bodies on safety as well as the prevention and repression of crime, aimed at the prior verification of the operational program for the work in view of the subsequent monitoring of all phases of execution of the works and the parties performing it, in any case providing for the adoption of protocols of legality that have specific clauses providing for the undertaking, by the successful tenderer, to denounce any attempts at extortion, with the possibility of evaluating the behavior of the successful tenderer for purposes of the subsequent admission to restricted procedures of the same contracting authority in the case of breach of such requirements. The requirements with which the safety agreements must comply shall be binding for the successful tenderers and the successful firm, which must transfer the relative obligations borne by the companies concerned for any reason in relation to the performance of the work. The monitoring measures for the prevention and repression of attempts at mafia infiltration include the control of financial flows related to the realization of the work, including those relating to resources that are entirely or partially to be borne by the promoters in accordance with Article 183 and those deriving from the implementation of any other means of project financing. The costs relating to financial monitoring shall be included in the flat rate set forth in paragraph 20.

4. The general contractor shall be responsible with respect to the contracting authority for the correct and timely execution of the work, according to the following provisions of this Chapter. The relationship between the contracting authority and general contractor shall be governed by the rules of Part I and Part II, which represent implementation of Directive 2014/24/EU or by the rules of Part III, the acts of the tender and by the provisions of the Italian Civil Code regulating the contract.

5. Article 63 shall not apply to variants of the project awarded to the general contractor, which shall be subject to the rules set forth in Part II, which represent implementation of Directive 2014/24/EU, or by the rules of Part III and by the following provisions:

a) the general contractor shall be responsible for any variants required to correct defects or integrate omissions of the executive project prepared by it and approved by the contracting authority, whereas the contracting authority shall be responsible for any variants induced by force majeure or intervening prohibitions of law or third-party entities, or which are in any case requested by the contracting authority;

b) other than the cases set forth in clause a), the general contractor can propose to the contracting authority planning variants or technical modifications that it considers to be useful for reducing the time or cost for the realization of the works. The contracting authority can refuse to approve the variants or technical modifications if they do not comply with the technical specifications and needs of the contracting authority, specified in the project on which the tender is based, or which could in any case result in a worsening of the functionality, durability, maintainability and safety of the works, or result in increased costs to be borne by the contracting authority or delay of the completion deadline.

6. The general contractor shall provide for the uniform performance of the activities set forth in paragraph 2 directly or, if constituted by more parties, by means of the project company set forth in paragraph 10. The relationship of the general contractor with third parties are relationships governed by private law to which this Code does not apply, except for what is provided in this Chapter. The provisions set forth in Part I and Part II shall apply to the general contractor who is also the contracting authority or contracting entity, as well as Title I which represents implementation of Directive 2014/24, or the provisions set forth in Part III.

7. The general contractor can perform the awarded work directly, within the limits of the qualification it holds, or by entrusting third parties. The third parties entrusted with the work of the general contractor must in turn have the qualification prerequisites provided by Article 84, and they can sub-contract the work within the limits and on the conditions provided for contractors of public works. Article 105 shall apply to such sub-contracts.

8. The award to the general contractor, as well as the award and sub-contracting of the work of the general contractor, shall be subject to anti-mafia controls in the manner provided for public works.

9. Before making any payment to the general contractor, the contracting authority shall control, including the issue of any progress reports, proper compliance with the general contractor's contractual obligations to its subcontractors: if it appears that the general contractor is in breach, the contracting authority shall apply a deduction on subsequent payments and shall make direct payment to the subcontractor, as well as apply any different sanctions provided for in the contract.

10. When the general contractor is composed of different parties, it shall establish a project company in the form of a company, including a consortium, a share capital company or a limited liability company to perform the work. The company shall be governed by Article 184 and by the following provisions of this Article. In addition to the parties that compose the general contractor, the financial, insurance and operational technical institutions previously indicated at the time of the tender can have stakes in the company. The company, composed as above, shall succeed the general contractor in the relationship without any authorization, except for anti-mafia controls and without the subentry constituting an assignment of the contract. Unless the contract provides otherwise, the parties that compose the general contractor shall remain jointly liable with the project company with respect to the contracting authority for the successful performance of the contract. Alternatively, the project company can provide the contracting authority with bank and insurance guarantees for the repayment of the amounts received while the work is being performed, thus freeing its shareholders. Such guarantees shall terminate on the date of issue of the testing certificate for the work. The minimum capital of the project company shall be indicated in the call to tender.

11. The contract shall establish the manner in which any shares of the project company are transferred, except that the shareholders who hold stakes to satisfy the qualification prerequisites must participate in the company and guarantee, within the limits of the contract, proper compliance with the obligations of the general contractor, until the work has been realized and tested. The entry in the project company as well as the divestment of holdings by banking institutes and other institutional investors who have not participated to satisfy the qualification prerequisites can, however, take place at any time. The contracting authority cannot oppose assignments of receivables made by the general contractor in the case set forth in Article 106, paragraph 13.

12. The call to tender shall determine the share of the value of the work that can be realized by the general contractor through advance payment using its resources and the timeframe and manner of payment of the price. The balance of the share of the consideration withheld for such purpose must be paid upon the completion of the work. To finance the above share, the general contractor or the project company can issue bonds, upon the authorization of the supervisory authorities, including in derogation of the limits set forth in Article 2412 of the Italian Civil Code. The contracting authority shall guarantee the payment of the bonds issued, within the limits of its debt towards the general contractor which appears from the progress reports issued, or from the final account or from the testing certificate for the work. The bonds guaranteed by

the contracting authority can be used to create the bank or insurance reserves provided by current legislation. The manner in which the guarantee set forth in the third clause of this paragraph operates shall be established by a decree of the Minister of the Economy and Finance, together with the Minister of Infrastructures and Transportation. The guarantees provided by the State in accordance with this paragraph shall be inserted in the list annexed to the budget of the Ministry of the Economy and Finance.

13. The receivables of the project company, including those constituted by the licensees in accordance with Article 184 with respect to the contracting authority, can be assigned in accordance with Article 106, paragraph 13. The assignment can regard receivables that are not yet liquid and enforceable.

14. The assignment must be stipulated by means of a public act or authenticated private instrument and must be served on the assigned debtor. The act that is served must expressly indicate whether the assignment is made with respect to a loan that is without recourse or with limited recourse.

15. The contracting authority shall pay the amount of the services provided and pre-financed by the general contractor by the issue of a payment certificate enforceable upon the expiration of the pre-financing in accordance with the contractual provisions. With respect only to the receivables set forth in this paragraph that are assigned in exchange for loans that are without recourse or with limited recourse, the issue of the certificate of payment constitutes definitive acknowledgment of the credit of the lender assignee. No objection can be made to the assignee of payment of the share of the pre-financing that is acknowledged deriving from the relationship between the debtor and the assignor creditor, including settlement with receivables deriving from compliance with such contract or with any other receivable with respect to the assignor general contractor.

16. The call to tender shall indicate the final date of payment of the receivables acknowledged to be final in accordance with paragraph 15, in all cases of the lack of or delayed completion of the work.

17. For awards for which there are receivables acknowledged as being final in accordance with paragraph 15:

a) if the guarantees set forth in Article 104 have already been reduced or the reduction is expressly provided by the guarantee that is given, the final acknowledgment of the receivable shall not be operative if the guarantee is not restored and the provision of reduction deleted from the guarantee;

b) (repealed)

18. The general contractor shall provide the guarantees set forth in Article 104.

19. The specifications shall provide, among others:

- a) the manner and timeframe, during the phase of the development and approval of the executive project, of the preparatory services related to the work and the site preparation, if authorized;
- b) the manner and time schedule for the payment of accruals of the consideration due to the general contractor for the services performed prior to the initiation of the work, relating in particular to the design activities and services set forth in clause a).

20. The contracting authority shall indicate a flat rate in the call to tender that is not subject to bid price discounts, corresponding to the overall amount of the work according to the preliminary valuations that the general contractor must include in the bid made at the time of the tender, to be used to implement suitable measures aimed at achieving the objectives of prevention and repression of crime and attempts at mafia infiltrations, in accordance with paragraph 3, clause d) and Article 203, paragraph 1. In the project on which the tender is based, in accordance with Article 195, paragraph 2, that is prepared by the contracting authority, the amount corresponding to such rate shall be included in the available amounts of the economic framework, and a preliminary report shall be included that accompanies the project, indicating the articulation of the above measures, as well as a cost estimate. Such estimate shall be carried forward to the subsequent planning stages. Technical variations to implement the measures in question, that may be proposed by the general contractor at any stage of the work cannot be a reason for increased costs to be borne by the contracting authority. If the final project is produced due to the promoter's initiative, the latter shall prepare a similar articulation of the measures in question, with the relative indication of costs, not subject to bid price discounts, and inserted in the amounts available to the administration. The provisions of this paragraph shall also apply, to the extent compatible, in cases of awards through concession.

Art. 195. (Tender procedure for the general contractor)

1. The choice to grant an award by means of an award to the general contractor must be justified by the contracting authority based on complexity and other needs, in order to guarantee a high level of quality, safety and cost effectiveness. The contracting authorities cannot, however, proceed with an award to the general contractor if the amount of the award is equal to or greater than 100 million Euro.
2. For an award to the general contractor, the final project shall be used as the basis for the tender.

3. The contracting authorities can establish and indicate in the call to tender, in relation to the importance and complexity of the works to be realized, the minimum and maximum number of tenderers who shall be invited to present tenders. If the applications for participation exceed the above maximum number, the contracting authorities shall determine which parties to invite, preparing a merit ranking based on objective, nondiscriminatory criteria that are relevant to the object of the contract, which shall be predefined in the call to tender. In any case, the minimum number to be invited may not be less than five, if there are that number of qualified parties. In any case, the number of candidates invited must be sufficient to ensure effective competition.
4. The award of the contracts set forth in paragraph 1 shall be made according to the criterion of the most economically advantageous offer, chosen, in addition to being based on the criteria set forth in Article 95, by also taking account of:
 - a) the technical and aesthetic value of the variants;
 - b) the greater amount of the pre-financing that the candidate is able to offer with respect to that envisaged by the call to tender;
 - c) any further elements identified in relation to the specific nature of the works to be realized.
5. The provisions of Part II, Title VI shall apply, to the extent not provided for by this Article, to the contracting authorities in the sectors provided for in Articles 115 through 121.
6. The provisions of Part II, Titles I, II, III and IV shall apply to all other contracting authorities, to the extent not provided for by this Article.

Art. 196. (Controls on performance and testing)

1. The testing of the infrastructures shall be done in the manner and within the term set forth in Article 102.
2. For infrastructures of great significance or complexity, the contracting authority can authorize the testing commissions to use the support and investigation services of specialized parties in the sector. The relative costs shall be borne by the funds available to the contracting authority for the realization of the above infrastructures in the manner and within the limits established by a decree of the Minister of Infrastructures and Transportation, together with the Minister of the Economy and Finance. The contractor entrusted with testing support cannot have any relationship with the party that designed, directed, supervised or realized all or part of the infrastructure.
3. With respect to public works contracts, awarded using the formula of the general contractor, a mandatory national list shall be created at the Ministry of Infrastructures and Transportation of

the parties who can respectively act as site supervisor and director of testing. Their appointment in the procurement procedures shall be made by public drawing from a list of candidates indicated by the contracting authorities in a number that is at least three times that for each role to be covered and which also provides that the costs to maintain the register shall be borne by the parties concerned.

4. A Decree of the Minister of Infrastructures and Transportation, to be adopted within six months from the date this Code enters into force, shall regulate the criteria, the specific prerequisites of morality, skill and professionalism, the manner of registration in the register as well as the fees to be paid, which cannot exceed the limits set forth in Articles 23-*bis* and 23-*ter* of Law Decree No. 201 of 6 December 2011, converted, with modifications, by Law No. 214 of 22 December 2011 and subsequent modifications, and Article 13 of Law Decree No. 66 of 24 April 2014, converted, with modifications, by Law No. 89 of 23 June 2014. Article 216, paragraph 21 shall apply until the date of entry in force of the Decree set forth in paragraph 4.

Art. 197. (Qualification system for the general contractor)

1. The certification that the general contractor has the necessary prerequisites shall be made in the manner set forth in Article 84. The qualification can be requested by individual firms in the form of commercial companies or cooperatives, by consortium of manufacturing and labor cooperatives provided by Law No. 422 of 25 June 1909 and by the Legislative Decree No. 1577 of the temporary Head of State of 14 December 1947 and subsequent modifications, or by the stable consortium set forth in Article 45, paragraph 2, clause c).

2. General contractors shall be qualified by classification, with reference to the gross amount of the awards for which they can compete. The general contractors cannot compete for awards of a gross amount that is greater than that of their enrollment classification, certified using the system set forth in this Article or documented in accordance with Article 45, except for the right to be associated with another general contractor.

3. The qualification classifications shall be determined by ANAC (in effect, they are determined by a Decree of MIT in accordance with Art. 199 – reporter’s note).

4. Prerequisites for general contractors to be able to participate in the tender, in addition to the lack of reasons for exclusion set forth in Article 80, include additional requirements of adequate economic and financial capacity, adequate technical and organizational suitability, as well as adequate technical and managerial staff. Such further requirements shall be determined using the guidelines adopted by ANAC (in effect, they are determined by a Decree of MIT in accordance with Art. 199 – reporter’s note).

Art. 198. (Rules for participation in the tender of the general contractor)

1. The contracting authorities are entitled to require, for the individual tenders:
 - a) that the tenderer demonstrates the absence of the reasons for exclusion set forth in Article 80. The control of the existence of the general prerequisites shall always be performed with respect to the successful tenderer;
 - b) that the tenderer demonstrates, through consolidated financial statements and suitable bank statements, the availability of financial resources for the pre-financing, proportional to the work to be realized;
 - c) that the successful tenderer selected at the time of the tender or by the tenderer itself has the specific technical skills required for the work to be realized and the economic financial and organizational technical requisites suitable for the project to be prepared.
2. Affiliated companies in accordance with Article 7 cannot compete in the same tender. It is forbidden for participants to participate in the tender in more than one temporary joint venture or consortium, or to compete in the tender in individual form, if they participated in such tender in association or as a consortium, including a stable consortium.
3. The general contractors having adequate and competent qualification classification to participate in the tenders, can participate in the tender in association or consortiums with other companies as long as the latter are allowed, for any classification, in the qualification system or can be qualified, for any classification. Associated companies or those in a consortium can contribute to establishing the prerequisites set forth in paragraph 1.

Art. 199. (Management of the qualification system for the general contractor)

1. The certification that the general contractor has the necessary prerequisites shall be issued in accordance with what is set forth in Article 197 and shall be determined in the context of the qualification system provided by such Article.
2. In the case of delay in issuing the certification attributable to the SOA, the expired certification shall remain valid for the purpose of participating in the tenders and to sign contracts, until the issue of the renewed certification.
3. The certifications that the prerequisites have been satisfied issued by the Ministry of Infrastructures and Transportation shall be valid for a period of three years.

4. The Ministry of Infrastructures and Transportation shall also issue the certification set forth in paragraph 1 for requests received as of the date of entry into force of this Code, as well as those that are received until the entry into force of the Decree set forth in Article 83, paragraph 2. Such Decree also establishes the assessment criteria by the contracting authority of the certificates presented at the time of tenders for the sole award to a general contractor, during the period of coexistence of the qualification certificates issued by the Ministry of Infrastructures and Transportation and those issued in the manner set forth in Article 84.

PART V - INFRASTRUCTURES AND PRIORITY SETTLEMENTS

Art. 200. (General Provisions)

1. The infrastructures and priority settlements for the development of Italy shall be assessed and consequently inserted in the specific planning and programming instruments set forth in the following Articles, by the Ministry of Infrastructures and Transportation.

2. The realization of the works and infrastructures set forth in this Article is subject to:

a) a building and management concession;

b) the sole award to a general contractor;

c) project financing;

d) any other form of award provided by this Code that is compatible with the type of work to be rea

3. At the time of the initial determination of the infrastructures and settlements set forth in paragraph 1, the Minister of Infrastructures and Transportation shall prepare a survey of all of the works already included in the planning and programming instruments, regardless of how they are named, current as of the date of the entry into force of this Code. Upon the outcome of such survey, the Minister shall propose the list of the works to be inserted in the first multiannual planning document, whose content considers what is indicated in Article 201, paragraph 3, which shall replace all of the above instruments. The survey must, in any case, include interventions that involve binding legal obligations. Binding legal obligations are considered to be those related to interventions in relation to which the contract has already been approved after a tender for the realization of the work, as well as those that are the object of international agreements signed by Italy.

Art. 201. (Planning and programming instruments)

1. For purposes of identifying the infrastructures and priority settlements for the development of Italy, the following general planning and programming instruments shall be used:

a) general transportation and logistics plan;

b) multiannual planning document, set forth in Article 2, paragraph 1, of Legislative Decree No. 228 of 29 December 2011.

2. The general transportation and logistics plan (PGTL) contains the strategic guidelines for the policies on the mobility of persons and goods as well as the infrastructure development of Italy. The plan shall be adopted every three years, upon a proposal of the Minister of Infrastructures and Transportation, by Decree of the President of the Republic, after a resolution of CIPE, and after obtaining the opinion of the Unified Conference and having heard the competent Parliamentary Commissions.

3. The Multiannual Planning Document (DPP) set forth in Legislative Decree No. 228 of 29 December 2011, for which the Ministry of Infrastructures and Transportation is responsible, in addition to what is established by paragraph 2 of Article 2 of Legislative Decree No. 228 of 2011, shall contain the list of the infrastructures and priority settlements for the development of Italy, including interventions related to the transportation and logistics sector whose feasibility plan is considered to be worthy of financing, to be realized consistently with the PGTL. The DPP shall take into account the working plans for each national thematic area established by the Steering Committee set forth in Article 1, paragraph 703, clause c), of Law No. 190 of 23 December 2014.

4. The DPP shall be prepared in accordance with Article 10, paragraph 8, of Law No. 196 of 31 December 2009, and shall be approved in accordance with the procedures and in compliance with the timeframe set forth in Article 2, paragraphs 5 and 6, of Legislative Decree No. 228 of 2011, having heard the Unified Conference set forth in Article 8 of Legislative Decree No. 281 of 28 August 1997, and the competent Parliamentary Commissions.

5. The Regions, Autonomous Provinces, Metropolitan Cities and the other competent entities shall send the Ministry of Infrastructures and Transportation proposals for infrastructures and priority settlements for the development of Italy for purposes of inclusion in the DPP, giving priority to the completion of unfinished works, including the feasibility study, prepared in accordance with what is provided by the Decree set forth in Article 23, paragraph 3, and accompanied by the documentation indicated in the guidelines set forth in Article 8 of Legislative Decree No. 228 of 2011. The Ministry, after controlling the grounds of the prior assessment of the intervention made by the proponent, the overall consistency of the proposed intervention as well as its functionality, including with respect to achievement of the objectives indicated in the PGTL, and if it deems it priority, can insert it in the DPP.

6. The Ministry of Infrastructures and Transportation shall prepare a detailed annual report on the progress of the interventions included in the DPP; the report shall be annexed to the Economic and Financial Document. For such purpose, the contracting authority, within thirty days after the approval of the final project, shall send the Ministry of Infrastructures and Transportation a summary statement conforming to the model approved by such Ministry by a specific Decree containing the highlights of the project and, in particular, the costs, timeframe, and technical performance characteristics of the work, as well as any variations made with respect to the feasibility study.

7. The initial DPP to be approved, within one year from the entry into force of this Code, shall contain the list of the infrastructures and priority settlements set forth in paragraph 3 and shall be prepared in derogation from the procedures set forth in paragraph 5. Notwithstanding what is provided by Article 200, paragraph 3, during the approval process of the PGTL in accordance with paragraph 1, the initial DPP shall contain the strategic guidelines and orientation for the transportation and infrastructures sector as well as a list of the interventions of the initial DPP that are consistent with them.

8. (repealed)

9. Until approval of the initial DPP, the planning and programming instruments and plans, regardless of what they are named, that have already approved in accordance with applicable procedures as of the date of entry into force of this Code, or in relation to which a commitment has been made with the competent bodies of the European Union, shall be considered to be investment programs for infrastructures and transportation.

10. At the time of preparation of the DPP following the initial DPP, a revision shall also be made of the interventions inserted in the prior DPP, in such a way as to avoid any overlapping between the programming instruments. The Minister of Infrastructures and Transportation shall evaluate the reinsertion of each individual intervention in every DPP, including in relation to the permanence of the public interest in its realization, as well as through the assessment of financial-economic feasibility and considering binding legal obligations. Specifically, for such purpose it shall consider the works whose realization has not initiated, with reference to a significant part, or for which the cost of the intervention indicated in the executive project is greater by more than twenty percent than its cost indicated in the feasibility study. The Minister of Infrastructures and Transportation can propose including or excluding work from such Programming Document even beyond the timeframe for the periodic approval of the DPP set forth in paragraph 2 of Article 2 of Legislative Decree No. 228 of 2011, by means of the procedure provided for each approval, if there are exceptional or nevertheless unforeseeable factors or factors that could not be anticipated when the DPP was prepared that render such work necessary.

Art. 202. (Financing and reprogramming of resources for priority infrastructures)

1. To improve the capacity of programming and reprogramming spending for the realization of infrastructures of preeminent national interest, consistently with Article 10, paragraphs 2 and 4, of Legislative Decree No. 229 of 29 December 2011, the following shall be created in the budget of the Ministry of Infrastructures and Transportation:
 - a) a Fund for the feasibility design of infrastructures and priority settlements for the development of Italy, as well as for the project review of the infrastructures already financed;
 - b) a Fund to be allocated for the realization of the infrastructures and priority settlements for the development of Italy.
2. The funds set forth in paragraph 1 can provide for compensatory changes by decrees of the Minister of the Economy and Finance, upon a proposal of the Minister of Infrastructures and Transportation.
3. At the time of their initial implementation, the Funds set forth in paragraph 1, clauses a) and b) shall receive the available resources set forth in Article 32, paragraphs 1 and 6, of Law Decree No. 98 of 6 July 2011, converted with modifications in Law No. 111 of 15 July 2011, set forth in Article 18, paragraph 1, of Law Decree No. 69 of 21 June 2013, converted with modifications in Law No. 98 of 9 August 2013, as well as the available resources recorded among capital in the budget of the Ministry of Infrastructures and Transportation called "Fund to be allocated for the design and realization of strategic works of preeminent national interest as well as for works for the collection and conveyance of water resources". The determination of the resources assigned to the funds set forth in paragraph 1 shall be established by one or more decrees of the Minister of Infrastructures and Transportation together with the Minister of the Economy and Finance, upon an opinion of CIPE.
4. One or more decrees of the Minister of Infrastructures and Transportation shall establish:
 - a) the procedures for receiving financing for the feasibility study;
 - b) the allocation of the resources of the Design Fund set forth in paragraph 1, clause a) to the various projects, as well as the procedures for revocation.
5. By one or more decrees of the Minister of Infrastructures and Transportation, together with the Minister of the Economy and Finance, the resources of the Fund shall be transferred for the realization of the infrastructures set forth in paragraph 1, clause b), allocated by CIPE to the various interventions upon a proposal of the Minister of Infrastructures and Transportation, together with the Ministry of the Economy and Finance.

6. For purposes of reprogramming the allocation of resources, to be done by one or more resolutions of CIPE, upon a proposal of the Minister of Infrastructures and Transportation together with the Minister of the Economy and Finance, on the basis of criteria established in the Multiannual Planning Document provided by Article 2 of Legislative Decree No. 228 of 29 December 2011 and subsequent modifications, as well as due to the effect of the project review, the loans to be revoked shall be identified, whose allocations are recorded in the budget of the Ministry of Infrastructures and Transportation for the works of preeminent national interest set forth in Law No. 442 of 21 December 2001, including the "Fund to be allocated for the design and realization of strategic works of preeminent national interest as well as works for the collection and conveyance of water resources". The annual share of the limits on use and the contributions that are revoked shall flow to the Fund set forth in paragraph 1, clause b) for subsequent reallocation by CIPE, upon a proposal of the Minister of Infrastructures and Transportation.

7. The amounts related to loans that are revoked in accordance with this Article recorded in the residuals account shall be paid to the revenue side of the State budget, and then reallocated, compatibly with the stability of the public finance, to the Fund set forth in paragraph 1, clause b).

8. The provisions set forth in this Article shall not apply to write-offs.

9. The Minister of the Economy and Finance is authorized to make, by means of its own decrees, the necessary variations to the budget in terms of residuals, accruals and cash in order to implement this Article.

Art. 203. (Monitoring the infrastructures and priority settlements)

1. By means of a decree of the Minister of the Interior, together with the Minister of Justice and with the Minister of Infrastructures and Transportation, the procedures shall be identified to monitor the infrastructures and priority settlements for the prevention and repression of attempts at mafia infiltration, for which a special Coordination Committee shall be established at the Ministry of the Interior. While the adoption of the decree set forth in clause 1 is pending, the provisions of the Decree of the Ministry of the Interior of 14 March 2003, published in Official Journal No. 54 of 5 March 2004 and subsequent modifications shall continue to be applied, including to the works subject to such monitoring as of the date of entry into force of this Code.

2. Further, the terms and procedures of financial monitoring set forth in Article 36 of Law Decree No. 90 of 24 June 2014, converted with modifications by Law No. 114 of 11 August 2014, shall apply.

PART VI – FINAL AND TRANSITORY PROVISIONS

TITLE I - DISPUTES

CHAPTER I – JUDICIAL REMEDIES

Art. 204. (Judicial Remedies)

1. The following modifications shall be made to Article 120 of the Code on Administrative Procedure, set forth in Annex 1 to Legislative Decree No. 104 of 2 July 2010:

a) in paragraph 1 the words «as well as the related measures of the Supervisory Authority for public works, services and supplies contracts» shall be substituted by the words «as well as the measures of the National Anticorruption Authority related to them»;

b) the following shall be added after paragraph 2:

«2-bis. The measure that results in exclusions from the tender process or admissions to it after the evaluation of the subjective, financial-economic and technical-professional requirements shall be appealed within the term of thirty days, starting from its publication on the profile of the contracting authority's client, in accordance with Article 29, paragraph 1, of the Code on Public Contracts adopted as implementation of Law No. 11 of 28 January 2016. The failure to appeal precludes the right to enforce the derivative unlawfulness of the subsequent acts of the tender, including by cross-appeal. The appeal of the proposal of an award, if made, and of other acts during the proceedings that are not immediately harmful shall also be inadmissible»;

c) in paragraph 5, the words: «by appeal» shall be substituted by the following: «Except for what is provided in paragraph 6-bis for appeals»;

d) the following shall be inserted after paragraph 6:

«6-bis. In the cases provided in paragraph 2-bis, the decision shall be made in chambers, to be held within thirty days from the expiration of the term for the appearance of the parties other than the petitioner. Upon the request of the parties the appeal shall be decided, within the same term, in a public hearing. The decree establishing the hearing shall be communicated to the parties fifteen days before the hearing. The parties can produce documents until ten clear days before the hearing, briefs until six clear days beforehand, and can file replies to new documents and new briefs filed in view of the hearing in chambers until three clear days beforehand. The chambers or hearing can be adjourned only in the case of evidentiary need, to integrate the adversarial

procedure, to propose additional grounds or to propose cross-appeals. The evidentiary order shall establish a term for documents to be filed that does not exceed three days starting from the communication or, if prior, notification of it. The new hearing in chambers must be established within fifteen days. The cancellation of the proceedings from the docket cannot be ordered. The appeal must be filed within thirty days from the communication, or if prior, from the notification of the judgment and the long term shall not be applied starting from its publication»;

e) in paragraph 7, the words: «new» shall be substituted by the following: «With the exception of the cases provided by paragraph 2-*bis*, the new»;

f) the following shall be inserted after paragraph 8-*bis*:

«8-*ter*. In making a precautionary ruling, the court shall consider what is provided by Articles 121, paragraph 1 and 122, and the imperative needs related to a general interest in the contractual performance, reporting this in the grounds for the judgment»;

g) in paragraph 9 the words «, except for the possibility to request the immediate publication of the ruling within two days.» shall be substituted by the words «; the parties can request the early publication of the ruling, which shall be done within two days from the hearing.». After the first clause of paragraph 9, the following shall be inserted: «In the cases provided by paragraph 6-*bis*, the regional administrative court shall file the judgment within seven days from the hearing of the arguments, whether public or in chambers; the parties can request the early publication of the ruling, which shall be done within two days of the hearing.»;

h) in paragraph 11, the words: «The provisions of paragraphs 3, 6, 8 and 10» shall be substituted by the following: «The provisions of paragraphs 2-*bis*, 3, 6, 6-*bis*, 8, 8-*bis*, 8-*ter*, 9, second clause and 10»;

i) the following shall be inserted after paragraph 11:

«11-*bis*. In the case of the submission of tenders for more than one lot, the appeal shall be made by a cumulative petition only if identical reasons for the appeal against the same act are argued.».

CHAPTER II - ALTERNATIVE REMEDIES TO JUDICIAL PROTECTION

Art. 205. (Amicable agreement for the works)

1. With respect to the public works set forth in Part II, and with the exclusion of the contracts set forth in Part IV, Title III, awarded by contracting authorities and contracting entities, or by the licensees, if after recording reservations of rights in the accounting documents the economic

value of the work might vary between 5 and 15 percent of the contractual amount, the provisions set forth in paragraphs 2 through 6 shall apply in order to reach an amicable agreement.

2. The procedure for an amicable agreement shall regard all of the reservations of rights recorded until the time of the initiation of such procedure and can be reiterated when the recorded reservation of rights, which are additional and different with respect to those already reviewed, again reach the amount set forth in paragraph 1, within the scope, however, of the overall maximum limit of 15 percent of the contractual amount. The requests to enforce claims that were already the object of reservations of rights cannot be proposed for amounts that are greater than those quantified in such reservations of rights. Design aspects that were the object of control pursuant to Article 26 cannot be the object of a reservation of a right. Before approval of the testing certificate or the control of conformity or the certificate of completion of the work, regardless of the amount of the reservation of rights, the sole person in charge of the procedure shall initiate the procedure for an amicable agreement to resolve the registered reservations of rights.

3. The site manager or contract manager shall immediately communicate to the sole person in charge of the procedure the reservations of rights set forth in paragraph 1 and shall send his own confidential report in the shortest amount of time possible.

4. The sole person responsible for the procedure shall assess the admissibility of the reservation of rights and that it is not manifestly groundless for the effective attainment of the value limit set forth in paragraph 1.

5. The sole person in charge of the proceedings, within 15 days from the communication set forth in paragraph 3, having obtained the confidential report of the site supervisor and, if there is one, of the testing body, can request the Chamber of Arbitration to indicate a list of five experts having specific competence in relation to the object of the contract. The sole person in charge of the procedure and the party that formulated the reservation of rights shall jointly select from the list the expert to be entrusted with the formulation of a reasoned proposal for an amicable agreement. In the case of the failure to agree between the sole person in charge of the proceedings and the party who formulated the reservation of rights within fifteen days from the transmission of the list, the expert shall be appointed by the Chamber of Arbitration, which shall also establish his remuneration, using as a reference the limits established by the Decree set forth in Article 209, paragraph 16. The proposal shall be formulated by the expert within ninety days from appointment. If the RUP does not request the appointment of an expert, the proposal shall be formulated by the RUP within ninety days from the communication set forth in paragraph 3.

6. The expert, if appointed, or the RUP, shall verify the reservation of rights together with the party that formulated it, conduct further hearings, prepare the matter, including by collecting data and information and obtaining other opinions, and, after having determined and verified the

availability of suitable economic resources, shall make a proposal for an amicable agreement that shall be sent to the competent manager of the contracting authority and to the party that formulated the reservation of rights. If the proposal is accepted by the parties within forty-five days from its receipt, the amicable agreement shall be concluded and a record shall be prepared to be signed by the parties. The agreement has the nature of a settlement. With respect to the amounts recognized at the time of the amicable agreement, interest shall be due at the legal rate starting from the sixtieth day following the acceptance of the amicable agreement by the contracting authority. If the proposal is rejected by the party that formulated the reservation of rights or after the term set forth in the second clause has expired without result, recourse can be made to arbitration or to the ordinary court.

6-bis. In the case of the rejection of the proposal for an amicable agreement or after the term has expired for acceptance without any result, the company can initiate legal proceedings within the following sixty days, on penalty of forfeiture.

Art. 206. (Amicable agreement for services and supplies)

1. The provisions set forth in Article 205 shall also apply, to the extent compatible, to contracts for the supply of goods on an ongoing or periodic basis, and for services, when controversies arise during the operational phase that regard the precise performance of the supplies or services due.

Art. 207. (Technical consulting board) (repealed)

Art. 208. (Settlement)

1. The controversies related to subjective rights deriving from the performance of public contracts for works, services and supplies can be resolved through settlement in compliance with the Italian Civil Code, only and exclusively in the case in which it is not possible to attempt other remedies as an alternative to legal action.

2. If the value of the amount object of the concession or waiver exceeds 100,000 Euro, or 200,000 Euro in the case of public works, the legal opinion of the *Avvocatura dello Stato* [Attorney General's Office] must be obtained if it regards central administrations, or of an in-house attorney of the structure, or the highest level official competent for the dispute, or if there is no in-house attorney, when the issue regards sub-central administrations.

3. The proposal for a settlement can be formulated both by the successful tenderer as well as by the competent manager, after hearing the sole person in charge of the procedure.
4. The settlement must be in writing on penalty of nullity.

Art. 209. (Arbitration)

1. Controversies on subjective rights deriving from the performance of public contracts related to works, services, supplies, design and creative competitions, including those consequent to the failure to reach an amicable agreement set forth in Articles 205 and 206, shall be referred to arbitration. In accordance with Article 1, paragraph 20 of Law No. 190 of 6 November 2012, arbitration shall also be used for controversies related to concessions and public contracts for works, services and supplies in which a publicly owned company, or a subsidiary or affiliate of a publicly owned company, is a party, in accordance with Article 2359 of the Italian Civil Code, or which in any case has as its object works or supplies financed with resources covered by the public budget.
2. The contracting authority shall indicate in the call to tender or notice with which it calls the tender or, for the procedures without a call to tender, in the invitation, regardless of whether the contract contains an arbitration clause. The successful tenderer can reject the arbitration clause, which in such case shall not be included in the contract, communicating this to the contracting authority within twenty days from its knowledge of the award of the tender. In any case, arbitration shall be prohibited.
3. An arbitration clause inserted without authorization in the call to tender or in the notice with which the tender is called or, for procedures without a call to tender, in the invitation, shall be null. The clause shall be inserted upon reasoned authorization by the contracting authority's governing body.
4. The arbitration board shall be composed of three members and shall be appointed by the Chamber of Arbitration set forth in Article 210. Each of the parties, in the request for arbitration or in the act opposing the request, shall designate the arbitrator of its choice selected from among parties of proven experience and independence in the matter that is the object of the contract to which the arbitration refers. The Chairman of the arbitration board shall be nominated and appointed by the Chamber of Arbitration, chosen from among the persons registered in the list set forth in paragraph 2 of cited Article 211, who has specific experience in the matter that is the object of the contract to which the arbitration refers.
5. The appointment of the arbitrators for the resolution of controversies in which a public administration is a party shall be made in compliance with principles of public notice and rotation, as well as in compliance with the provisions of this Code. If the controversy is between

two public administrations, the arbitrator of the party shall be chosen from among public managers. If the controversy is between a public administration and a private party, the arbitrator for the public administration shall preferably be chosen from among public managers. In both cases, if the Administration decides by means of a reasoned act that it cannot select the arbitrator from among public managers, the selection shall be made from among the persons registered in the list.

6. Without prejudice to what is provided by Article 815 of the Italian Code of Civil Procedure, the following cannot be appointed:

- a) ordinary magistrates, administrative accountants and military personnel regardless of whether they are in service, as well as State attorneys and prosecutors regardless of whether they are in service, and members of tax commissions;
- b) anyone who during the past three years exercised the functions as arbitrator for a party or defense counsel in arbitrations governed by this Article, except for cases in which the exercise of the defense constitutes compliance with the lawful duties of the defense counsel who is a public employee;
- c) anyone who, prior to retirement, dealt with appeals in a civil, criminal, administrative or accounting setting that were filed by the party who requested the arbitration;
- d) anyone who has expressed an opinion, for whatever reason, in the matters that are the object of the arbitration;
- e) anyone who prepared the project or the specifications for the tender or who gave an opinion on it;
- f) anyone who directed, supervised or tested the works, services, or the supplies to which the controversies refer;
- g) anyone who participated for any reason in the procedure for which the arbitration is in course.

7. The appointment of the arbitration board in breach of the provisions set forth in paragraphs 4, 5 and 6 shall render the arbitral award null.

8. For purposes of the appointment of the panel, the request for arbitration, the opposition brief and any counter arguments shall be sent to the Chamber of Arbitration. The selections made by the parties shall also be transmitted. At the same time as the appointment of the Chairman, the Chamber of Arbitration shall communicate to the parties the amount and manner in which the deposit is to be paid on account for the arbitration costs. The Chairman of the arbitration board shall appoint a secretary, if necessary, who shall also be chosen from among ANAC's internal staff.

9. The parties shall decide the venue of the arbitration board, including in one of the places where the regional sections of the Observatory are located set forth in Article 213; if there is no indication of the venue of the arbitration board, or if there is no agreement between the parties, it shall be established at the registered office of the Chamber of Arbitration.

10. The arbitration proceedings shall be subject to the provisions of the Italian Code of Civil Procedure, except for the provisions of this Code. Specifically, all means of proof are admissible provided by the Italian Code of Civil Procedure, with the exclusion of any form of oath.

11. The terms that the arbitrators establish for the parties for their arguments and evidentiary requests shall be considered peremptory, and consequently the party that has not complied shall be declared as having forfeited, only if there is a provision in such sense in the arbitration agreement or in a separate written instrument or in the procedural regulations that the arbitrators have decided to apply.

12. The arbitral award shall be pronounced upon its last signature and shall become effective upon being filed with the Chamber of Arbitration for Public Contracts. Within fifteen days from when the award is issued, an amount equal to one thousandth of the value of the relative controversy shall be paid by the arbitrators and shall be borne by the parties. Such amount shall be paid directly to ANAC.

13. The arbitral award shall be filed with the Chamber of Arbitration for Public Contracts before being filed with the Clerk's Office of the Court, done in accordance with and for the effects set forth in Article 825 of the Italian Code of Civil Procedure. The arbitral award shall be filed with the Chamber of Arbitration by the arbitration board, in the number of originals as there are parties, in addition to one for the office records, or in the IT and electronic manner determined by ANAC. Upon the request of a party, the respective original shall be returned with certification that it has been filed, for purposes of the requirements set forth in Article 825 of the Italian Code of Civil Procedure.

14. The arbitral award can be appealed, other than for reasons of nullity, also for violation of the rules of law with respect to the merits of the controversy. The appeal shall be filed within the term of ninety days from notification of the award and cannot be proposed beyond onehundredeighty days from the date the arbitral award is filed with the Chamber of Arbitration.

15. Upon the request by one of the parties, the Court of Appeals can suspend the effectiveness of the award by an order if there are grave and grounded reasons. Article 351 of the Italian Code of Civil Procedure shall apply. When the effectiveness of the arbitral award is suspended, or the suspension ordered by the chairman is confirmed, the arbitration board shall verify whether the proceedings can be concluded. In such case, after specifying the conclusions, it shall order oral argument in the same hearing or in chambers, or in a hearing to be held within ninety days from the order of suspension; it shall issue an award at the hearing in accordance with Article 281-

sexies of the Italian Code of Civil Procedure. If it considers that evidentiary obligations are essential, the arbitration board, in the same order of suspension, shall order evidence to be taken at a subsequent hearing no later than ninety days, and shall then provide as above.

16. The Chamber of Arbitration, upon the proposal of the arbitration board, shall determine by means of a specific resolution the fees of the arbitrators within the limits established by a decree of the Ministry of Infrastructures and Transportation. In any case, it is prohibited to increase the maximum fees based on the particular complexity of the issues dealt with, the specific skills used, and the actual work performed. The remuneration of the arbitration panel, inclusive of any remuneration for the secretary, cannot in any case exceed the amount of 100,000 Euro, to be revalued every three years by the decrees and resolutions indicated in the first clause hereof. For public managers, the limits shall apply that are set forth in Article 23-ter of Law Decree No. 201 of 6 December 2011, converted by Law No. 214 of 22 December 2011, as well as Article 1, paragraph 24 of Law No. 190 of 6 November 2012. The act authorizing payment of the remuneration and expenses for the arbitration, as well as the fees and expenses for expert consulting, shall be a title for an order of payment in accordance with Article 633 of the Italian Code of Civil Procedure.

17. The balance of the fees for the resolution of the controversy shall be paid by the parties, in the amount ordered by the Chamber of Arbitration, within the term of thirty days from communication of the arbitral award.

18. The Chamber of Arbitration shall order the payment of the fees and expenses for expert consulting, when ordered, in accordance with Articles 49 through 58 of the Uniform Text of legislative and regulatory provisions on legal expenses, set forth in DPR No. 115 of 30 May 2002, to the extent resulting from the implementation of the tables provided therein.

19. The amount of the fees due for the resolution of controversies shall be paid directly to ANAC.

20. Without prejudice to what is set forth in Article 92, second paragraph of the Italian Code of Civil Procedure, if the request is partially accepted, the arbitration panel shall offset the costs of the arbitration in proportion to the ratio between the value of the claim and that of the award.

21. The parties shall be jointly liable for the payment of the fees due to the arbitrators and the costs related to the arbitration board and the arbitral award, without prejudice to the right of recourse among themselves.

Art. 210. (Chamber of Arbitration, list of arbitrators and list of secretaries)

1. The Chamber of Arbitration for Public Contracts related to works, services and, supplies, hereinafter the “Chamber of Arbitration”, shall be created at ANAC.

2. The Chamber of Arbitration shall oversee the formation and maintenance of the Professional List of arbitrators for public contracts, shall prepare the deontological code for arbitration in chambers and shall provide for the necessary requirements for the establishment and functioning of the arbitration board.

3. The President and the arbitration council shall be bodies of the Chamber of Arbitration.

4. The arbitration council shall be composed of five members, appointed by ANAC from among parties having specific competence in the area of public contracts for works, services and supplies, in order to guarantee the independence and autonomy of the institute, as well as having the requisites of honorability established by the same Authority. ANAC shall select the President internally. The appointment shall be for a period of five-years and shall be remunerated in the amount determined by the appointment measure, within the limits of the resources attributed to the Authority. The President and members are subject to the incompatibilities and prohibitions provided by paragraph 10.

5. To carry out its functions, the Chamber of Arbitration shall use a secretarial structure with staff provided by ANAC.

6. The Chamber of Arbitration shall prepare an annual survey of the data appearing from controversies regarding public contracts and send it to the Authority and to the Steering Committee set forth in Article 212.

7. Without prejudice to what is provided by Article 1, paragraph 18 of Law No. 190 of 6 November 2012, the persons belonging to the following categories can be enrolled in the list of arbitrators of the Chamber of Arbitration:

a) attorneys registered with ordinary and special bars who are authorized to practice before superior courts who have the requisites for the appointment as counsellor to the Court of Cassation;

b) experts who have a college degree in engineering and architecture who are authorized to exercise the profession for at least 10 years and who are registered with the relative lists;

c) tenured university professors in legal and technical subjects and managers of the public administrations, who have demonstrated experience in the field of public contracts for works, services and supplies.

8. The Chamber of Arbitration shall also, in a separate section, maintain the list of experts for the appointment of expert consultants in arbitrations. Persons can be registered in the list who have a college degree and at least 5 years demonstrated professional experience, with the relative registration in a professional list, if required.

9. The persons indicated in paragraph 7, clauses a), b) and c), as well as in paragraph 8 of this Article, shall respectively be included in the list of arbitrators and in the list of experts, upon

application accompanied by curriculum and adequate documentation demonstrating the prerequisites.

10. Registration in the list of arbitrators and in the list of experts has a three-year validity and can be reobtained after two years have passed from the expiration of the three-year period. Without prejudice to what is provided by Article 53 of Legislative Decree No. 165 of 30 March 2001, as modified by Article 1, paragraph 42, clause 1 of Law No. 190 of 6 November 2012, during the period in which they belong [to the list] and during the following three years, the persons registered in the list cannot carry out professional appointments on behalf of the parties to the arbitrations decided by them, including appointment as the arbitrator chosen by the party.

11. The above is without prejudice to the cases of recusal set forth in Article 815 of the Italian Code of Civil Procedure.

12. In the cases set forth in Article 209, paragraph 7, the Chamber of Arbitration shall also supervise the maintenance of the list of secretaries for the arbitration boards. The list can include officers who have a college degree in legal or economic or equivalent areas, and if necessary, technical areas, who are included in the registers of the public administrations set forth in Legislative Decree No. 165 of 30 March 2001, who have at least five years seniority in a register. Any charges related to maintaining the list shall be borne by the persons interested in registration, providing suitable tariffs for such purpose to ensure the complete coverage of the above costs.

13. The list of arbitrations in course and that have concluded, the data related to those matters, and the names and fees of the

TITLE II - GOVERNANCE

Art. 212. (Address and coordination)

1. A "Cabina di Regia" shall be established at the Presidency of the Council of Ministers with the following tasks:

- a) carry out a survey on the state of implementation of this Code and the difficulties met by contracting authorities or contracting entities at the application stage, also in order to propose possible corrective and improvement solutions;
- b) take care, where appropriate by means of a dedicated action plan, the implementation of this Code by coordinating the adoption, by the competent entities, of decrees and guidelines, as well as their collection in integrated, organic and homogeneous consolidated texts, in order to ensure their timeliness and mutual coherence;
- c) to examine the proposal of normative modifications in the fields governed by this Code in order to assess the impact on the legislation currently in force, ensure the homogeneity and juridical certainty, supporting the competent structure at the Presidency of the Council of Ministers in coordinating the different regulatory interventions in the sector;

- d) to promote the realisation, in cooperation with the competent entities, of a national plan in the field of telematic purchasing procedures, in order to spread the use of digital tools and the digitalisation of the different stages in the purchasing process;
- e) to promote agreements, protocols of intent, conventions, also with private association in order to favour the bankability of public works.

2. The "Cabina di Regia" reports, on the basis of the information received, any specific violations or systemic problems to ANAC for the interventions of competence.

3. By 18 April 2017 and subsequently every three years, the "Cabina di Regia", also with the support of ANAC, presents to the Commission a monitoring report containing, where appropriate, information on the most frequent causes of uncorrect application or juridical uncertainty, including possible structural recurring problems in the application of the norms, the level of participation of micro-enterprises and small and medium enterprises to public contracts and on the prevention, detection and appropriate reporting of cases of frauds, corruption, conflict of interests and other serious misconducts in the field of procurement and concessions.

4. The "Cabina di Regia" is the national point of reference for cooperation with the European Commission as regards the application of public contracts and concessions legislation, and for the compliance with the obligations of assistance and mutual cooperation among Member States, in order to ensure the exchange of information on the application of the norms contained in this Code and on the management of the relevant procedures.

Article 211. ANAC Pre-dispute opinions

1. At the initiative of the contracting authorities or one or more of the other parties, ANAC shall provide its opinion, following discussion of the parties, with regard to matters arisen during the course of the tendering procedures, within thirty days of receipt of the request. The opinion binds the parties who have previously committed to abide by what is laid down therein. The binding opinion is admissible before the competent organs of administrative justice ex Article 120 of the Code of Administrative Trial. In the event of a rejection of the appeal against the binding opinion, the court shall assess the conduct of the claimant in accordance with and for the purposes of Article 26 of the Administrative Trial Code. (amended by legislative decree 56-2017 in force from 20-5-2017)

1-bis. ANAC is entitled to sue against appeals, other general acts and measures relating to contracts of major concern, issued by any contracting authority, if it deems that they violate the rules on public contracts relating to works, services and supplies. (paragraph introduced by legislative decree 50-2017 as amended by Law L 96-2017 in force from 24-6-2017)

1-ter. ANAC, if it considers that a contracting authority has adopted a measure vitiated by serious violations of this Code, issues a reasoned opinion within sixty days of the violation, indicating specifically the defects in legitimacy that were found. The opinion is transmitted to the contracting authority; if the contracting authority fails to comply within the deadline given

by ANAC, not exceeding sixty days from the transmission, ANAC may, within the following thirty days, appeal before the Administrative Judge. Applicable is the article 120 of the Code of Administrative Trial of Annex 1 to the Legislative Decree of 2 July 2010, no. 104th paragraph introduced by decree law 50-2017 as amended by Law L 96-2017 in force from 24-6-2017 1-quater. ANAC may, by its own regulation, identify cases or types of measures in relation to which it exercises the powers referred to in paragraphs 1-bis and 1-ter. (paragraph introduced by decree law 50-2017 as amended by Law L 96-2017 in force from 24-6-2017)

2. (Corrigendum dated 15-07-2016, subsequently repealed by legislative decree 56-2017 in force from 20-5-2017)

Art. 213.

National Anti-Corruption Authority

1. The supervision and control of public contracts and their regulation shall, within the limits of the provisions of this Code, be assigned to the National Anti-Corruption Authority (ANAC) referred to in Article 19 of the Decree Law of 24 June 2014, n. 90, converted, with modifications, by law 11 August 2014, n. 114, which also acts to prevent and counter illegality and corruption.

2. The ANAC, through guidelines, standard calls for tenders, type-contracts and other flexible regulation tools, whatever named, ensures the promotion of efficiency, the quality of the procuring stations' activities, which provides support to also by facilitating the exchange of information and the homogeneity of administrative procedures and encouraging the development of best practices. Immediately after their adoption, the authority shall transmit to the Parliament the regulatory and other acts referred to in the previous sentence, which are considered to be most relevant in terms of impact, number of potential perpetrators, nexus to criminal cases, abnormal or symptomatic situations of illicit conduct by the procuring stations. The decisions and acts taken by ANAC can be challenged before the competent administrative organs. The ANAC, for the purpose of issuing the guidelines, acquires consultations, analysis and verification of the impact of the regulation, consolidation of the guidelines in integrated texts, organic and homogeneous material, with adequate publicity, even on the Official Gazette, so that the quality of the regulation and the ban on the introduction or maintenance of regulatory levels above the minimum required by law no. 11 of 2016 and this code is observed. (correct with errata corrige of 15-07-2016)

3. Within the powers assigned to it, the Authority shall:

(a) supervise on public contracts, including those of regional interest, of works, services and supplies in the ordinary and special sectors and classified contracts or which require specific security measures within the meaning of Article 1 (2) (f) bis, of Law 6 November 2012, no. 190, as well as on contracts excluded from the scope of the Code;

(b) ensure that the performance of public contracts is guaranteed economically and ensures that there is no prejudice to the public treasury;

- (c) signals to the Government and Parliament, by specific act, of particularly serious phenomena of non-compliance or distorted application of sectorial legislation;
- d) advise the Government on proposals regarding changes that are required in relation to current sector regulations;
- e) prepares and address to the Government and Parliament the annual report (referred to in Article 1, paragraph 2, of Law No 190 of 6 November 2012 as amended by Article 19, paragraph 5-ter of the Decree-Law of 24 June 2014 , n.90, converted, with modifications, by the law of 11 August 2014, no.114), on the activity carried out highlighting the dysfunctions encountered in the exercise of its functions (as amended by legislative decree 56-2017 in force from 20-5-2017)
- f) supervise the qualification system of executors of public works contracts and exercise related sanctioning powers;
- (g) supervise on the prohibition of awarding contracts through procedures other than the ordinary ones and control the correct application of the specific derogating rules provided for cases of high urgency and civil protection referred to in Article 163 of this Code;
- (h) for contracts of particular interest, carry out activities of collaborative supervision, carried out following the signature of memoranda of understanding with the requesting contracting stations, aimed at supporting them in the preparation of acts and in the organization of the entire tender procedure.
- h-bis) in order to promote the cost-effectiveness of public contracts and the transparency of the conditions of purchase, it issue relevant guidelines, with no prejudice to sectorial regulations, on the standard costs for work contracts and the reference price of goods and services, using this, on the basis of specific conventions, by relying on support of ISTAT and other national statistical systems, under the most efficient conditions, among the most effective on public administration costs, by making use of additional information contained in existing databases of other Public Administrations and entities operating in the public contracts sector (provision introduced by Legislative Decree 56-2017 in force from 20-5-2017)

4. The Authority shall manage the qualification system of the contracting authorities and the central purchasing bodies.

5. In the course of carrying out its activities, the Authority may carry out inspections, even upon a justified request of anyone interested in it, possibly relying on the cooperation of other state organs and the auxiliary body of the Guardia di Finanza, which carries out the verifications and inquiries, required by acting with the investigative powers assigned to it, for the purposes of assessments relating to value added tax and income tax.

6. In case it ascertains the existence of irregularities, the Authority shall transmit the acts and its findings to the controlling bodies and, if the irregularities are of a criminal nature, to the competent Prosecutor office. In case the execution of public contracts is prejudicial to the public treasury, the acts and the findings are also sent to the interested parties and to the General Prosecutor of the Court of Auditors.

7. The Authority cooperates with the Italian Competition Authority on the recognition of best business conduct for the purpose of attributing the "Rating of legality" of the companies (referred to in Article 5-ter of the Decree-Law January 24, 2012, no. 1, converted, with modifications, by Law 24 March 2012, no. 27). The rating of legality also contributes to the determination of the firm's rating as referred to in Article 83, paragraph 10. (correction with effect from 15 July 2016)

8. For the purposes referred to in paragraph 2, the Authority manages the National Database on Public Contracts, in addition to the information acquired through its computerized systems, all

the information contained in the existing databases, including at territorial level, in order to ensure unified accessibility, transparency, publicity and traceability of the tendering procedures and their preceding and succeeding stages. By its own decision, the Authority shall determine the modalities and times within which the holders of such databases shall, after stipulating interoperability protocols, guarantee the confluence of the data in the single accredited Database, which the Authority holds exclusive ownership. For public works, the Authority, the Ministry of the Economy and Finance, the Ministry of Infrastructure and Transport, the Presidency of the Council of Ministers and the Regions and Autonomous Provinces as computer system operators, referred to in paragraph 4 of the Article 29, shall agree on the procedures for the collection and exchange of information in the national database of public contracts, of the database referred to in Article 13 of Law 31 December 2009, no. 196, of the database referred to in Article 1, paragraph 5, of Law no. 144 and of the database referred to in Article 36 of Decree Law 24 June 2014, no. 90, converted, with modifications, by law 11 August 2014, n. 114, in order to ensure (pursuant to Legislative Decree no. 229 of Legislative Decree 14 March 2013, no. 33 and this Code), the respect of the principle of exclusivity of the transmission of information and the reduction of administrative costs for the persons referred to in Article 1 (1), the effective monitoring of programming to the execution of works and the traceability of related financial flows or the fulfillment of obligations in terms of preventive transparency. Without prejudice to the autonomy of the national economic operator database referred to in Article 81, the Authority and the Ministry of Infrastructure and Transport agree on the arrangements for exchanging information to ensure the function of preventing corruption and protecting legality, while at the same time avoiding overlapping of competences and optimizing the use of data in the interest of their use by economic operators and procuring stations. (correct disposition with incorrect correction of 15-07-2016; provision amended by Legislative Decree 56-2017 in force from 20-5-2017)

9. For the management of the database referred to in paragraph 8, the Authority shall use the Observatory of Public Works, Services and Supplies Contracts, composed of a Central and Regional Sections, based in each Region and autonomous Province. The Observatory operates through computerized procedures, based on specific protocols, also through links to the relevant systems in use at the regional sections and other public administrations and other parties operating in the public contracts sector. The Authority shall establish the modus operandi of the Observatory as well as the mandatory information, terms and forms of communication that the contracting stations and entities are bound to transmit to the Observatory. With regard to a person who omits, without justified reasons, to provide required information or provides untruthful information, the Authority may impose the pecuniary administrative sanction referred to in paragraph 13. The Central Section of the Observatory uses the regional sections competent for the territory for the acquisition of the necessary information as to carry out institutional tasks, on the basis of specific agreements with the regions. The Central Section of the Observatory shall monitor the application of the minimum environmental criteria referred to in the decree as to in Article 34, paragraph 1, and the achievement of the objectives set out in the Public Consumption Sustainability Action Plan. (amended by Legislative Decree 56-2017 in force from 20-5-2017)

10. The Authority shall operate the Computer Repository of public works, services and supplies, established at the Observatory, containing all the news, information and data relating to the economic operators with reference to the registrations provided for in Article 80. The Authority shall establish the additional information that must be in the records considered to be useful for

the purposes of its holding, the verification of the serious professional misconduct referred to in Article 80 (5) (c), of the attribution of the company rating referred to in Article 83, paragraph 10, or the achievement of the qualification certificate referred to in Article 84. The Authority shall also ensure that the case file is linked to the database referred to in Article 81. (amended by Legislative Decree 56 -2017 effective from 20-5-2017)

11. The Arbitration Chamber for Public works, services and supplies contracts (referred to in Article 210) operates within the Authority.

12. It is confirmed what established at Article 1, paragraph 67, Law no. 266.

13. In compliance with the principles set forth in Law No 689 of 24 November 1981, the Authority has the power to impose pecuniary administrative penalties on individuals who refuse or omit, without justification, to provide information or disclose documents requested by the same Authority and with economic operators who do not comply with the request of the tendering entity or the awarding entity to prove the existence of criteria as to participate in the awarding, within the minimum limit of Euro 250 and the maximum limit of Euro 25,000 . With regard to subjects who, when requesting information or documents from the Authority, provide information or exhibit non-truthful documents and to economic operators who provide the contracting stations or the awarding entities or certification bodies, unreliable data or documents about the possession of qualification requirements, except any additional penal sanction, the Authority has the power to impose pecuniary administrative penalties within the minimum limit of 500 euros and the maximum limit of 50,000 euros. By its own acts, the Authority shall regulate the sanctioning proceedings falling within its competence. (correct disposition with incorrect correction of 15-07-2016; provision amended by Legislative Decree 56-2017 in force from 20-5-2017)

14. The sums resulting from the payment of the sanctions referred to in Article 211 shall be paid at the treasure of the State, for the subsequent reallocation to a special fund to be set up by the Ministry of Infrastructure and Transport to be allocated, with the decree of the same Minister, to the awarding of the meritorious procuring stations, according to the criteria identified by ANAC in accordance with Article 38. The Minister of Economy and Finance is authorized to make the necessary budgetary changes with his own decrees. (correct arrangement with errata corripse of 15-07-2016)

15. The Authority shall maintain and update the mandatory National Register of the members of the Adjudication commissions referred to in Article 78, as well as the list of procuring stations operating through direct awards towards their own companies in accordance with Article 192.

16. The list of procurement aggregator bodies shall be set up at the Authority within the Single Registry of Contracting Authorities.

17. In order to ensure immediate and specific consultation of the ANAC's flexible regulation instruments, the ANAC shall publish those measures in such a way as to make fully accessible the rules applicable to contracting stations and economic operators.

17-bis. ANAC indicates the date of passing into force of the flexible regulation instruments referred to in paragraph 2 and to the other acts provided for in this Code, which normally coincides with the fifteenth day following their publication in the Official Journal of the Republic of Italy and, in cases of particular urgency, it may not be before the day following their publication in the Official Journal of the Italian Republic. The same acts shall apply to procedures and contracts for which the tenders or notices, indicating the procedure for the choice of the contractor, shall be published after the date of effectiveness indicated by the ANAC, as the previous sentence indicates; in the case of contracts without the publication of tenders or notices, the acts shall apply to procedures and contracts in respect of which, at the

date of effectiveness, no invitations to tender have yet been sent. (amended by Legislative Decree 56-2017 in force from 20-5-2017).

Art. 214

Art. 214. (Ministry of Infrastructure and Transports and Technical Mission Structure)

1. Within the scope of the functions referred to in Legislative Decree 30 July 1999 n. 300, the Ministry of Infrastructures and Transports promotes the technical and administrative activities necessary for the proper and prompt planning and approval of infrastructures and carries out, with the collaboration of the regions or autonomous provinces concerned, the support activities necessary for supervision, from part of the competent authority, on the construction of the infrastructure.

2. In carrying out the functions referred to in paragraph 1, the Ministry shall base its activity on the principle of loyal cooperation with the autonomous regions and provinces and with the local authorities concerned and acquires, in the cases indicated by law, the prior agreement of the regions or autonomous provinces concerned. For the purposes referred to in paragraph 1, the Ministry, in particular:

- a) promote and receive proposals from regions or autonomous provinces and other contracting entities;
- b) promotes and proposes agreements between the government and individual regions or autonomous provinces, with a view to the joint coordination and construction of infrastructures;
- c) promotes the drafting of infrastructure feasibility projects by the contracting entities, including through any agreements or agreements between the parties involved;
- d) arrange, possibly in collaboration with the regions, the provinces of all the bodies responsible for the awarding activities by the contracting entities and the subsequent construction of the infrastructures;
- e) where necessary, collaborations in the activities of the contracting entities or entities involved in the preliminary activities with address and support actions;
- f) takes care of the analysis of the feasibility and definitive processes for the purposes of their analysis to the decisions of the CIPE in the case of sectors and priority sectors for the development of the country referred to in the part of the project. For the state enterprises, the council of the superior council, or of other bodies or consultants, where required by the regulations in force, is acquired on the final plan;
- g) assign to the contracting entities, a load of the funds referred to in Article 202, paragraph 1, letter a), the additional financial resources linked to the project activities; in cases of infrastructures and priorities for the development of the country referred to in the part, the CIPE, the agreement with the Ministry of Economy and Finance, the CIPE the obligation to the winning entities, a load of funds, minimum additional resources to the realization of the

infrastructures, contextually to the approval of the definitive project and within the limits of the available resources, giving priority to the completion of the incomplete works.

h) check the progress of the works also through technical-administrative inspections at the sites concerned, upon access to them; for this purpose, it may avail itself, if necessary, of the Finance Guard Corps, by signing specific memoranda of understanding.

3. For the activities of strategic direction and planning, research, support and high consultancy, assessment, design review, monitoring and high surveillance of the infrastructures, the Ministry may use a technical mission structure composed of employees within the approved workforce and managers of public administrations, by technicians identified by the regions or autonomous provinces territorially involved, as well as, on the basis of specific professional assignments or coordinated and continuous collaboration relationships, by designers and experts in the management of public and private works and administrative procedures. The technical mission structure is established by decree of the Minister of Infrastructure. The structure can also make use of highly specialized and professional staff, subject to selection, with fixed-term contracts lasting no longer than five years renewable for a single time and as advisors, of state and non-state universities legally recognized, of research and companies specialized in the design and management of public and private works. The structure also carries out the functions of the Evaluation and Verification Unit of public investments, provided for in Article 1 of the Law of 17 May 1999, n. 144 and article 7 of the legislative decree of 29 December 2011, n. 228.

4. In order to facilitate, from the beginning of the preliminary investigation phase, the construction of infrastructures and priority settlements, the Minister of Infrastructures and Transport, having heard the competent Ministers, as well as the Presidents of the regions or autonomous provinces concerned, proposes to the President of the Council of Ministers the appointment of extraordinary commissioners, who follow the progress of the works and provide for appropriate guidance and support actions, also promoting activities to prevent conflicts and disputes, also with reference to the needs of local communities, as well as necessary agreements between the public and private parties involved. In carrying out these activities, and in the case of particular complexity of the same, the extraordinary commissioner may be assisted by a sub-commissioner, appointed by the President of the Council of Ministers, on the proposal of the Presidents of the regions or autonomous provinces territorially involved, with charges charged to the regions or autonomous provinces proposing or relying on the resources referred to in paragraph 8. For works not having an interregional or international character, the proposal to appoint the special commissioner is formulated in agreement with the region or the autonomous province, or the territorial entity concerned.

5. The charges deriving from the application of paragraph 4 are charged to the funds referred to in Article 202 and are contained within the quota of the resources that are assigned to the purpose annually by decree of the Minister of Infrastructure and Transport, concert with the Minister for the Economy and Finance. The charges for the operation of the technical mission structure referred to in paragraph 3 are covered by the funds referred to in Article 1, paragraph 238 of the Law of 30 December 2004, n. 311, as well as on the resources assigned annually to the Ministry of Infrastructures and Transport pursuant to Law no. 144 of 1999

6. The President of the Council of Ministers, upon the proposal of the Minister of Infrastructures, having heard the competent Ministers and, for the infrastructures pertaining to

the regional awarding entities, the presidents of the regions or autonomous provinces concerned, may enable the special commissioners to adopt, with the methods and powers referred to in Article 13 of the Decree-Law of 25 March 1997, n. 67, converted, with amendments, by the law of 23 May 1997, n. 135, in substitution of the competent subjects, the measures and deeds of any kind necessary for the prompt planning, preliminary investigation, assignment and realization of the infrastructures and of the productive settlements.

7. The extraordinary commissioners act autonomously and with the aim of guaranteeing the public interest and report to the President of the Council, the Minister of Infrastructures and the CIPE in relation to the problems encountered and the initiatives undertaken and operate according to the directives issued by them. and with the support of the Ministry, and, where existing, the technical mission structure and the advisors, acquiring, through them, every necessary study and opinion. Within the limits of the costs authorized pursuant to paragraph 9, the extraordinary commissioners and sub-commissioners make use of the structure referred to in paragraph 3, as well as the competent regional structures and may avail themselves of the support and collaboration of third parties.

8. The decree of the President of the Council of Ministers appointed by the extraordinary commissioner identifies the remuneration and costs pertinent to the activities to be carried out by the same, as well as the methods of payment of the same based on the resources of the economic framework of each intervention, within the limits of the sums allocated for this purpose.

8-bis. To the commissioners appointed pursuant to Article 20 of the Decree-Law of 29 November 2008, n. 185, converted, with amendments, by law January 28, 2009, n. 2, for the works referred to in this article the provisions of paragraphs 4 to 8 apply.

9. (repealed)

10. The Ministry of Infrastructures and Transports shall ensure the necessary support and assistance to contracting authorities or contracting entities for the application of the sectorial regulation, in cooperation with Regions and Autonomous Provinces of Trento and Bolzano, within the limits of the activities that those latter exercise according to this Code.

11. In the first application, however, the acts and measures adopted remain valid and are subject to the effects produced and the legal relationships arising on the basis of Article 163 of the Legislative Decree Legislative Decree 12 April 2006, n. 163.

h) check the progress of the works also through technical-administrative inspections at the sites concerned, upon access to them; for this purpose, it may avail itself, if necessary, of the Finance Guard Corps, by signing specific memoranda of understanding.

12. (repealed)

Art. 215. (Superior Board of Public Works)

1. Full functional and organizational autonomy is guaranteed, as well as the independence of judgment and evaluation of the Board of Public Works as the highest technical advisory body of the State.
2. By decree of the President of the Republic, upon the proposal of the Minister of Infrastructures and Transport, upon the resolution of the Council of Ministers, new consultative powers may be assigned on matters identical or similar to those already within the competence of the Council itself. The same decree provides for regulating the representation of the various administrations of the State and the Regions within the Board of Public Works, as well as regulating the composition of the administrative technical committees, without new or greater burdens on public finance. The responsibilities of the National Council for Cultural and Environmental Heritage are reserved.
3. The Superior Council of Public Works expresses an obligatory opinion on the final projects of public works that are state-regulated, or in any case financed at least 50% by the State, for an amount exceeding 50 million euro, before the start of the procedures in Part II, Title III, of Legislative Decree 3 April 2006, n. 152 of the procedures referred to in articles 14, 14-bis and 14-ter of the law of 7 August 1990, n. 241 of the procedures referred to in Article 3 of the Decree of the President of the Republic April 18, 1994, n. 383, as well as, where foreseen, before the communication of the start of the procedure referred to in Article 11 of the Decree of the President of the Republic of 8 June 2001, n. 327, as well as an opinion on the projects of the other contracting authorities that are public administrations, always higher than this amount, if they so request. For public works of less than € 50 million, the responsibilities of the Board of Governors are exercised by the administrative technical committees of the interregional authorities for public works. If the public work is less than € 50 million, there are elements of particular relevance and complexity, the administrator submits the project, with a motivated explanatory report, to the opinion of the Board of Governors.
4. The meetings of the sections and of the General Assembly of the Superior Council of Public Works are valid with the presence of one third of the members and the opinions are valid when they are resolved with the favorable vote of the absolute majority of those attending the meeting.
5. The Superior Council of Public Works expresses its opinion within ninety days of the transmission of the project. Once this deadline has expired, the opinion is intended to be favorable.

TITLE III - TRANSITIONAL, COORDINATION AND ABROGATION PROVISIONS

Art. 216. (Transitional provisions and coordination)

1. Except as provided for in this article or in the individual provisions of this code, the same applies to the procedures and contracts for which notices or notices indicating the procedure for the selection of the contractor are published after the date of its entry into force and, in the case of contracts without publication of notices or notices, to the procedures and contracts in relation to which, on the date of entry into force of this code, the invitations to submit offers have not yet been sent .

1-bis. For the interventions included among the strategic infrastructures referred to in the regulations provided for by article 163 and following of the legislative decree 12 April 2006, n. 163, already included in the approved planning tools and for which the environmental impact assessment procedure has already been started on the date of entry into force of this code, the related projects are approved according to the previous legislation. Without prejudice to the provisions of paragraph 4-bis, the provisions of paragraph 1 apply to tender procedures.

2. Until the General Plan of Transport and Logistics (PGTL) has been approved, the general framework of transport infrastructure planning approved by the Council of Ministers will be applied on 13 November 2015 and subjected to environmental and strategic evaluation.

3. Until the date of entry into force of the decree referred to in Article 21, paragraph 8, the planning documents already adopted and effective shall be applied, within which the contracting authorities shall identify an order of priority of the interventions, taking anyway account of the works necessary for the completion of the works that have not been completed and already started on the basis of the previous three-year planning, the already approved executive projects and the maintenance and recovery of the existing assets, as well as the interventions likely to be realized through concession or partnership contracts private public. The contracting authorities proceed in the same way for the new programs that are necessary before the adoption of the decree.

4. Until the date of entry into force of the decree referred to in Article 23, paragraph 3, the provisions of Part II, Title II, Chapter I (Articles 14 to 43: contents of design) shall continue to apply, as well as the attachments or parts of annexes referred to in the Decree of the President of the Republic October 5, 2010, n. 207. Until the adoption of the tables referred to in Article 23, paragraph 16, the provisions of the ministerial decrees already issued on the subject continue to apply. Until the date of entry into force of the decree referred to in Article 23, paragraph 3-bis, ordinary maintenance work contracts may be entrusted, in compliance with the procedures for the selection of the contractor provided for in this code, on the basis of the final design consisting of at least one general report, the list of unit prices of the planned work, the metric-estimate calculation, the safety and coordination plan with the analytical identification of the safety costs not to be reduced. Until the date of entry into force of the same decree, the execution of the works can be separated from the drafting and approval of the executive project, in the case of maintenance work, with the exception of maintenance interventions that involve

the renewal or replacement of structural parts of the works. The preparation of the security and coordination plan remains the same with the analytical identification of the costs of security not subject to downward pressure.

4-bis. The prohibition referred to in article 59, paragraph 1, fourth sentence, does not apply to works whose final projects are approved by the competent body at the date of entry into force of this code with publication of the call within twelve months from the date of entry into force of this provision.

5. Until the date of entry into force of the decree provided for in Article 24, paragraph 2, the provisions of articles 254, 255 and 256 of the Presidential Decree of 5 October 2010, n. 207.

6. (paragraph that has lost its effectiveness, see now the decree of the Ministry of Justice 17 June 2016 published on the G.U. No. 174 of 27 July 2016.

7. Until the date of entry into force of the decree foreseen by article 25, paragraph 2, the list of university archaeological institutes and of the subjects possessing the necessary qualification remains valid and the criteria for its keeping adopted with ministerial decree March 20, 2009, n. 60, published in the Official Gazette June 15, 2009, n. 136.

8. (paragraph that has lost its effectiveness, see now the ANAC Guidelines No. 3)

9. (paragraph that has lost effectiveness, see now the Guidelines No. 4 of ANAC)

10. Until the date of entry into force of the qualifying system of the contracting authorities referred to in Article 38, the qualification requirements are met by registration in the registry office referred to in Article 33-ter of the Decree-Law 18 October 2012, n. 179, converted, with modifications, from the law 17 December 2012, n. 221.

11. Until the date indicated in the decree referred to in Article 73, paragraph 4, notices and notices must also be published in the Official Journal of the Italian Republic, special series relating to contracts. Until the same date, the expenses for publication in the Official Journal of notices and calls for tenders are reimbursed to the contracting authority by the contractor within the period of 60 days from the award and the legal effects referred to in paragraph 5 of the aforementioned Article 73 continue to run from the publication in the Official Journal. Until the date of entry into force of the decree referred to in Article 73, paragraph 4, the regime referred to in Article 66, paragraph 7 of Legislative Decree 12 April 2006, n. 163, in the text applicable up to the aforementioned date, pursuant to Article 26 of the Decree-Law of 24 April 2014, n. 66, as amended by Article 7, paragraph 7, of the Decree-Law of 30 December 2015, n. 210 converted, with amendments, by law February 25, 2016, n. 21.

(paragraph as amended by Article 9, paragraph 4, Decree-Law No. 244 of 2016).

12. Until the adoption of the regulations concerning the registration in the Register referred to in Article 78, the committee continues to be appointed by the body of the contracting authority competent to make the choice of the subject entrusted with the contract, according to rules of competence and transparency previously identified by each contracting authority. Up to the full interaction of the Register referred to in Article 78 with the databases set up in the

administrations holding the information concerning the requirements of the commissioners, the contracting authorities shall verify, even by sample, the self-declarations presented by the commissioners drawn on the existence of requirements of the same commissioners. Failure to meet the requirements or the declaration of incompatibility of candidates must be promptly communicated by the contracting authority to the ANAC for the purpose of the eventual cancellation of the expert from the Register and the communication of a new expert.

13. Until the adoption of the decree referred to in Article 81, paragraph 2, the contracting authorities and the economic operators use the AVCPass database set up at the ANAC.

14. Until the adoption of the indicated guidelines (rectius: of the ministerial decree of which - ed) to Article 83, paragraph 2, the provisions of Part II, Title III shall continue to be applicable, as compatible. 60 to 96: company qualification system), as well as the annexes and the parts of the annexes referred to therein, of the Decree of the President of the Republic October 5, 2010, n. 207.

15. Until the date of entry into force of the decree referred to in Article 89, paragraph 11, the provisions of Article 12 of the Decree-Law of 28 March 2014, no. 47, converted, with amendments, by the law of 23 May 2014, n. 80.

(paragraph that has become effective since January 19, 2017, see now the ministerial decree November 10, 2016, No. 248 published in G.U. No. 3 of January 4, 2017)

16. Until the date of entry into force of the ministerial decree provided for in article 102, paragraph 8, the provisions of Part II, Title X (articles 215 to 238: testing), as well as the annexes or parts of annexes referred to therein, of the Decree of the President of the Republic October 5, 2010, n. 207.

17. Until the date of entry into force of the decree referred to in Article 111, paragraph 1, the provisions of Part II, Title IX, Chapters I and II shall continue to apply (Articles 178 to 210: purpose and form of accounting), as well as the attachments or parts of the annexes referred to therein, of the Decree of the President of the Republic October 5, 2010, n. 207.

18. Until the adoption of the national guidelines for hospital, care and school catering as per article 144, paragraph 2, the contracting stations identify the technical specifications aimed at guaranteeing the quality of the service requested.

19. Until the date of entry into force of the decree referred to in Article 146, paragraph 4, the provisions of Part II, Title XI, Chapters I and II, as well as the annexes or parts of annexes referred to therein shall continue to apply, and referred to in Article 251 of the Decree of the President of the Republic October 5, 2010, n. 207. (interventions on cultural heritage)

20. Until the adoption of the decree referred to in Article 159, paragraph 4, the procedures laid down by the Decree of the President of the Republic of 5 November 2012, n. 236.

21. Until the establishment of the register referred to in Article 196, paragraph 4, the persons in possession of the appropriate professional requirements in relation to the work to be managed and the role of tester can act as the works director and tester. the subjects in possession of the

requisites foreseen by the article 216 of the decree of the President of the Republic 5 October 2010, n. 207, without prejudice to the incompatibility with the function of responsible of the proceeding.

22. The arbitration procedures referred to in Article 209 shall also apply to disputes on subjective rights, deriving from the execution of public contracts referred to in Article 209, paragraph 1, for which the notices have been published before the date of entry into force of this code. Until the date of entry into force of the decree referred to in Article 209, paragraph 16, Article 10, paragraphs 1 to 6, and the attached tariff of Decree 2 December 2000, n. 398.

23. Preliminary projects related to the construction of public works or works of public utility concerning proposals for concession pursuant to Article 153 or Article 175 of Legislative Decree 12 April 2006 n. 163, for which the declaration of public interest has already intervened, not yet approved at the date of entry into force of this code, are subject to assessment of economic and financial feasibility and approval by the administration in accordance with the provisions of this code. The lack of approval determines the revocation of the procedures initiated and any promoters, to whom the reimbursement of the costs incurred and documented for the integration of the project based on the tender is recognized, if due, relating to the study of environmental impact and urban location .

24. In order to allow the holding, with the widest participation, of the public consultation referred to in Article 5, paragraph 5, of the Law of 18 December 2015, n. 220, and pending the updating of the discipline concerning the assignment of the public radio, television and multimedia service, in article 49, paragraph 1, of the legislative decree 31st July 2005, n. 177, the words: "6 May 2016" are replaced by the following: "31 October 2016". In Article 49-ter of the Legislative Decree of 31 July 2005, no. 177, as amended, the reference to articles 19 and 27, paragraph 1, and to the regulation of the code of public contracts pursuant to Legislative Decree 12 April 2006, n. 163, is meant to refer respectively to articles 17, 4 and to the discipline of the present code.

25. In Article 2, paragraph 1, letter h), of the Decree Law of 31 May 2014, n. 83, converted, with amendments, by the law of 29 July 2014, n. 106, the reference to articles 112 and 93, paragraphs 1 and 2, of the public contracts code referred to in Legislative Decree 12 April 2006, n. 163, is meant to refer respectively to articles 26 and 23, paragraphs 1 and 3, of this code.

26. Until the adoption of the general directives referred to in Article 1, paragraph 7, the provisions of Articles 343 to 356 of the Presidential Decree of 5 October 2010, n. 207. (contracts executed abroad)
(paragraph that has become effective since January 4, 2018, see now the ministerial decree (foreign) November 2, 2017, No. 192 published in G.U. No. 294 of December 20, 2018)

27. The procedures for the assessment of the environmental impact of the large works started on the date of entry into force of this decree according to the rules already provided for in Articles 182, 183, 184 and 185 of which Legislative Decree 12 April 2006, n. 163, are concluded in compliance with the provisions and attributions of competence in force at the time of the aforesaid start. The same procedures are also used for the variants.

27-bis. Until the date of entry into force of the guidelines referred to in Article 83, paragraph 2 (in fact until the entry into force of the MIT decree pursuant to Article 83, paragraph 2 - of the already contained in the articles from 186 to 193 of the legislative decree 12 April 2006, n. 163. Until the aforesaid date, the specific transitory provision provided for in article 189, paragraph 5 of the same legislative decree also applies.

27-ter. Contracts of works entrusted before the entry into force of this code and in the course of execution shall be governed by the rules already contained in article 133, paragraphs 3 and 6, of Legislative Decree 12 April 2006, n. 163.

27-quater. For the works of urbanization of the construction contribution, object of urban conventions or similar acts, however named, the provisions of the present code are applied with reference to the works object of the cited conventions and deeds stipulated after the entry into force of the same code.

27-quinquies. To the procedures for the awarding of contracts for the concession of the natural gas distribution service issued by the contracting authorities, the provisions of the legislative decree of 23 May 2000, n. 164, as compatible with this Part III, as well as referred to in Article 46-bis, paragraphs 1, 2 and 3 of the Decree-Law of 1 October 2007, n. 159, converted, with amendments, by law 29 November 2007, n. 222 and Article 4 of the Decree-Law of 21 June 2013, n. 69, converted, with amendments, by law 9 August 2013, n. 98. In the cases referred to in the first sentence, without prejudice to the maximum duration of twelve years, the assignment period is determined in accordance with paragraphs 1 and 2 of article 168.

27-sexies. For motorway concessions expired or expiring within six months of the date of entry into force of this provision, for which the management activity is economically prevalent with respect to the construction of new works or extraordinary maintenance interventions and the announcement of which is published within twenty-four months from the date of entry into force of this provision, the grantor may initiate tender procedures for the awarding of the concession on the basis of the only requirement framework limited to the interventions for securing the existing infrastructure.

27-septies. With reference to Article 24, paragraph 3, qualified technicians who have been in service to the contracting authority on the date of entry into force of the law 18 November 1998, n. 415, in the absence of authorization, can sign the projects, within the limits provided by the professional regulations, if they are in service to the contracting authority or have held a similar position with another contracting authority, for at least five years and are classified in a technical professional profile and have carried out or collaborated in design activities

Art. 217. (Repeal)

1. Without prejudice to the provisions of Article 216, with effect from the date of entry into force of this Code, they are or shall be repealed, in particular:

- a) Article 344 of the Law of 20 March 1865, n. 2248;
- b) Article 11 of the Royal Decree of 18 November 1923, n. 2440;
- c) Article 120 of the Royal Decree of 23 May 1924, n. 827;
- c-bis) the law of 11 November 1986, n. 770;
- d) Article 1, paragraphs 1 to 5 of the Law of 21 December 2001, n. 443;
- d-bis) the article 14-viciesimo, of the decree-law 30 June 2005, n. 115, converted, with amendments, by law 17 August 2005, n. 168;
- e) the legislative decree 12 April 2006, n. 163, and subsequent amendments;
- f) Article 1-octies of the Decree Law of 12 May 2006, n. 173, converted, with modifications, from the law 12 July 2006, n. 228;
- g) Article 1, paragraph 909, of the law of December 27, 2006, n. 296;
- h) the legislative decree 26 January 2007, n. 6;
- i) the legislative decree of 31 July 2007, n. 113;
- i-bis) Article 2, paragraphs 289 and 289-bis of the Law of 24 December 2007, n. 244;
- l) Article 1, paragraph 2, letter s) n. 2 and n. 3, Article 8 of the Law of 3 August 2007, n. 123;
- l-bis) Article 8-duodecimo, paragraph 2-bis, of the Decree-Law of 8 April 2008, n. 59, converted, with amendments, by law 6 June 2008, n. 101;
- m) the legislative decree 11 September 2008, n. 152;
- n) Article 23 of the Decree Law of 29 November 2008, n. 185, converted, with amendments, by law January 28, 2009, n. 2;
- o) Article 29, paragraph 1-sexies and 1-quinquiesdecies, lett. b) of the Decree-Law of 30 December 2008, n. 207, converted, with amendments, by law February 27, 2009, n. 14;
- p) Article 2, paragraph 9, of the Decree-Law of 28 April 2009 2009, n. 39, converted with amendments, by law 24 June 2009, n. 77;
- q) article 4, paragraph 4-bis, and article 4-quater of the decree-law 1 July 2009, n. 78, converted with modifications, by law August 3, 2009, n. 102;
-) Article 2, paragraph 16, of the Law of 15 July 2009, n. 94;
- s) Article 3 of the Decree-Law of 25 September 2009, n. 135, converted, with modifications, from the law 20 November 2009, n. 166;
- t) Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of Legislative Decree 20 March 2010, n. 53;
- u) the decree of the President of the Republic October 5, 2010, n. 207, with effect:

1) from the date of entry into force of the implementing acts of the present code, which operate the recognition of the provisions of the Decree of the President of the Republic n. 207 of 2010 replaced by them;

2) from the date of entry into force of this code: Part I; Part II, Title I, Chapter II; Part II, Title II, Chapter II; Part II, Titles IV and V, VI, VII, VIII; Part II, Title IX, Chapter III; Part II, Title XI, Chapter III, excluding Article 251; Part III, excluding articles 254, 255 and 256; Parts IV, V and VII, as well as the annexes and parts of the annexes referred to therein;

(Articles 1 to 8, 11 to 13, 44 to 59, 97 to 177, 211 to 214, 249, 250, 252, 253, 257 to 270, 271 to 342, 357 to 359);

v) l'articolo 4 del decreto-legge 15 maggio 2011, n. 70, convertito, con modificazioni, dalla legge 12 luglio 2011, n. 106, con esclusione di commi 13 e 14;

v-bis) l'articolo 13 della legge 11 novembre 2011, n. 180;

w) l'articolo 23, commi 4 e 5, l'articolo 41 commi 1, 2, 5-bis e 5-ter, l'articolo 42 commi 1, 2, 3, 4 e 5 e l'articolo 44, commi 1, lett. a), 2, 5, 6, 7, 8 e 9 del decreto-legge 6 dicembre 2011, n. 201, convertito, con modificazioni, dalla legge 22 dicembre 2011, n. 214,

- x) l'articolo 2, comma 7, del decreto legislativo 29 dicembre 2011, n. 228;
- z) gli articoli 41, 42, 44, 46, 50, 51, 52, 55, comma 1 e 59-bis, del decreto legge 24 gennaio 2012, n. 1, convertito, con modificazioni, dalla legge 24 marzo 2012, n. 27;
- aa) l'articolo 20, commi 1, 3 e 4, del decreto legge 9 febbraio 2012, n. 5, convertito, con modificazioni, dalla legge 4 aprile 2012, n. 35;
- bb) l'articolo 8, comma 2-bis, l'articolo 11 e l'articolo 12 del decreto legge 7 maggio 2012, n. 52, convertito, con modificazioni, dalla legge 6 luglio 2012, n. 94;
- cc) l'articolo 4, comma 5-ter del decreto legge 6 giugno 2012, n. 74, convertito, con modificazioni, dalla legge 1 agosto 2012, n. 122;
- dd) l'articolo 3, comma 2, l'articolo 4-bis, l'articolo 5 e l'articolo 33, comma 2, del decreto legge 22 giugno 2012, n. 83, convertito dalla legge 7 agosto 2012, n. 134;
- ee) l'articolo 1, commi 2, 2-bis e 4 del decreto legge 6 luglio 2012, n. 95, convertito dalla legge 7 agosto 2012, n. 135;
- ff) l'articolo 6, comma 1, del decreto legge 13 settembre 2012, n. 158, convertito con modificazioni, dalla legge 8 novembre 2012, n. 189;
- gg) l'articolo 28 del decreto legislativo 19 settembre 2012, n. 169;
- hh) article 6, paragraph 3, article 33, paragraphs 3-bis, 3-ter and 4-bis, article 33-bis, article 33-quater, article 33-quinquies, article 'article 34, paragraph 4, and article 36, paragraph 5-bis, of the law decree 18 October 2012, n. 179, converted from the law 17 December 2012, n. 221;
- ii) Article 1, paragraphs 19, 20, 21, 22, 23, 24, 25 and 58, paragraph 2, letter f-bis) of the Law of 6 November 2012, n. 190; Article 4, paragraphs 4, 5 and 6 of the Law of 14 January 2013, n. 10;
- jj) Article 19, paragraphs 1 and 2, article 26, paragraph 2, article 26-bis, article 26-ter, article 27, paragraph 2, article 31, paragraph 2 and article 32, paragraphs 4, 5 and 7-bis of the Decree Law of 21 June 2013, n. 69, converted with amendments by the law 9 August 2013, n. 98;
- ll) Article 13, paragraph 10, of the Decree-Law of 23 December 2013, n. 145, converted, with modifications, from the law 21 February 2014, n. 9;
- mm) Article 1, paragraphs 72 and 343, of the law of December 27, 2013, n. 147;
- nn) Article 12, paragraphs 3, 5, 8, 9 and 11 of the Decree-Law of 28 March 2014, n. 47, converted, with amendments, by the law of 23 May 2014, n. 80;
- oo) Article 9, paragraphs 4 and 4-bis, of the Decree Law of 24 April 2014, n. 66, converted with amendments by the law of 23 June 2014, n. 89;
- pp) Article 13, paragraph 8, of the Decree-Law of 24 June 2014, n. 91, converted, with amendments, by law 11 August 2014, n. 116;
- qq) article 13-bis, article 23-bis, article 23-ter, paragraphs 1 and 2, article 35, article 37 and article 39, paragraphs 1, 2 and 3, of Decree Law of 24 June 2014, No. 90, converted, with modifications, by law 11 August 2014, n. 114;
- rr) Articles 2, paragraphs 1, 2, 3 and 4, 5, 13, paragraph 1, 14, 24 and 34, paragraphs 1, 2, 3, 4, 5 and 6 of the Decree Law of 12 September 2014, n. 133, converted, with amendments, by law 11 November 2014, n. 164;
- ss) Article 8, paragraphs 3 and 3-bis, of the Decree-Law of 31 December 2014, n. 192, converted, with modifications, from the law February 27, 2015, n. 11;
- ss-bis) the article 1, paragraph 505, of the law 28 December 2015, n. 208;
- tt) articles 16, 18 and 19 of the law of 28 December 2015, n. 221;
- uu) Article 7, paragraphs 1, 2, 3, 4 and 4-bis of the Decree Law of 30 December 2015, n. 210, converted, with modifications, from the law 25 February 2016, n. 21.

Art. 218. (Updates)

1. Any legislative intervention that is incident on the present code or on the matters regulated by it is implemented through an explicit modification, integration, derogation or suspension of the specific provisions contained therein.

Art. 219. (Financial invariance clause)

1. The implementation of this code must not result in new or greater burdens on public finance.
2. The administrations concerned shall comply with the requirements laid down in this code with the human, instrumental and financial resources available under current legislation.

Art. 220. (Entry into force)

This code comes into force on the day of its publication in the Official Gazette.

This decree, bearing the seal of the State, will be included in the official collection of regulatory assets of the Italian Republic. It is obligatory for anyone to observe it and to have it observed.