

**E- CONTRACTUAL PROCEDURES ACCORDING TO
THE ITALIAN LAW**

ETHICAL CLAUSES AND GENERAL PRINCIPLES FOR PROCUREMENT AND EXECUTION OF CONTRACTS

The present Appendix contains the ethical clauses and fundamental principles on procurement, drafting and execution of works, supplies and service procurement contracts foreseen in the Intergovernmental Agreement. All matters not expressly mentioned in the present Appendix shall be regulated by the applicable law established by the Agreement.

1. CONTRACTOR'S REQUIREMENTS

1.1 Unless differently stated in the Agreement, procurement procedures are open to EU economic operators, operators falling in the conditions set out by art. 25 of the EU/2014/24 Directive and operators fulfilling requirements and qualifications for contracts according to their National law.

1.2 The Contracting Authority may request all tenderers to fulfil one or more requirements to take part in public procurement, provided that such requirements are relevant and proportionate to perform the contract to an appropriate quality standard.

1.2.1 *Economic and financial capacity.* The Contracting Authority may impose conditions for participation to guarantee that economic operators possess economic and financial capacity to perform the contract. To that end, the Contracting Authority may request in particular that economic operators have a minimum yearly turnover. The Contracting Authority may not request a minimum yearly turnover exceeding the double of the estimated contract amount, except in cases duly justified by the special risks related to the nature of the works, services or supplies. Where a contract is divided into lots, this Article shall apply in relation to each individual lot. However, the contracting authority 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.

1.2.2. *Professional and technical capacity:* Contracting authorities may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard. Contracting authorities may require, in particular, that economic operators have a sufficient level of experience demonstrated by suitable references from contracts performed in the past. In procurement procedures for supplies requiring siting or installation work, services or works, the professional ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency, experience and reliability

1.2.3 *Qualifications for professional activities:* With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled in one of the professional or trade registers kept in their State of establishment.,

1.2.3 Tender documents shall indicate the required conditions of participation which may be expressed as minimum levels of ability, together with the appropriate means of proof.

1.4 Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting authority may require that the economic operator and those entities be jointly liable for the execution of the contract.

1.5 . In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, contracting authorities may require that certain critical tasks 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 .

1.6 Economic operators falling in one or more of the following conditions are excluded from participation in public procurement ,and cannot be awarded a contract:

1.6.1 they have been the subject of a conviction by final judgment for one of the following reasons, as defined by art. 57 of the EU/2014/24 directive: participation in a criminal organization, corruption, fraud, terrorist offences or offences linked to terrorist activities, money laundering or terrorist financing, child labor and other forms of trafficking in human beings;

1.6.2 they have been the subject of a conviction by final judgment for any other crime having as a consequence the incapability of contracting with public Authorities, either in the country where they are established or in one of the country Parties of the Agreement;

1.6.3 they are in serious breach of their obligations relating to the payment of taxes or social security contributions because they have been the subject of a conviction by final judgment or a binding final administrative decision in the State of the Donor or of the contracting authority of in the country where they are established;

1.6.4 they are in serious breach ,demonstrated by any appropriate means of their legal obligations on health and social security, environment, welfare and labor , in in the State of the Donor or of the contracting authority of in the country where they are established;

1.6.5 either they are subject of a proceeding to declare, or they are in one of the following conditions : bankrupt, or being wound up, insolvent, or are having their affairs administered by the liquidator or by the courts, or have entered in an arrangement with creditors, with or without suspending their business activities, or are in an analogous situation;

1.6.6 the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;

1.6.7 they, or the members of the group to which they belong, their partners in joint ventures or groups or their subcontractors, are in conflict of interest linked to their prior involvement in the procurement procedure, having provided consultancy to the contracting authority or having been involved in the preliminary phases of the procurement procedure;

1.6.8 they have been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, they have withheld such information to one of the Parties of the Agreement or they are recorded in the register kept by the Observatory of the Italian Anticorruption Authority for submission of false documents or false information in order to obtain qualification for their professional activity;

1.6.9 They have been convicted by a judgement for terrorism, or participation to a criminal organization, having as a consequence loss, suspension or ban from participating in public procurement procedures;

1.6.10 They have been banned from being awarded a public procurement contract by a binding final administrative decision (as a consequence of a final judgement on a crime), in the State of the Donor or of the contracting authority of in the country where they are established;

1.6.11 They are in breach of their obligations related to prohibition of fictitious transfer of ownership to trustees on a fiduciary basis , regarding control of fictitious transfer of ownership to third parties in the State of the Donor or of the contracting authority of in the country where they are established;

1.6.12 They are not compliant with their obligations concerning working rights of people with disabilities in the State of the contracting authority;

1.6.13 They are in control of any other tenderer participating to the same procurement procedure, or they exert a decisive influence on the other tenderer implying that their tenders are attributable to one and only decision making management structure;

1.6.14 They have hired, as employees or consultants, former employees of the contracting authority whose contract is expired form less than three years, in case those former employees, within the last three years, had decision-making powers on behalf of the contracting authority in awarding contracts to themselves.

1.7 An economic operator shall also be excluded when a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein falls under of the conditions set out in par. 1.6.

2. CHOICE OF CONTRACTORS

2.1 Award and execution of works, supply and service contracts and concessions guarantee performance quality and respect of cost effectiveness, efficacy, promptness, and fairness. In contracts and concession awards, contracting authorities abide also to the principles of free competition, non-discrimination, transparency, proportionality and publicity. Whenever allowed by the applicable law, upon criteria expressly mentioned in the tender documents, inspired by social needs, protection of health, environment, cultural heritage and sustainable development, also in energy . Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

2.2 The design of the procurement shall not be made with the intention of artificially narrowing competition with the intention of unduly favouring or disadvantaging certain economic operators .or certain works, suppliers or services.

2.3 Criteria for choosing participants to public procurement procedures shall not discriminate micro, small and medium enterprises.

2.4. Bidding documents shall specify the financial resources available for the contract to be awarded, and the maximum amount of the auction.. Any offer above that amount shall be automatically excluded.

2.5 Award procedures shall be cancelled if there are fewer than three eligible candidates./bidders. Whenever objective market conditions reasons render highly unlikely submission of three valid offers, tender documents may allow award in presence of one or two valid eligible offers.

2.6 Each bidder may submit only one offer. When submitting their tender, bidders declare not to have any conflict of interest and not to have any specific connection to other tenderers or to other parties involved in the procurement procedure.

2.7 Tender documents only may authorise or require tenderers to submit variants. Variants shall not be authorised without such indication. Variants shall be linked to the subject-matter of the contract.

2.8 Whenever the Agreement requires a no-objection on procurement procedures by AICS, contracting authorities requests a bid guarantee amounting to 2% of the maximum amount of the auction. Guarantees may be issued by a bank or a primary insurance company, shall be effective upon complying demand of the contracting authority simply stating that the contractor is in breach of his obligations and must contain an express waiver to the right to enforce the prior payment of the original debtor. The guarantee shall be requested if the contract is not stipulated due to the fault of the contractor.

3. CONTRACT EXECUTION

3.1 Contracts awarded after a no-objection by AICS shall be guaranteed by a performance bond, normally equal to 10%.of the contract price. Guarantees may be issued by a bank or a primary insurance company, shall be effective at first demand of the contracting authority and must contain an express waiver to the right to enforce the prior payment of the original debtor. Guarantees shall also be payable upon fraud or grave misconduct of the contractor. Performance bonds are progressively reduced during contract execution, and anyway up to maximum 80% of the amount of the guarantee. The remaining 20% shall be released upon verification of regular execution of the contract.

3.2 Contracts can be modified during their term with the prior approval of AICS, pursuant to art. 72 of the EU/2014/24 directive. Anyway, any increase in price shall not exceed the total amount budgeted in the Agreement. The approval of modifications can be denied if they make impossible or highly unlikely completion of other activities of the initiative regulated by the Agreement. Contractors shall not be entitled to any payment or reimbursement whatsoever for expenses deriving from activities carried out without AICS' prior approval. Upon AICS' or the contracting authority's request, contractors may be asked to restore, at their own expense, the original state before the unauthorized modification.

3.3 The contracting authority may, if during the contract term it becomes necessary increase or reduce the total contract amount up to 20% , ask fulfillment at the same conditions of the original contract. Contractors shall not be allowed to terminate the contract.

3.4 Contacts may not be assigned to third parties. In case of assignment, the contract shall be automatically terminated. Assignment can be allowed, upon AICS' prior approval, only if a new contractor replaces the previous as a consequence of universal or partial succession into the position of the initial contractor, due to death, corporate restructuring, including takeover, merger,

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 application of the present Appendix;

3.5 Contracts' duration can only be extended during their term of execution, if an option to extend duration is expressly included in the original contract and in tender documents.. In that case, contractors are bound to perform at the same prices and conditions of the original, or the most advantageous for the contracting authority.

3.6 Without prejudice to fulfilment of obligations regarding traceability of financial flows, as per the following paragraph 3.9, handover of credits deriving from a procurement, design contest or concession contract are considered effective by the Italian Government only upon AICS prior approval.. In any case, the contracting authority reserves the right to object to the assignee all exceptions applicable to the original contractor pursuant to the works, supply, service, or design contract signed by the latter.

3.7 Contractors who have been awarded a design contest are responsible for damages caused to the contracting authorities for errors or omissions in their design. In case of design or works procurement contracts, contractors are responsible for delays and additional expenses caused by deficiencies in the original design.

3.8 Subcontracting is allowed only up to 30% of the contract amount. Tender documents shall indicate conditions for subcontracting. Tenderers shall declare , in their bids, which supplies, services or works they intend to subcontract. Successful tenderers submit all subcontracts to the contracting authorities before the performance of the subcontract commences . Main contractors are fully responsible to the contracting authority for the entire contract . Subcontractors have to fulfill all requirements as per par. 1.2 in relation to the subcontract and must not fall under any grounds for exclusion under paragraphs 1.6 and 1.7 above. Tenderers or main contractors shall replace all subcontractors incurring in any ground for exclusion.

3.9 Contract prices are expressed and paid in Euro, or in the currency otherwise expressly mentioned in the Agreement. Exchange risks and variations shall not be subject to any compensation whatsoever.

3.10 Payments shall be traceable, according to deadlines foreseen in the contract and taking into account the actual progress in performance. The Italian Government makes payments to the other Party, as foreseen in the Agreement, exclusively on a dedicated bank account. In all contracts a specific clause obliges the contracting authorities, main and subcontractors to use the dedicated account for all payments.

3.11 Contracts are automatically terminated if contractors are subject of proceedings for bankruptcy, for winding up, for having their affairs administered by the court, or are in an arrangement with creditors, or for any similar procedure provided for in their National law.

3.12 In case of willful misconduct or serious fault, contractors' liability may not be limited.

3.13 Contract execution shall be governed by the law of the contracting authority, unless differently foreseen in the Agreement or in this Appendix.

3.14 Disputes arising between the contractors and the contracting authority shall not be subject to the jurisdiction of the Italian courts.

4. ELIGIBLE AND INELIGIBLE COSTS

4.1 The costs included in the contract(s) shall be eligible if they are actual, economic, and necessary for carrying out the Project pursuant to Project document.

4.2 In any case, the following items shall not be considered eligible:

4.2.1 voluptuary or luxury goods (e.g. perfumes, cosmetics, art objects, spirits, sports goods, etc.);

4.2.2 goods, services and civil works directly or indirectly connected to military activities;

4.2.3 non-income / non-profit taxes (including VAT) and import duties eventually due in the country of the contracting authority;

4.2.4 provisions for outstanding debts and future losses of the beneficiary or the final users;

4.2.5 interests owed by the contracting authority or the final users to any third party.

5. ETHICAL CLAUSES

5.1 Any attempt by candidates or bidders to obtain confidential information, enter into unlawful agreements with competitors or influence the contracting authority during the process of examining, clarifying, evaluating, and comparing tenders will lead to the rejection of his candidacy or tender and may result in administrative penalties;

5.2 Contractors and their staff or any other company with which the contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the Project.

5.3 Contractors must at all times act impartially and as a faithful adviser in accordance with the code of conduct of their profession. They must refrain from making public statements about the Project or services without the contracting authority's prior approval. They may not commit the contracting authority in any way without its prior written consent.

5.4 For the duration of the contract, contractors and their staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state. In particular, tenderers who have been awarded contracts shall respect core labour standards as defined in the relevant International Labour Organisation conventions (such as the conventions on labour unions and the protection of labour unions' rights, and on freedom of association and collective bargaining; elimination of forced and compulsory labour, as integrated by the 2014 Protocol; elimination of discrimination in respect of employment and occupation; convention on the protection of maternity, the convention on safety and health in agriculture, and the abolition of child labour).

5.5 The contractors may accept no payment connected with the contract other than that provided for therein. The contractors and their staff must not exercise any activity or receive any advantage inconsistent with their obligations to the contracting authority.

5.6 The contractor and their staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the contractor are confidential.

5.7 The contractors shall refrain from any relationship likely to compromise their independence or that of their staff. If contractors cease to be independent, or in case a conflict of interest arises, they inform the contracting authority with no delay. The contracting authority may terminate the contract without further notice and without the supplier having any claim to compensation.

5.8 Either MAECI- DGCS or AICS reserve the right to suspend or cancel Project financing if corrupt practices of any kind are discovered at any stage of the award process and if the contracting authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the contracting authority.

5.9 More specifically, all tender dossiers and contracts for works, supplies and services must include a clause stipulating that tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

5.10 Contractors undertakes to supply the AICS on request with supporting evidence regarding the conditions in which the contract is being executed. The Italian competent authorities may carry out whatever documentary or on-the-spot checks it deem necessary to find evidence in cases of suspected unusual commercial expenses or suspect corruptive practices.

5.11 Contractors found to have paid unusual commercial expenses on Projects funded by the AICS are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving Italian government's funds.

5.12 Failure to comply with one or more of the ethics clauses may result in the exclusion of the candidate, bidder or contractor from other Italian-funded contracts, and in penalties foreseen in the contract. The individual or company in question must be informed of the fact in writing.

5.13 It is the obligation of the contracting authority to make sure that procurement procedures are concluded in a transparent manner, based on objective criteria and disregarding any possible external influences.