

Regulations of 28 June 2017

Regulation on collaborative supervision of public contracts

THE AUTHORITY

HAVING SEEN Law Decree No. 90 of 24 June 2014, converted with modifications by Law No. 114 of 11 August 2014;

HAVING SEEN Legislative Decree No. 50 of 18 April 2016, and specifically Article 213, paragraph 3, clause h) of such Decree;

HAVING SEEN Legislative Decree No. 56 of 19 April 2017;

HAVING SEEN Resolution No. 143 of 30 September 2014;

HAVING SEEN the act on the “Organizational Restructuring of the National Anti-Corruption Authority following approval of the Reorganization Plan and the new functions attributed as regards the prevention of corruption in public contracts and transparency, and the identification of centers of responsibility based on the Authority’s institutional mission”, adopted by Resolution No. 1196 of 23 November 2016;

CONSIDERING the opinion of the Special Committee of the Council of State No. 2777 of 28 December 2016,

ISSUES

The following Regulation:

Article 1

(Definitions)

1. For purposes of this Regulation, these terms have the following meanings:

a) «Code», Legislative Decree No. 50 of 18 April 2016;

b) «Authority», the National Anti-Corruption Authority;

- c) «President», the President of the Authority;
- d) «Board», the Authority's Board;
- e) «Office», the collaborative supervision and special supervisory Office;
- f) «UOS», the Special Operating Unit created pursuant to Article 30 of Law Decree 90/2014;
- g) «Manager», the office manager;
- h) «Contracting Authority», the party indicated in Article 3, paragraph 1, clause o) of the Code;
- i) «Collaborative Supervision», the supervisory activity set forth in Article 213, paragraph 3, clause h), of the Code;
- l) «Supervision Protocol», the protocols stipulated by the Authority with the requesting contracting authorities set forth in Article 213, paragraph 3, clause h), of the Code;

Article 2

(Scope of application)

1. This Regulation is adopted in the context of the regulatory autonomy granted to the Authority and applies to works contracts and concessions for the procurement of services, supplies and work that the contracting authorities, the contracting entities, the central purchasing bodies or other contracting parties set forth in Article 3 of the Code intend to tender based on the procurement plans of the contracting authorities set forth in Article 21 of the Code or, even independently of the plans, if the prerequisites set forth in this Regulation are satisfied.

Article 3

(Object)

2. The contracting authorities set forth in Article 1, before holding a tender procedure, can request the Authority to engage in preliminary supervision in order to assist it prepare the acts of the tender, control compliance with sector regulations, determine suitable clauses and conditions to prevent attempts at criminal infiltration, as well as monitor how the entire tender procedure is carried out.

Article 4

(Prerequisites for initiating Collaborative Supervision)

1. The following can be subject to Collaborative Supervision, because they are of specific interest, in accordance with Article 213, paragraph 3, clause h) of the Code:

a) awards of contracts of contracts made in the context of extraordinary works programs at the time of major sports, religious, cultural or economic events;

b) awards of contracts of contracts arranged after natural disasters;

c) measures to realize large strategic infrastructures;

d) awards of works contracts for amounts greater than 100,000,000 Euro or contracts for services and supplies for an amount greater than 15,000,000 Euro that are part of programs of interventions realized through investments of Community funds;

2. In addition to the cases set forth in paragraph 1, when there are recurring factors of a high risk of corruption, or when anomalous situations are detected, or, in any case, that are symptomatic of unlawful behavior or criminal acts, the Board can order that the request for a preliminary control of the documentation and acts of the tender or any phases of the tender procedure be accepted.

3. The activity set forth in paragraph 1 can be requested by the contracting authorities even if one or more contracts are subject to the measures set forth in Article 32, paragraph 1 of Law Degree 90/2014.

Article 5

(Request for Collaborative Supervision)

1. The request for Collaborative Supervision is made to the Authority by a written application signed by the Contracting Authority's legal representative.
2. The application must set forth the specific reasons for the request, with an express indication of one or more of the mandatory prerequisites set forth in Article 4, as well as detailed information regarding the works, services or supplies for which the Collaborative Supervision is requested. Specifically, the application must indicate the list of awards of contracts for which the Collaborative Supervision is requested, specifying the type, object and amount of each of the proceedings that it intends to initiate.
3. The requests for Collaborative Supervision shall be submitted to the Board which, after evaluating that the prerequisites have been satisfied in accordance with this Regulation, shall order that they be accepted.
4. The rejection of the request for Collaborative Supervision does not exclude any other kind of intervention by the Authority in the context of the powers attributed to it in accordance with Article 213, paragraph 3 of the Code.

Article 6

(Supervision Protocol)

1. The procedures by which the Collaborative Supervision shall be carried out with respect to the Contracting Authority shall be established in an action protocol prepared by the competent Office upon an indication of the President, who shall submit it to the Board for approval.
2. The Collaborative Supervision protocols have an annual duration, unless in the case of a different decision by the Board in consideration of the specific nature of the Contracting Authority and the interventions for which collaboration is requested but which, in any case, cannot have a duration that exceeds two years.

3. The Collaborative Supervision protocols must be timely published on the Authority's institutional website in a specific section sub-divided by year.

Article 7

(Documentation object of the control)

1. The object of the preliminary review regards all acts of the tender procedure, in accordance with the following indicative list:

- decision to award a contract or equivalent measure;

- call for tender or letter of invitations to present bids in the case of a negotiated procedure;

- tender rules;

- specifications;

- draft contract/convention;

- measure appointing commissioners and constitution of the selection committee;

- minutes of the tender and of the verification sub-procedure and exclusion of offers that are abnormally low;

- list of participants in the tender;

- list of names of sub-contractors;

- list of names of any auxiliaries;

- measures of exclusion;

- award measures, proposed award and adjudication;

- stipulated contract or convention;

- any other act, decision or document prepared by the Contracting Authority in the award phase.

2. The Authority may in any case request further documentation deemed to be useful or necessary for the proper performance of the collaborative activity.

Article 8

(Collaborative Supervision Proceedings)

1. Collaborative Supervision proceedings are carried out together with the Contracting Authority, in accordance with what is indicated in this Article.

2. Except for the specific nature of each tender, the supervisory proceedings follow the phases of the tender procedure, specifically: (a) publication of the call for tender or notice; (b) admission/exclusion of the tenderers and appointment of the selection committee; (c) assessment of the bids and proposal for the award; (d) control of the bid for any anomalies; (e) award and stipulation of the contract.

3. The acts and documents set forth in Article 7, in relation to each stage of the tender process, shall be sent to the Authority before being formally adopted.

4. After they have been sent, the competent Office shall verify the acts subject to preliminary control, which concludes with the preparation of proposed recommendations submitted to the President of the Authority for approval.

5. The recommendations set forth in paragraph 4 shall be timely communicated to the Contracting Authority by the competent Office.

6. The Contracting Authority shall make the adjustments, modifying or substituting the act accordingly, and shall send an acknowledgment of receipt together with the documentation.

7. If it decides not to adhere to the recommendations, the Contracting Authority will submit its reasons therefore with the Authority. The competent Office will make its final recommendations, using the procedure indicated in paragraph 4 above, and shall send them to the Contracting Authority in a timely manner.

8. After receiving the Authority's final recommendations, the Contracting Authority can decide whether to accept them or, in exercising its administrative discretion, not to accept them, undertaking the acts for which it is responsible.

9. The competent Office, if it deems the Contracting Authority's failure to make the adjustments is particularly serious, shall submit its recommendations to the Authority's Board, which can order the termination of the Supervision Protocol and initiate all supervisory powers attributed by law.

10. Upon the conclusion of the tender procedure subject to Collaborative Supervision, the Contracting Authorities shall advise the Authority of the initiation of the performance of the contract.

11. If there are justified needs that are indicated in the Supervision Protocol, the parties can provide waivers from the proceedings regulated by this Article.

12. The Authority can use the support of the Finance Police [*Guardia di Finanza*] to carry out control activities in the context of the Collaborative Supervision.

13. Any request for access to acts related to documentation of the performance of the Collaborative Supervision shall be reviewed by the Contracting Authorities that signed the relative Supervision Protocol.

Article 9

(Termination of the Supervision Protocol)

1. The Authority's Board can order the termination of the Collaborative Supervision protocol:

a) if the Contracting Authority breaches its obligations of preliminary communication of the acts and tender documentation set forth in Article 7;

b) when after at least three (3) months have passed from its formal execution, the beneficiary Contracting Authority has not sent any tender documentation to the Authority, or in any case has not asked for any intervention by the Authority. Requests that are mere delaying tactics that do not fall within the scope of the Collaborative Supervision, or which nevertheless are extraneous to the Authority's jurisdiction, do not result in suspensions of the above term;

c) for supervening and justified substantive reasons or expediency.

Article 10

(Regular report to the Authority's Board)

1. The competent Office will send a report to the Authority's Board every six months on the Collaborative Supervision that has been performed, with an indication of the supervisory protocols stipulated and the procedures subject to supervision.

2. The Board may order the publication of the report or a summary of it on the Authority's institutional website.

Article 11

(Collaborative Supervision of the UOS [Special Operative Units])

1. This Regulation shall apply, to the extent compatible, to the preliminary supervisory activity performed by the UOS in the cases provided by law.

Article 12

(Entry into force and repeal)

1. This Regulation shall enter into force the date following that of publication in the Official Journal of the Italian Republic.

2. Starting from the entry into force of this Regulation, Article 4 of the “Regulation on supervisory activity and inspections” published in Official Journal No. 300 of 29 December 2014 shall be repealed.

Approved at the meeting of 28 June 2017.