



**DECREE NO. 10 OF 20 JANUARY 2000**  
**RATIFICATION OF DECREE NO. 121 OF 25 NOVEMBER 1999**  
**REGULATING PUBLIC CONTRACTS FOR WORKS, SERVICES AND**  
**SUPPLIES COMPLEMENTARY TO PUBLIC WORKS**

**CONSOLIDATED TEXT with amendments resulting from:**

Corrigendum of 11 February 2000  
Decree no. 62 of 24 July 2000  
Decree no. 100 of 29 October 2001  
Law no. 194 of 22 December 2010  
Delegated Decree no. 97 of 15 June 2011

**GENERAL PRINCIPLES**

**Art. 1**

*(General principles)*

This Decree shall regulate negotiations related to public contracts concerning works, services and supplies complementary to the works of the State and of the Entities of the overall public sector.

Such negotiations shall take inspiration from the following principles:

- a) achievement of public objectives for which the Entity is entitled to operate in the legal system;
- b) attainment of the highest cost-effectiveness within the limits of the best achievement of public objectives;
- c) application of the criteria of efficiency and effectiveness according to procedures based on timeliness, transparency and correctness;
- d) highest possible objectivity in choosing negotiation systems in the interest of the community.

**Art. 2**

*(Purposes)*

This Decree shall aim at implementing the conditions and legal instruments necessary to a correct and transparent management of public procurement contracts of the State and of the Entities of the overall public sector.

**Art. 3**

*(Scope)*

All public procurement contracts between the State and the entities of the overall public sector on the one hand and the successful tenderers on the other shall be governed by this Decree, in accordance with the requirements set out herein.

**PROGRAMME**

**Art. 4**

*(Programme)*



By 31 December, the Congress of State shall approve the programme of public works to be carried out during the following financial year, presented by the relevant Ministries, taking into account the proposals of the boards of directors of the Autonomous State Corporations.

In drawing up the programme, the Congress of State shall implement its administrative, economic and social policy guidelines, in line with the Economic Programme.

For each work included in the programme, the following shall be provided: the description of the main characteristics of the work, the location, urban forecasts and the expected amount of expenditure;

In drawing up the programme, priority shall be given to the completion of works already begun and to the interventions required for the functioning of the works.

The Congress of the State may amend the above programme if the amendments are strictly related to budgetary availability.

#### **Art.4-bis**

For the implementation of public works included in the programme referred to in Article 4, in relation to which the contracting Administration and Public Entities expressly provide for such possibility, private proponents shall have the right to submit a feasibility study.

Private proponents may also submit proposals to the contracting Administration and Public Entities, by means of feasibility studies, relating to the implementation of public works and infrastructures not included in the programme referred to in Article 4.

The Administration and Public Entities shall be required to assess proposals within six months of receipt and may adopt, within the scope of their programmes, feasibility studies deemed to be of public interest.

The adoption of the feasibility study shall not entitle the proponent to any consideration for services rendered or to the implementation of the works, nor to the management of the related services; however, if the procedures referred to in Article 14 are implemented, the provisions contained therein shall apply. <sup>4</sup>

### **DESIGN**

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<sup>4</sup> **Original text (Law no. 194/2010):**

Art.89 (first paragraph)

(Amendments to Decree no. 10 of 20 January 2000)

The following article shall be added after Article 4 of Decree no. 10 of 20 January 2000:

"Art.4-bis

For the implementation of public works included in the programme referred to in Article 4, in relation to which the contracting Administration and Public Entities expressly provide for such possibility, private proponents shall have the right to submit a feasibility study.

Private proponents may also submit proposals to the contracting Administration and Public Entities, by means of feasibility studies, relating to the implementation of public works and infrastructures not included in the programme referred to in Article 4.

The Administration and Public Entities shall be required to assess proposals within six months of receipt and may adopt, within the scope of their programmes, feasibility studies deemed to be of public interest.

The adoption of the feasibility study shall not entitle the proponent to any consideration for services rendered or to the implementation of the works, nor to the management of the related services; however, if the procedures referred to in Article 14 are implemented, the provisions contained therein shall apply."



**Art. 5**  
*(Design stages)*

1. Without prejudice to the provisions of paragraphs 4 and 5, the design of public works shall be divided into two stages of successive technical studies, final and executive, in order to ensure:

- a) the quality of the work;
- b) compliance of the work with their intended purpose;
- c) compliance with environmental and urban planning regulations.

2. The final project shall fully identify the works to be carried out in compliance, where applicable, with the requirements, criteria and constraints established in the preliminary project and shall contain all the elements necessary for the granting of the required authorisations. It shall include the following:

- a) descriptive report on project-related choices, the characteristics of the materials selected and the criteria for executing the works in the territory;
- b) study of environmental impact, where required;
- c) general drawings on appropriate scales describing the main characteristics of the works and architectural solutions, the surfaces and volumes to be built, including those for identifying the type of foundations;
- d) geological report supported by geognostic surveys, in order to determine a detailed geological, geomorphological, hydrogeological, geotechnical and seismic picture. These reports shall be detailed to such an extent that they allow preliminary calculations of the structures and installations and the drawing up of the bill of quantities. If, in accordance with paragraphs 4 and 5 below, a preliminary design stage is required, the detailed geological report shall be drawn up during that stage;
- e) preliminary calculations for structures and installations;
- f) descriptive procedural guidelines governing the performance, technical and economic elements envisaged in the project;
- g) bill of quantities.

3. The executive project, drawn up in accordance with the final project and on the basis of any additional plano-altimetric surveys, measurements and stakeout surveys, and surveys of the underground service network that may be necessary, shall determine in detail the works to be carried out and the related estimated cost and be drawn up at such a level of detail as to allow, where possible, each element to be identified in terms of form, type, quality, size and price. The executive project shall include the following:

- a) analytical technical report on the work, examining all its distinctive elements and technical and architectural characteristics;
- b) executive calculations for structures and installations;
- c) graphic designs on appropriate scales, including construction details, also in relation to any installations;
- d) performance-based or descriptive special tender specifications;
- e) bill of quantities and list of unit prices;
- f) maintenance plan for the work and its parts.

4. If the public works or infrastructures are subject to environmental impact assessment, a preliminary design stage shall also be required to define the qualitative and functional characteristics of the works, the requirements to be met and the specific services to be provided. The preliminary project shall include the following:

- a) explanatory report on the reasons for choosing the proposed solution and its feasibility based on preliminary investigations relating to the environmental, administrative, financial and technical aspects of the project;



b) schematic drawings for identifying the size, volume, type, functional and technological characteristics of the works to be carried out;

c) rendering of the proposed solution;

d) environmental screening, where required.

5. The drafting and approval of the preliminary project shall also be required in relation to public works of considerable importance and technical complexity, as well as in the context of the procedure for the construction of works and infrastructures through a contest and public works concessions with project finance.

6. In relation to public works of considerable importance, both from a technical point of view and in terms of social and economic impact, the design of the product or infrastructure may also be preceded by a preparatory study stage, consisting of the drafting of a feasibility study, which shall include an explanatory report containing the following:

a) the functional, technical, management and economic-financial characteristics of the works to be carried out;

b) the graphic representation of the identified solution;

c) the analysis of possible alternatives to the identified solution;

d) the analysis of the current situation, including any architectural, geological, socio-economic and administrative aspects. With regard to geological aspects, the analysis shall consist of drawing up a preliminary geological survey to identify and describe the critical issues in the area of the works;

e) for the purposes of preliminary assessment of the environmental sustainability and landscape compatibility of the project, the description of the requirements of the works to be carried out, the characteristics and connections with the context in which the project is to be carried out, with particular reference to the verification of environmental, historical, archaeological and landscape constraints pertaining to the areas or buildings involved in the project, as well as the identification of appropriate measures to protect the environment and cultural and landscape values. 5

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Article 14 of Decree no. 10 of 20 January 2000 shall be replaced by the following:

“Art.14

(Project finance)

For the implementation of public works included in the programme referred to in Article 4 or whose feasibility studies have been adopted in accordance with Article 4bis, which can be financed in whole or in part with private capital, the contracting Administration or Public Entity may award a concession through a tender based on a feasibility study, with a view to receiving bids that provide for the use of resources wholly or partly borne by the proponents.

The concessionaire of the public work identified as a result of the tender procedures shall, as a general rule, be entitled, by way of consideration, solely to functionally manage and economically exploit all the works carried out. However, the contracting Administration or Public Entity shall also establish a price during the tender procedure in the following cases:

a) if the concessionaire is required to charge users prices that are lower than those corresponding to the return on investment and the sum of the cost of the service and the normal profit margin;

b) if it is necessary to ensure the concessionaire the pursuit of the economic and financial balance of the investments and related management in connection with the quality of the service to be provided.

In determining the price referred to in the second paragraph, account shall be taken of any goods and services provided by the concessionaire to the contracting Administration or Public Entity in relation to the work in question, as established by the contracting authority during the decision-making stage.



For a consideration, the contracting Administration or Public Entity, without prejudice to the prerogatives of the Great and General Council, may transfer ownership or rights of use of real estate properties at its disposal or expropriated for this purpose, the use of which is instrumental or connected with the work to be entrusted under concession, as well as real estate properties that no longer serve functions of public interest.

The concession shall normally have a duration of no more than thirty years; however, in order to ensure the economic and financial balance of the concessionaire's investments, the contracting Administration or Public Entity may establish that the concession shall have a duration of more than thirty years, taking into account the return on the concession, the percentage of the price referred to in the second paragraph in relation to the total amount of the works and the risks associated with changes in market conditions."

The Congress of the State shall adopt, by 31 March 2011, a decree regulating the following:

- a) the requirements and characteristics of private proponents who may submit feasibility studies to the Administration or Public Entities;
- b) the content of the bids, the security deposits to be paid and the criteria for evaluating the bids;
- c) the content and methods of disclosure of the tender notice and the letter of invitation;
- d) the procedures for identifying the promoter and the successful bidder of the concession and for concluding the concession contract;
- e) the amount owed to the promoter who was not awarded the concession;
- f) the possibility of establishing project companies and relations between such companies and the successful bidder of the concession;
- g) the termination of the concession contract due to breach by the entity awarding the concession or the revocation of the concession for reasons of public interest;
- h) termination of the concession contract due to the concessionaire's fault;
- i) the characteristics and requirements of entities that finance the public works and entities that may participate in the tender.

<sup>5</sup> **Original text (Decree no. 10/2000):**

Art. 5

(Executive project)

The execution of public works shall be subject to the prior drawing up and approval of an executive project by the competent offices.

The executive project shall determine in detail the works to be carried out and the related estimated cost and be drawn up at such a level of detail as to allow, where possible, each element to be identified in terms of form, type, quality, size and price. In particular, the project shall consist of the following:

- analytical technical report, examining all the distinctive elements of the work and its technical and architectural characteristics;
- graphic designs on the required scales, such as to define the layout of the work and specify its form and details, including in relation to any technological installations;
- executive calculations for structures and installations;
- bills of quantities;
- any special tender specifications.

**Legislative amendments:**

**Delegated Decree no. 97/2011, Article 2:**

Art. 2

1. Article 5 of Decree no. 10 of 20 January 2000 shall be replaced by the following:

"Art. 5

Design stages

1. Without prejudice to the provisions of paragraphs 4 and 5, the design of public works shall be divided into two stages of successive technical studies, final and executive, in order to ensure:

- a) the quality of the work;
- b) compliance of the work with their intended purpose;
- c) compliance with environmental and urban planning regulations.

2. The final project shall fully identify the works to be carried out in compliance, where applicable, with the requirements, criteria and constraints established in the preliminary project and shall contain all the elements necessary for the granting of the required authorisations. It shall include the following:



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- a) descriptive report on project-related choices, the characteristics of the materials selected and the criteria for executing the works in the territory;
  - b) study of environmental impact, where required;
  - c) general drawings on appropriate scales describing the main characteristics of the works and architectural solutions, the surfaces and volumes to be built, including those for identifying the type of foundations;
  - d) geological report supported by geognostic surveys, in order to determine a detailed geological, geomorphological, hydrogeological, geotechnical and seismic picture. These reports shall be detailed to such an extent that they allow preliminary calculations of the structures and installations and the drawing up of the bill of quantities. If, in accordance with paragraphs 4 and 5 below, a preliminary design stage is required, the detailed geological report shall be drawn up during that stage;
  - e) preliminary calculations for structures and installations;
  - f) descriptive procedural guidelines governing the performance, technical and economic elements envisaged in the project;
  - g) bill of quantities.
3. The executive project, drawn up in accordance with the final project and on the basis of any additional plano-altimetric surveys, measurements and stakeout surveys, and surveys of the underground service network that may be necessary, shall determine in detail the works to be carried out and the related estimated cost and be drawn up at such a level of detail as to allow, where possible, each element to be identified in terms of form, type, quality, size and price. The executive project shall include the following:
- a) analytical technical report on the work, examining all its distinctive elements and technical and architectural characteristics;
  - b) executive calculations for structures and installations;
  - c) graphic designs on appropriate scales, including construction details, also in relation to any installations;
  - d) performance-based or descriptive special tender specifications;
  - e) bill of quantities and list of unit prices;
  - f) maintenance plan for the work and its parts.
4. If the public works or infrastructures are subject to environmental impact assessment, a preliminary design stage shall also be required to define the qualitative and functional characteristics of the works, the requirements to be met and the specific services to be provided. The preliminary project shall include the following:
- a) explanatory report on the reasons for choosing the proposed solution and its feasibility based on preliminary investigations relating to the environmental, administrative, financial and technical aspects of the project;
  - b) schematic drawing for identifying the size, volume, type, functional and technological characteristics of the works to be carried out;
  - c) rendering of the proposed solution;
  - d) environmental screening, where required.
5. The drafting and approval of the preliminary project shall also be required in relation to public works of considerable importance and technical complexity, as well as in the context of the procedure for the construction of works and infrastructures through a contest and public works concessions with project finance.
6. In relation to public works of considerable importance, both from a technical point of view and in terms of social and economic impact, the design of the product or infrastructure may also be preceded by a preparatory study stage, consisting of the drafting of a feasibility study, which shall include an explanatory report containing the following:
- a) the functional, technical, management and economic-financial characteristics of the works to be carried out;
  - b) the graphic representation of the identified solution;
  - c) the analysis of possible alternatives to the identified solution;
  - d) the analysis of the current situation, including any architectural, geological, socio-economic and administrative aspects. With regard to geological aspects, the analysis shall consist of drawing up a preliminary geological survey to identify and describe the critical issues in the area of the works;
  - e) the description, for the purposes of preliminary assessment of the environmental sustainability and landscape compatibility of the project, of the requirements of the works to be carried out, the characteristics and connections with the context in which the project is to be carried out, with particular reference to the verification of environmental, historical, archaeological and landscape constraints pertaining to the areas or buildings involved in the project, as well as the identification of appropriate measures to protect the environment and cultural and landscape values.”.



**Art. 6**  
*(External assignments)*

1. Due to the particular requirements of public works, the Public Administration or Public Entities may assign the project, either directly or through specific competitions, to professionals outside the Public Administration, on the basis of terms of engagement.
  2. Professionals with proven experience, adequate specific expertise and who meet the requirements of current building and urban planning regulations shall be eligible.
  3. The terms of engagement of the professional shall comply with the professional scales of fees in force, without prejudice to the provisions of special regulations, and shall contain the following elements:
    - a) a detailed description of the subject of the assignment;
    - b) the estimated total cost of the work;
    - c) the explicit reservation of the right by the commissioning Administration or Public Entity to express its opinion on the fundamental points of the project under development and to request and obtain any variations or modifications;
    - d) the end date of the assignment and any penalties for delays;
    - e) the consideration owed to the professional and the payment methods;
    - f) the right of revocation and the terms of use of the works actually performed at the time of revocation;
    - g) the insurance policy for professional risks;
    - h) the full and exclusive use by the commissioning Administration or Public Entity of the projects and documents;
    - i) the name of the authority from which the designer can obtain, during the execution of the contract, all legislative and procedural information relating to procurement and regulations concerning employment and working conditions.
  4. The competent design office shall maintain contact with the external designer throughout the various stages of the design process.
  5. The insurance policy for professional risks of the appointed designer referred to in paragraph 3, letter g) above shall cover, in addition to new design costs, any additional costs that the contracting Administration or Public Entity shall incur for changes resulting from errors or omissions in the executive project that compromise, in whole or in part, the construction of the work or its use. The policy shall be concluded for an amount equal to 10 per cent of the cost of the designed works, with a maximum limit of €3,000,000.00; failure by the designer to submit the guarantee policy shall exempt the commissioning Administration or Public Entity from payment of professional fees.
  6. The selection of the professional to whom the design assignment is to be entrusted shall be carried out by the commissioning Administration or Public Entity on the basis of information on the professional and technical-organisational qualifications obtained from the market and in compliance with the principles of transparency, competition, rotation, equal treatment and proportionality.
  7. In all the assignments referred to in this Article, the person entrusted with the assignment shall not use subcontractors, except for activities relating to geological, geotechnical and seismic surveys, soundings, surveys, measurements and stakeout surveys, the preparation of specialist and detailed documents, and the graphic drafting of project documents alone. This shall not affect the liability of the designer entrusted with the assignment.
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8. The final and executive designs shall normally be entrusted to the same entity, whether public or private, unless there are specific reasons to the contrary; in such cases, the new designer shall be required to accept the design work previously carried out.

9. The assignment may include both design stages, provided that the start of the executive design stage is subject to the decisions taken by the commissioning Administration or Public Entity as a result of the final design stage.

10. It shall be prohibited to assign activities related to design, safety coordination during the design stage, works management, safety coordination during the execution stage, testing, surveys and support through fixed-term contracts or other procedures other than those provided for in this Decree. 6

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<sup>6</sup> **Original text (Decree no. 10/2000):**

Art. 6

(External assignments)

Due to the particular requirements of public works, the Public Administration or Public Autonomous Corporations may assign the project, either directly or through specific competitions, to professionals outside the Public Administration, on the basis of specific terms of engagement.

Professionals with proven experience and adequate specific expertise shall be eligible.

The terms of engagement of the professional shall comply with the professional scales of fees in force and the provisions of Article 168 of Law no. 87 of 19 July 1995 and shall include the following conditions:

- a detailed description of the subject of the assignment,
- the estimated total cost of the work,
- the explicit reservation of the right by the commissioning Administration to express its opinion on the fundamental points of the project under development and to request and obtain any variations or modifications;
- the end date of the assignment and any penalties for delays;
- the consideration owed to the professional and the payment methods;
- the right of revocation and the terms of use of the works actually performed at the time of revocation;
- the insurance policy for professional risks;
- the full and exclusive use by the Public Administration of the projects and documents;
- the name of the authority from which the designer can obtain, during the execution of the contract, all legislative and procedural information relating to procurement and regulations concerning employment and working conditions.

The competent design office shall maintain contact with the external designer throughout the various stages of the design process.

**Legislative amendments:**

**Delegated Decree no. 97/2011, Article 3:**

Art. 3

1. Article 6 of Decree no. 10 of 20 January 2000 shall be replaced by the following:

“Art.6

External assignments

1. Due to the particular requirements of public works, the Public Administration or Public Entities may assign the project, either directly or through specific competitions, to professionals outside the Public Administration, on the basis of terms of engagement.

2. Professionals with proven experience, adequate specific expertise and who meet the requirements of current building and urban planning regulations shall be eligible.

3. The terms of engagement of the professional shall comply with the professional scales of fees in force, without prejudice to the provisions of special regulations, and shall contain the following elements:

- a) a detailed description of the subject of the assignment;
- b) the estimated total cost of the work;



## **Art. 6 bis** *(Design contests)*

1. Design contests shall be announced by means of a contest notice in relation to

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c) the explicit reservation of the right by the commissioning Administration or Public Entity to express its opinion on the fundamental points of the project under development and to request and obtain any variations or modifications;

d) the end date of the assignment and any penalties for delays;

e) the consideration owed to the professional and the payment methods;

f) the right of revocation and the terms of use of the works actually performed at the time of revocation;

g) the insurance policy for professional risks;

h) the full and exclusive use by the commissioning Administration or Public Entity of the projects and documents;

i) the name of the authority from which the designer can obtain, during the execution of the contract, all legislative and procedural information relating to procurement and regulations concerning employment and working conditions.

4. The competent design office shall maintain contact with the external designer throughout the various stages of the design process.

5. The insurance policy for professional risks of the appointed designer referred to in paragraph 3, letter g) above shall cover, in addition to new design costs, any additional costs that the contracting Administration or Public Entity shall incur for changes resulting from errors or omissions in the executive project that compromise, in whole or in part, the construction of the work or its use.

The policy shall be concluded for an amount equal to 10 per cent of the cost of the designed works, with a maximum limit of €3,000,000.00; failure by the designer to submit the guarantee policy shall exempt the commissioning Administration or Public Entity from payment of professional fees.

6. The selection of the professional to whom the design assignment is to be entrusted shall be carried out by the commissioning Administration or Public Entity on the basis of information on the professional and technical-organisational qualifications obtained from the market and in compliance with the principles of transparency, competition, rotation, equal treatment and proportionality.

7. In all the assignments referred to in this Article, the person entrusted with the assignment shall not use subcontractors, except for activities relating to geological, geotechnical and seismic surveys, soundings, surveys, measurements and stakeout surveys, the preparation of specialist and detailed documents, and the graphic drafting of project documents alone. This shall not affect the liability of the designer entrusted with the assignment.

8. The final and executive designs shall normally be entrusted to the same entity, whether public or private, unless there are specific reasons to the contrary; in such cases, the new designer shall be required to accept the design work previously carried out.

9. The assignment may include both design stages, provided that the start of the executive design stage is subject to the decisions taken by the commissioning Administration or Public Entity as a result of the final design stage.

10. It shall be prohibited to assign activities related to design, safety coordination during the design stage, works management, safety coordination during the execution stage, testing, surveys and support through fixed-term contracts or other procedures other than those provided for in this Decree.”.

**See LAW NO. 160 OF 3 NOVEMBER 2015**

**Amendments to Law no. 219 of 23 December 2014 and Adjustment to the Budget of the State and of the Entities of the overall public sector for the 2015 financial year**

Art. 30

*(Authentic interpretation)*

1. Article 6 of Decree no. 10 of 20 January 2000, as replaced by Article 3 of Delegated Decree no. 97 of 15 June 2011, where it provides that the terms of engagement of the professional assign the full and exclusive use by the commissioning Administration or Public Entity of the projects and documents, shall be interpreted as meaning that, through the acquisition, the projects and documents become State documents, with the right of free reproduction pursuant to Article 98, paragraph 1, letter f), of Law no. 8 of 25 January 1991.



public works and infrastructures, if the notice concerns the design of works of particular architectural, environmental, historical, artistic, conservation and technological significance.

2. In design contests relating to the public works sector, the Administration or Public Entity organising the contest shall base the tender on a feasibility study and strictly require the submission of projects or plans with a level of detail equivalent to that of a preliminary project. If the design contest concerns works to be carried out using the project finance system referred to in Article 14, the design proposal shall also include the drawing up of an economic and financial study for its construction and management.

3. The deadline for submitting proposals shall be determined in relation to the importance and complexity of the subject matter and shall not be less than sixty days from the date of publication of the contest notice.

4. The entities eligible to participate in design contests, the amount to be awarded to the winner and the sums to be awarded to other projects deemed worthy, by way of reimbursement of expenses, shall be determined by the contest notice.

5. The Administration or Public Entity organising the contest shall acquire ownership of the winning project upon payment of the award.

6. The Administration or Public Entity organising the contest shall have the right, through a negotiated procedure, to entrust the subsequent design stages to the winner of the contest, provided that such winner meets the necessary technical and professional requirements with respect to the design stages to be completed; this right and the related consideration shall be specified in the contest notice.

7. If only a limited number of participants are allowed to take part in the design contest, the Administration or the Public Entity organising the contest shall establish clear and non-discriminatory selection criteria; in order to ensure effective competition, the number of candidates invited to participate shall not be less than five. <sup>7</sup>

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<sup>7</sup> **Original text (Delegated Decree no. 97/2011):**

Art. 5

1. The following articles shall be added after Article 6 of Decree no. 10 of 20 January 2000: "Art.

6 *bis*

Design contests

1. Design contests shall be announced by means of a contest notice in relation to public works and infrastructures, if the notice concerns the design of works of particular architectural, environmental, historical, artistic, conservation and technological significance.

2. In design contests relating to the public works sector, the Administration or Public Entity organising the contest shall base the tender on a feasibility study and strictly require the submission of projects or plans with a level of detail equivalent to that of a preliminary project. If the design contest concerns works to be carried out using the project finance system referred to in Article 14, the design proposal shall also include the drawing up of an economic and financial study for its construction and management.

3. The deadline for submitting proposals shall be determined in relation to the importance and complexity of the subject matter and shall not be less than sixty days from the date of publication of the contest notice.

4. The entities eligible to participate in design contests, the amount to be awarded to the winner and the sums to be awarded to other projects deemed worthy, by way of reimbursement of expenses, shall be determined by the contest notice.

5. The Administration or Public Entity organising the contest shall acquire ownership of the winning project upon payment of the award.

6. The Administration or Public Entity organising the contest shall have the right, through a negotiated procedure, to entrust the subsequent design stages to the winner of the contest, provided that such winner meets the necessary technical and professional requirements with respect to the design stages to be completed; this right and the related consideration shall be specified in the contest notice.



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7. If only a limited number of participants are allowed to take part in the design contest, the Administration or the Public Entity organising the contest shall establish clear and non-discriminatory selection criteria; in order to ensure effective competition, the number of candidates invited to participate shall not be less than five.

#### Art. 6 *ter* Contests of ideas

1. Contests of ideas shall be selection procedures announced by means of a contest notice aimed at the acquisition by the Administration or Public Entities of an idea proposal to be remunerated with an appropriate award.
2. The contest notice shall not require the submission of documents of a higher level than those required for the feasibility study. The participants in the contest shall draw up their proposals in the form most suitable for their correct representation.
3. The contest notice shall establish the entities eligible to participate in the contest and shall provide for an appropriate award for the entity or entities proposing the ideas that are considered the best.
4. The winning idea or ideas shall become the property of the Administration or Public Entity organising the contest and, following any definition of technical arrangements, may be used as the basis for a design contest in which the winners are eligible to participate if they meet the relevant subjective requirements.
5. The Administration or Public Entity organising the contest shall have the right, through a negotiated procedure, to entrust the subsequent design stages to the winner of the contest, provided that such winner meets the necessary technical and professional requirements with respect to the design stages to be completed; this right and the related consideration shall be specified in the contest notice.

#### Article 6 *quater* Two-stage contests

1. In the case of particularly significant and complex projects, the Administration or Public Entity, upon providing adequate justification, shall have the right to conduct a two-stage design contest; the second stage of such contest, consisting in the submission of preliminary designs, shall involve the participants selected through the evaluation of idea proposals submitted during the first stage, without any merit rankings or awards. The provisions of Article 6 *bis*, paragraph 6, shall apply.

#### Art. 6 *quinquies*

##### Common provisions for design contests

1. The notice relating to design contests and contests of ideas shall contain, in addition to the provisions of Articles 6*bis*, 6*ter* and 6*quater*, insofar as they are compatible, the information and indications referred to in Articles 20 and 21 and shall be published in accordance with the procedures laid down in Article 20, paragraph 3. In particular, the contest notice shall clearly identify the subject matter of the contest by indicating the public work and infrastructure to be designed, as well as the public and collective requirements to be met through the implementation of the public project.
2. In cases where participants in a contest are required to have a specific professional qualification, at least one third of the selection board shall be composed of members who have the same or an equivalent qualification. The selection board shall operate independently and shall assess the plans and projects anonymously submitted by candidates and solely on the basis of the criteria specified in the contest notice.
3. Anonymity shall be maintained until the board has completed its activity, unless the board deems it appropriate to invite candidates to answer questions aimed at clarifying any aspect of the projects; to this end, communications, exchanges and the storage of information shall be conducted in such a way as to guarantee the integrity of the data and the confidentiality of any information submitted by participants in the contest and to prevent the selection board from seeing the content of the plans and projects before the deadline for their submission.
4. The board shall draw up a report, signed by all its members, explaining the reasons for the choices made in drawing up the merit ranking for each project and including the relevant observations and all the clarifications necessary to explain the final assessments. The report shall also contain a transcript of the dialogue between the members of the selection board and the candidates invited to provide clarifications pursuant to paragraph 3.
5. At the end of the award procedures, the Administration or Public Entity that organised the contest shall send all participants a notice regarding the results of the contest by registered letter with acknowledgement of receipt.



**Art. 6 ter**  
*(Contests of ideas)*

1. Contests of ideas shall be selection procedures announced by means of a contest notice aimed at the acquisition by the Administration or Public Entities of an idea proposal to be remunerated with an appropriate award.
2. The contest notice shall not require the submission of documents of a higher level than those required for the feasibility study. The participants in the contest shall draw up their proposals in the form most suitable for their correct representation.
3. The contest notice shall establish the entities eligible to participate in the contest and shall provide for an appropriate award for the entity or entities proposing the ideas that are considered the best.
4. The winning idea or ideas shall become the property of the Administration or Public Entity organising the contest and, following any definition of technical arrangements, may be used as the basis for a design contest in which the winners are eligible to participate if they meet the relevant subjective requirements.
5. The Administration or Public Entity organising the contest shall have the right, through a negotiated procedure, to entrust the subsequent design stages to the winner of the contest, provided that such winner meets the necessary technical and professional requirements with respect to the design stages to be completed; this right and the related consideration shall be specified in the contest notice. <sup>8</sup>

**Art.6 quater**  
*(Two-stage contests)*

1. In the case of particularly significant and complex projects, the Administration or Public Entity, upon providing adequate justification, shall have the right to conduct a two-stage design contest; the second stage of such contest, consisting in the submission of preliminary designs, shall involve the participants selected through the evaluation of idea proposals submitted during the first stage, without any merit rankings or awards. The provisions of Article 6 bis, paragraph 6, shall apply. <sup>9</sup>

**Art. 6 quinquies**  
*(Common provisions for design contests)*

1. The notice relating to design contests and contests of ideas shall contain, in addition to

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6. The Administration or Public Entity organising the contest shall have the right not to publish information relating to the results of design contests where such disclosure would hinder the application of the law, be contrary to the public interest, harm the legitimate commercial interests of companies or fair competition between providers of works and services."

<sup>8</sup> **Original text (Delegated Decree no. 97/2011):**

Art. 5

See note to Article 6-bis

<sup>9</sup> **Original text (Delegated Decree no. 97/2011):**

Art. 5

See note to Article 6-bis



the provisions of Articles 6bis, 6ter and 6quater, insofar as they are compatible, the information and indications referred to in Articles 20 and 21 and shall be published in accordance with the procedures laid down in Article 20, paragraph 3. In particular, the contest notice shall clearly identify the subject matter of the contest by indicating the public work and infrastructure to be designed, as well as the public and collective requirements to be met through the implementation of the public project.

2. In cases where participants in a contest are required to have a specific professional qualification, at least one third of the selection board shall be composed of members who have the same or an equivalent qualification. The selection board shall operate independently and shall assess the plans and projects anonymously submitted by candidates and solely on the basis of the criteria specified in the contest notice.

3. Anonymity shall be maintained until the board has completed its work, unless the board deems it appropriate to invite candidates to answer questions aimed at clarifying any aspect of the projects; to this end, communications, exchanges and the storage of information shall be conducted in such a way as to guarantee the integrity of the data and the confidentiality of any information submitted by participants in the contest and to prevent the selection board from seeing the content of the plans and projects before the deadline for their submission.

4. The board shall draw up a report, signed by all its members, explaining the reasons for the choices made in drawing up the merit ranking for each project and including the relevant observations and all the clarifications necessary to explain the final assessments. The report shall also contain a transcript of the dialogue between the members of the selection board and the candidates invited to provide clarifications pursuant to paragraph 3.

5. At the end of the award procedures, the Administration or Public Entity that organised the contest shall send all participants a notice regarding the results of the contest by registered letter with acknowledgement of receipt.

6. The Administration or Public Entity organising the contest shall have the right not to publish information relating to the results of design contests where such disclosure would hinder the application of the law, be contrary to the public interest, harm the legitimate commercial interests of companies or fair competition between providers of works and services. <sup>10</sup>

## **Art.7**

*(Provisions common to all assignments)*

The documents drawn up for the executive project shall comply with the principles of environmental protection and any other protection of the public interest.

The executive projects shall be accompanied by all the main and detailed documents required by the relevant provisions in force.

The calculation of the quantity of works shall be carried out with particular accuracy: any considerable deviations from the original estimates occurring during the execution shall be considered justified only if they are due to changes to the original project and shall in any case be regulated in accordance with the procedures set out in Article 56.

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<sup>10</sup> **Original text (Delegated Decree no. 97/2011):**

Art. 5

See note to Article 6-bis



The unit prices applied in the relevant expert surveys shall be established on the basis of accurate analyses, documented in the project documents, which ensure the proper execution of the works at the most favourable economic conditions for the contracting authority.

## **SELECTION PROCEDURES**

### **Art. 8** *(Register)*

In accordance with the provisions of Article 1 of the Law on public procurement contracts, only companies included in the relevant register may participate in tenders. In such register, companies shall be classified by the amount of their turnover and by categories of work.

Although the register of companies contains the information required by the various bodies, it may be kept in electronic form and entrusted to a single entity by decision of the Congress of State, without prejudice to the possibility for any interested party to consult and access it, including electronically. <sup>11</sup>

### **Art. 9** *(Procedures for inclusion in the register)*

Interested companies shall submit an application for inclusion in the relevant register in order to be invited to participate in tenders. The inclusion in the register shall be updated on a quarterly basis.

The inclusion in this register shall be based on the analysis of data or declarations, as certification of technical and economic capacity and reliability, listed in a specific circular to be approved by Congress of State decision.

References may also consist of certificates issued by the competent offices, showing that the entrepreneur is registered in an official list under the category of companies possessing the required professional characteristics.

In such cases, it shall be necessary to select candidates whose suitability offers adequate

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<sup>11</sup> **Original text (Decree no. 10/2000):**

Art.8

(Register)

In accordance with the provisions of Article 1 of the Law on public procurement contracts, only companies included in the appropriate registers, managed, stored and available for consultation at the individual contracting authorities, may participate in tenders. In such register, companies shall be classified by the amount of their turnover and by categories of work.

**Legislative amendments:**

**Law no. 100/2001, Article 1:**

Art. 1

Article 8 of Decree no. 10 of 20 January 2000 shall be amended as follows:

"Art.8

Register

In accordance with the provisions of Article 1 of the Law on public procurement contracts, only companies included in the relevant register may participate in tenders. In such register, companies shall be classified by the amount of their turnover and by categories of work.

Although the register of companies contains the information required by the various bodies, it may be kept in electronic form and entrusted to a single entity by Congress of State decision, without prejudice to the possibility for any interested party to consult and access it, including electronically."



guarantees for the fulfilment of contractual obligations; this implies that they shall have, on the one hand, the necessary capacity, experience and reliability and, on the other, sufficient technical and economic resources.

At its discretion and when necessary, the contracting authority may request additional references from the bidder to certify its technical, economic and financial capacity.

The application for inclusion in the register shall be accepted or rejected within one month of its submission, and the acceptance or rejection of the application shall be notified to the company.

In any case, the following entrepreneurs shall be excluded from inclusion in the registers or suspended:

- a. entrepreneurs against whom a request for the initiation of bankruptcy proceedings or of composition with creditors has been lodged or against whom such proceedings have been initiated;
- b. entrepreneurs whose company is under liquidation;
- c. entrepreneurs who have committed serious and proven offences that could compromise their reliability as participants in the tender;
- d. entrepreneurs who do not comply with obligations relating to taxes, duties and social security contributions;
- e. entrepreneurs who, during a previous tender procedure, have intentionally submitted certifications or declarations that do not reflect their actual capacity, experience and reliability;
- f. entrepreneurs who are not members of the professional association, if this is required by specific legal provisions.

The Public Administration and the Entities of the overall public sector shall have the right to request the suspension of the inclusion in the appropriate register of companies against which legal proceedings are pending.

The Public Administration and the Entities of the overall public sector shall also have the right to resort to companies not included in the register, on an exceptional basis, for temporary and specific services, subject to authorisation by the Congress of the State upon recommendation of the competent authorities of the individual Entities. <sup>12</sup>

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<sup>12</sup> **Original text (Decree no. 10/2000):**

Art. 9

Procedures for inclusion in the register

Interested companies shall submit an annual application by 30 November to be included in the relevant registers in order to be invited to participate in tenders that will be announced during the following year. Inclusion in such registers shall be based on an analysis of the following data or declarations, as certifications of technical and economic capacity and reliability:

- a. copy of the licence, company's corporate purpose and type of works carried out;
- b. average turnover of the last three financial years;
- c. turnover of the company of the last three financial years, including the share of works carried out in temporary association with other companies;
- d. list of works carried out over the last three financial years;
- e. average annual number of employees over the last three financial years, broken down by professional category where applicable;
- f. technical equipment available for performing the works or services;
- g. technical personnel in charge of the works and supervision;
- h. any inclusion of the place of business or domicile in the register of the contracting authority or in the professional register;
- i. declaration regarding the amount of direct taxes paid in the last three financial years, issued by the Tax Office or by means of self-certification;
- j. other certificates, in particular those suitable for verifying the candidates' capacity;
- k. share capital if legally required;
- l. any certifications of the financial statement;
- m. references.



References may also consist of certificates issued by the competent offices, showing that the entrepreneur is registered in an official list under the category of companies possessing the required professional characteristics. In such cases, it shall be necessary to select candidates whose suitability offers adequate guarantees for the fulfilment of contractual obligations; this implies that they shall have, on the one hand, the necessary capacity, experience and reliability and, on the other, sufficient technical and economic resources.

At its discretion and when necessary, the contracting authority may request additional references from the bidder to certify its economic and financial capacity.

The application for inclusion in the Register shall be accepted or rejected within one month of its submission, and the acceptance or rejection of the application shall be notified to the company.

In any case, the following entrepreneurs shall be excluded from inclusion in the registers or suspended:

- a. entrepreneurs against whom a request for the initiation of bankruptcy proceedings or of composition with creditors has been lodged or against whom such proceedings have been initiated;
- b. entrepreneurs whose company is under liquidation;
- c. entrepreneurs who have committed serious and proven offences that could compromise their reliability as participants in the tender;
- d. entrepreneurs who do not comply with obligations relating to taxes, duties and social security contributions;
- e. entrepreneurs who, during a previous tender procedure, have intentionally submitted certifications or declarations that do not reflect their actual capacity, experience and reliability;
- f. entrepreneurs who are not members of the professional association, if this is required by specific legal provisions.

The Public Administration and the Entities of the overall public sector shall have the right to temporarily suspend the inclusion in the appropriate registers of companies against which legal proceedings are pending.

The Public Administration and the Entities of the overall public sector shall also have the right to resort to companies not included in the appropriate registers, on an exceptional basis, for temporary and specific services, subject to authorisation by the Congress of the State upon recommendation of the competent authorities of the individual Entities.

#### **Legislative amendments**

##### **Decree no. 62/2000, Article 1**

###### **Art. 1**

Paragraph 1 of Article 9 of Decree no. 10 of 20 January 2000 shall be amended as follows:

“Interested companies shall submit an annual application by 31 October to be included in the relevant registers in order to be invited to participate in tenders that will be announced during the following year.”.

##### **Decree no. 100/2001, Article 2**

###### **Art. 2**

Article 9 of Decree no. 10 of 20 January 2000 shall be amended as follows:

###### **“Art.9**

Procedures for inclusion in the register

Interested companies shall submit an application for inclusion in the relevant register in order to be invited to participate in tenders. The inclusion in the register shall be updated on a quarterly basis.

The inclusion in this register shall be based on the analysis of data or declarations, as certification of technical and economic capacity and reliability, listed in a specific circular to be approved by Congress of State decision.

References may also consist of certificates issued by the competent offices, showing that the entrepreneur is registered in an official list under the category of companies possessing the required professional characteristics. In such cases, it shall be necessary to select candidates whose suitability offers adequate guarantees for the fulfilment of contractual obligations; this implies that they shall have, on the one hand, the necessary capacity, experience and reliability and, on the other, sufficient technical and economic resources.

At its discretion and when necessary, the contracting authority may request additional references from the bidder to certify its technical, economic and financial capacity.

The application for inclusion in the register shall be accepted or rejected within one month of its submission, and the acceptance or rejection of the application shall be notified to the company.

In any case, the following entrepreneurs shall be excluded from inclusion in the registers or suspended:

- a. entrepreneurs against whom a request for the initiation of bankruptcy proceedings or of composition with creditors has been lodged or against whom such proceedings have been initiated;
- b. entrepreneurs whose company is under liquidation;



## **Art. 10** *(Tenders)*

The procedures for selecting the contractor by the bodies referred to in Article 8 of the Framework Law shall be the following:

- open invitation to tender or public tender,
- restricted invitation to tender,
- contest,
- negotiated contracts.

The decision-making body of the contracting authorities shall approve, at its sole discretion, upon proposal of the head of the Entity, the type of tender chosen, the list of companies to be invited to participate in case it is not a public tender, and the award criteria, based on the type of tender and compliance with the conditions indicated below.

## **Art. 11** *(Award criteria)*

For contracts and orders to be concluded, the award of contracts shall be based on the criterion of the lowest price, determined in the following manner:

- secret bid at unit prices, a tender in which participating companies are invited to offer unit prices for the quantities of works, services or goods listed in the tender notice or in the description of the works;
- percentage discount bid, a tender in which participating companies are invited to offer a percentage discount on an initial amount indicated in the tender notice and derived from the sum of the unit prices;
- discount bid on the prices indicated in the bill of quantities, a tender in which participating companies are invited to offer a percentage discount on the indicated price.
- average percentage discount bid, a tender in which participating companies are invited to offer a percentage discount that matches or comes closest to the average of the discounts contained in the bids, after excluding the highest and lowest bids.

This last criterion shall be considered valid provided that, once the tender has been completed, at least five valid written replies have been received.

For periodic maintenance contracts and contracts to be concluded on a lump-sum basis or partly on a lump-sum basis and partly on a unit-price basis, the award shall be made according to the most economically advantageous bid, determined on the basis of a number of variable factors:

- the price,

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c. entrepreneurs who have committed serious and proven offences that could compromise their reliability as participants in the tender;

d. entrepreneurs who do not comply with obligations relating to taxes, duties and social security contributions;

e. entrepreneurs who, during a previous tender procedure, have intentionally submitted certifications or declarations that do not reflect their actual capacity, experience and reliability;

f. entrepreneurs who are not members of the professional association, if this is required by specific legal provisions.

The Public Administration and the Entities of the overall public sector shall have the right to request the suspension of the inclusion in the appropriate register of companies against which legal proceedings are pending. The Public Administration and the Entities of the overall public sector shall also have the right to resort to companies not included in the register, on an exceptional basis, for temporary and specific services, subject to authorisation by the Congress of the State upon recommendation of the competent authorities of the individual Entities.



- the technical and aesthetic value of the designed work or the quality of the materials and services provided,
- the time required to complete the works,
- the cost of use and maintenance,
- any additional elements that may be identified based on the type of service requested.

The special tender specifications or the tender notice shall indicate the order of importance of the above elements, so that the most advantageous bid for the contracting authority can be identified using a single final numerical parameter.

## **Art. 12**

*(Overall tender, tender with lots)*

Construction works shall be contracted out in such a way as to ensure unitary execution and a broad and reliable guarantee.

Works of considerable size shall normally be divided into lots and contracted out as individual lots (partial lots).

For economic or technical reasons, several partial lots may be contracted out in a single tender.

## **Art.13**

*(Division of tenders)*

As a general rule, separate tenders shall be organised for each execution of complementary works, services and supplies. Their unitary nature shall be inferred from their inclusion in a single project and/or their intended use for a single purpose.

However, for the execution of complementary works, services and supplies that are expected to be needed more times during the year, individual tenders may be held in accordance with the procedures set out in this Decree, and these tenders shall concern the aforementioned complementary works, services and supplies to be executed during the year, or following semester or quarter. In this case, the reference considerations shall be those estimated for the entire year, semester or quarter.

## **Art. 14**

*(Project finance)*

For the implementation of public works included in the programme referred to in Article 4 or whose feasibility studies have been adopted in accordance with Article 4bis, which can be financed in whole or in part with private capital, the contracting Administration or Public Entity may award a concession through a tender based on a feasibility study, with a view to receiving bids that provide for the use of resources wholly or partly borne by the proponents.

The concessionaire of the public work identified as a result of the tender procedures shall, as a general rule, be entitled, by way of consideration, solely to functionally manage and economically exploit all the works carried out. However, the contracting Administration or Public Entity shall also establish a price during the tender procedure in the following cases:

- a) if the concessionaire is required to charge users prices that are lower than those corresponding to the return on investment and the sum of the cost of the service and the normal profit margin;
- b) if it is necessary to ensure the concessionaire the pursuit of the economic and financial balance of the investments and related management in connection with



the quality of the service to be provided.

In determining the price referred to in the second paragraph, account shall be taken of any goods and services provided by the concessionaire to the contracting Administration or Public Entity in relation to the work in question, as established by the contracting authority during the decision-making stage.

For a consideration, the contracting Administration or Public Entity, without prejudice to the prerogatives of the Great and General Council, may transfer ownership or rights of use of real estate properties at its disposal or expropriated for this purpose, the use of which is instrumental or connected with the work to be entrusted under concession, as well as real estate properties that no longer serve functions of public interest.

The concession shall normally have a duration of no more than thirty years; however, in order to ensure the economic and financial balance of the concessionaire's investments, the contracting Administration or Public Entity may establish that the concession shall have a duration of more than thirty years, taking into account the return on the concession, the percentage of the price referred to in the second paragraph in relation to the total amount of the works and the risks associated with changes in market conditions. <sup>13</sup>

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<sup>13</sup> **Original text (Decree no. 10/2000):**

Art. 14

Construction works with concession for use

Construction works with a concession for use shall be contracts that the commissioning authority awards to an entrepreneur (concessionaire), in which the consideration for the works performed does not consist of a payment, but rather of the right to use the work, possibly with the payment of a price. The provisions of this Decree shall apply to the tender related to the concession for use.

#### **Legislative amendments**

##### **Law no. 194/2010, Article 89 (paragraph 2)**

Art.89

(Amendments to Decree no. 10 of 20 January 2000)

The following article shall be added after Article 4 of Decree no. 10 of 20 January 2000:

"Art.4-*bis*

For the implementation of public works included in the programme referred to in Article 4, in relation to which the contracting Administration and Public Entities expressly provide for such possibility, private proponents shall have the right to submit a feasibility study.

Private proponents may also submit proposals to the contracting Administration and Public Entities, by means of feasibility studies, relating to the implementation of public works and infrastructures not included in the programme referred to in Article 4.

The Administration and Public Entities shall be required to assess proposals within six months of receipt and may adopt, within the scope of their programmes, feasibility studies deemed to be of public interest.

The adoption of the feasibility study shall not entitle the proponent to any consideration for services rendered or to the implementation of the works, nor to the management of the related services; however, if the procedures referred to in Article 14 are implemented, the provisions contained therein shall apply."

Article 14 of Decree no. 10 of 20 January 2000 shall be replaced by the following:

"Art.14

(Project finance)

For the implementation of public works included in the programme referred to in Article 4 or whose feasibility studies have been adopted in accordance with Article 4bis, which can be financed in whole or in part with private capital, the contracting Administration or Public Entity may award a concession through a tender based on a feasibility study, with a view to receiving bids that provide for the use of resources wholly or partly borne by the proponents.

The concessionaire of the public work identified as a result of the tender procedures shall, as a general rule, be entitled, by way of consideration, solely to functionally manage and economically exploit all the works carried out. However, the contracting Administration or Public Entity shall also establish a price during the tender procedure in the following cases:



## **PUBLIC TENDER**

### **Art.15** *(Public tender)*

A public tender shall be the procedure whereby the contracting authority publicly announces the subject matter and conditions of the contract and receives bids from participants, in accordance with the procedures set out in the tender notice, accepting as contractor the party that has submitted the best bid. The public tender procedure shall be adopted when the characteristics of the service or particular circumstances do not justifiably require a different procedure. The stages of the public tender procedure shall be the following:

- a) decision to initiate the tender procedure by the decision-making bodies of the contracting authorities, with approval of the notice for the public tender and its publication;
- b) opening of envelopes, verification of the documents and mathematical analysis of the bids;
- c) execution of the tender;
- d) tender award.

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a) if the concessionaire is required to charge users prices that are lower than those corresponding to the return on investment and the sum of the cost of the service and the normal profit margin;

b) if it is necessary to ensure the concessionaire the pursuit of the economic and financial balance of the investments and related management in connection with the quality of the service to be provided.

In determining the price referred to in the second paragraph, account shall be taken of any goods and services provided by the concessionaire to the contracting Administration or Public Entity in relation to the work in question, as established by the contracting authority during the decision-making stage.

For a consideration, the contracting Administration or Public Entity, without prejudice to the prerogatives of the Great and General Council, may transfer ownership or rights of use of real estate properties at its disposal or expropriated for this purpose, the use of which is instrumental or connected with the work to be entrusted under concession, as well as real estate properties that no longer serve functions of public interest.

The concession shall normally have a duration of no more than thirty years; however, in order to ensure the economic and financial balance of the concessionaire's investments, the contracting Administration or Public Entity may establish that the concession shall have a duration of more than thirty years, taking into account the return on the concession, the percentage of the price referred to in the second paragraph in relation to the total amount of the works and the risks associated with changes in market conditions."

The Congress of the State shall adopt, by 31 March 2011, a decree regulating the following:

- a) the requirements and characteristics of private proponents who may submit feasibility studies to the Administration or Public Entities;
- b) the content of the bids, the security deposits to be paid and the criteria for evaluating the bids;
- c) the content and methods of disclosure of the tender notice and the letter of invitation;
- d) the procedures for identifying the promoter and the successful bidder of the concession and for concluding the concession contract;
- e) the amount owed to the promoter who was not awarded the concession;
- f) the possibility of establishing project companies and relations between such companies and the successful bidder of the concession;
- g) the termination of the concession contract due to breach by the entity awarding the concession or the revocation of the concession for reasons of public interest;
- h) termination of the concession contract due to the concessionaire's fault;
- i) the characteristics and requirements of entities that finance the public works and entities that may participate in the tender.



## **RESTRICTED INVITATION TO TENDER**

### **Art. 16**

*(Restricted invitation to tender)*

The restricted invitation to tender shall be a limited tender for the execution of complementary works, services and supplies, in which companies included in the relevant registers and invited by the contracting authority shall participate.

The restricted invitation to tender procedure shall be adopted:

- a) when the public tender entails an additional burden for the commissioning authority that is clearly disproportionate compared to the benefits of the operation or the value of the work;
- b) when the public tender had no bidders;
- c) in the event that a public tender appears inappropriate.

The contracting authority shall address the restricted invitation to tender to no fewer than three companies included in the registers.

If there are not enough companies included in the register, the contracting authority shall be authorised to find other companies deemed suitable.

The stages of the procedure shall be the following:

- transmission of the invitation to companies included in the Register;
- submission of bids and documents by the participants;
- tender procedures with document verification, acceptance and rejection of bids, and mathematical analysis of bids;
- announcement of the results of the tender.

### **Art. 17**

*(Invitation letter in the restricted invitation to tender procedure)*

The invitation letter shall be sent by registered letter with acknowledgement of receipt, by hand or by courier, to the selected companies included in the register for the corresponding category at least 10 days before the date set for the submission of bids.

A company that has not replied in any way to two consecutive invitations previously sent to it shall not be invited to participate in tenders; in this case, invitations shall only be sent again to that company upon request by the company itself.

The invitation letter shall contain the following:

- nature, scope and location of the works or services or the supply of goods;
- any provisions regarding execution times;
- name, address and telephone number of the contracting authority;
- documents or information relating to safety issues in compliance with the provisions of Law no. 31 of 18 February 1998;
- indication of the place and deadline by which the tender specifications and supplementary documents may be requested or viewed;
- the amount and method of reimbursement of any costs incurred in preparing and sending the documents;
- selected award criteria;
- deadline for the submission of bids;
- amount and method of payment of the security deposit and guarantee required;
- award period;
- payment arrangements;



- indication of the appeal procedures in the event of alleged irregularities in the award procedure.

## **CONTEST**

### **Art. 18**

*(Contest)*

A contest shall be a form of tender restricted to companies that submit executive projects including a financial bid for their implementation.

The award of contracts through contests shall be permitted for special works or for carrying out complex works or works with a high technological or artistic component, the design and execution of which requires particular skills.

The contracting authority shall describe the complementary works, services and supplies, establishing a maximum limit on expenditure.

Companies participating in the contest shall submit detailed proposals, with an analytical indication of the works or services they undertake to perform or the supplies they undertake to provide, as well as the considerations they request and any other conditions under which they are willing to perform their services. The award shall be made on the basis of an overall assessment of the bid, taking into account costs, technical and aesthetic qualities, value for money and any other factors that the decision-making body deems appropriate and which shall be indicated in the tender notice.

The contest may be announced, at the discretion of the decision-making body, by public notice or by direct invitation. In the first case, the contest notice shall be published in accordance with the procedures set out in Article 15, while in the second case, the invitation shall be sent only to the invited companies, in accordance with the procedures set out in Article 17 of this Decree.

## **NEGOTIATED CONTRACTS**

### **Art. 19**

*(Negotiated contracts)*

Negotiated contracts shall be understood as a negotiated procedure in which the contracting authority consults the companies of its choice and negotiates the terms of the contract with at least three of them.

The negotiated contract method may be used in one of the following cases:

- when it involves contracts for works, services or supplies with a total value of less than £50,000,000;
- when the public tender or restricted invitation to tender had no bidders and a new tender is unlikely to be successful;
- when there are particular reasons of urgency for which recourse to tenders could cause delays that would be considered detrimental;
- if the nature and scope of the service cannot be determined exhaustively and unequivocally before the contract is awarded.

The contracting authority may negotiate with a single company in the following cases:



- if, for specific reasons (patents, equipment, specific experience, technical or artistic reasons, etc.), the works can be executed only by one company;
- if proven technical reasons require uniformity or completion of the work or supply;
- when only one company is able to immediately meet, or in any case within the required time frame, in case of urgency or emergency, requests for services, supplies or interventions whose economic value does not require recourse to restricted invitations to tender or public tenders;
- when it involves the completion of works previously assigned through a formal tender procedure;
- the two parties to the contract are public Entities.

Negotiated contracts procedures shall be carried out by the competent offices of the contracting authority and concluded with the award of the contract by the decision-making body of the authority.

Contracts worth less than £50,000,000 may be concluded by means of an exchange of business letters.

## **TENDER**

### **Art. 20**

*(Issuance of the tender notice)*

In the context of a tender, the competent office shall issue a specific notice or letter of invitation which shall precisely indicate the subject matter of the works to be carried out, with an exact description of all the technical characteristics of the relevant work, service or supplies, as well as any other essential or incidental elements of the contract.

At its reasoned and unquestionable discretion, the contracting authority shall reserve the right not to award the contract even after the tender notice has been issued.

The tender notice shall be published by displaying it to the public at the headquarters of the contracting Administration or authority, by posting it in the Government Building and in the Township Halls, as well as by placing information posters throughout the territory of the Republic. <sup>14</sup>

### **Art.21**

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<sup>14</sup> **Original text (Decree no. 10/2000):**

Art. 20

*(Issuance of the tender notice)*

In the context of a tender, the competent office shall issue a specific notice or letter of invitation which shall precisely indicate the subject matter of the works to be carried out, with an exact description of all the technical characteristics of the relevant work, service or supplies, as well as any other essential or incidental elements of the contract.

At its reasoned and unquestionable discretion, the contracting authority shall reserve the right not to award the contract even after the tender notice has been issued.

#### **Legislative amendments**

#### **Delegated Decree no. 97/2011, Article 6:**

##### **Art. 6**

1. The following paragraph 3 shall be added to Article 20 of Decree no. 10 of 20 January 2000:

“The tender notice shall be published by displaying it to the public at the headquarters of the contracting Administration or authority, by posting it in the Government Building and in the Township Halls, as well as by placing information posters throughout the territory of the Republic.”.



*(Content of the notice)*

The notice or letter of invitation shall contain the following:

- a) filing date;
- b) exact name, address, telephone number, fax number and any other telegraphic or electronic contact details of the authority issuing the notice;
- c) nature, scope and characteristics of the services and place of execution of the works;
- d) nature and scope of the individual lots, in the event that the works are divided, and the possibility of submitting bids for one, several or all lots;
- e) indication of the chosen form of tender;
- f) information on the purpose of the works or assignment for the possible drafting of projects;
- g) address of the office where the tender specifications and supplementary documents may be requested or viewed, and the deadline by which they may be requested;
- h) amount and method of reimbursement of costs related to the preparation and sending of documents;
- i) indication of the bidding procedures;
- j) the main category or categories with the corresponding amount, as well as additional categories relating to all other works included in the project, also with the corresponding amount;
- k) date, time and place where bids from participating companies shall be submitted;
- l) period of validity of the bid;
- m) start date and duration of the works;
- n) any information regarding the security deposit and the guarantee;
- o) essential payment methods;
- p) indication of the office to which the candidate may refer in the event of alleged irregularities in the award procedure.

The commissioning authority may invite bidders to indicate in their bids any services they intend to subcontract to other entrepreneurs.

**Art. 22**

*(Description of the service)*

The service shall be described in an unequivocal and comprehensive manner, such that all participants may understand the description in the same way and participate in the tender by indicating only the consideration or percentage discount for which they are willing to provide the service.

As a general rule, the works shall be identified by means of a general description of the works or service to be performed or supply to be provided (description of the work) and a list of the same divided into partial services.

In the list of works, these shall be divided so that under each item marked with a number (position) one may find only those services which, based on their technical characteristics and their contribution to the price, are to be considered homogeneous.

Works of a different type shall only be included under a common item (common position) if, in the ratio among partial services for the determination of an average price, their impact is negligible.

If it is appropriate to include the design of the works in the tender in addition to the execution of the works, the entire service may be described by means of a programme of works including a description of the functions of the work, from which participants may infer all the necessary elements and circumstances for the preparation of the design and of the bid and the purpose of the finished work,



listing the relevant technical, economic, aesthetic and functional requirements. Each candidate shall receive a description of the works and other documents essential for determining the price. If copies of the latter documents (not the description of the works) cannot be provided, they shall be made available for their examination or acquisition.

If candidates request additional strictly relevant information, this shall be promptly provided.

### **Art. 23**

#### *(Tender specifications)*

The general tender specifications shall contain the general conditions and requirements of the tender that may apply indiscriminately to a specific type of works, while the special tender specifications shall contain the conditions and requirements that refer more specifically to the subject matter of the contract, the description and list of the works.

The specifications shall establish that the general contractual conditions for the execution of construction works and the general technical requirements for construction works shall be integral parts of the contract.

This shall also apply to any supplementary technical contractual conditions, insofar as these shall become an integral part of the contract.

In principle, the general contractual conditions shall remain unchanged. These may be supplemented, by the commissioning authorities that usually contract out works, by additional contractual conditions that meet their needs, provided that these conditions do not conflict with the general conditions. Any derogations from the general conditions shall be limited to those cases where special agreements are expressly provided for and only to the extent that the characteristics and execution of the works so require.

In principle, the general technical requirements shall remain unchanged. They may be supplemented by additional technical requirements. Any additions and modifications made to meet the requirements of specific cases shall be included in the description of the works.

### **Art. 24**

#### *(Technical requirements)*

Technical requirements shall be understood as the technical specifications relating to a service, material, product or supply, so that they comply with the use specified by the commissioning authority.

These requirements shall include quality classes, usability, safety and measurements, as well as requirements concerning materials, products and supplies with regard to quality assurance, terminology, representation, inspections and control processes, packaging, branding and distinctive signs.

Technical requirements shall also include provisions for the design and calculations relating to constructions, standards for control, inspection and testing of construction works, construction techniques and methodologies, and all other requirements that the public commissioning authority may impose, in relation to finished construction works, as general or specific provisions for materials or construction elements.



## **Art. 25**

### *(Temporary joint ventures and consortia)*

A temporary joint venture, also referred to as a "grouping" or "association", shall be formed whenever individual companies, by temporarily associating themselves, intend to collectively participate in a tender.

Tender notices shall expressly state that companies are eligible to participate in tenders not only individually but also in temporary joint ventures or consortia.

Associated companies shall be eligible to submit bids for tenders issued by the Public Administration or Public Entities if, prior to submitting the bid, they have conferred a special collective mandate with representation functions to one of the companies, designated as the group leader, which shall submit the bid and sign the contract in its own name and on behalf of the mandating companies.

The same company shall not be permitted to participate in a tender as both an individual company and an associated company.

Each associated company shall be included in the register provided for by the Law on public procurement contracts.

Temporary groupings formed after the tender shall be prohibited, under penalty of cancellation of the contract and payment of all expenses incurred in awarding the order to a new company, as well as a penalty equal to the security deposit provided.

## **Art. 26**

### *(Bid)*

The bid shall be submitted in writing and signed personally by the owner of the company submitting the bid or by its legal representative.

The bid shall contain the price offered, or the percentage discount offered compared to the base price determined by the contracting authority, as required by the tender notice, documents or information relating to safety issues in compliance with the provisions of Law no. 31 of 18 February 1998.

The sealed parcel containing the bid shall be sent, within the deadline, to the address and in the manner specified in the notice, by registered letter with acknowledgement of receipt, by hand or by courier, with the issuing of a specific receipt.

The parcel shall bear the business name, the address of the participating company and details of the subject matter and the tender in which the company intends to participate. The contracting authority shall generally allow the bidder to use its own copy of the list of works for the purpose of submitting the bid.

Any models or samples provided by the bidder shall be marked as part of the bid.

Any proposals for variations or alternative solutions shall be included in a specific annex and clearly marked.

No modifications to the tender specifications shall be permitted in the bid, nor shall any other forms of submission of bids be permitted.

## **Art. 27**

### *(Provisional security deposit)*



The bid shall be accompanied by a security deposit, paid in cash or by bank draft or by bank or insurance guarantee, equal to 5% (five percent) of the bid amount.

The security deposit shall cover the failure to sign the contract due to a decision of the successful bidder and shall be released upon award of the contract, i.e. no later than 90 days after the submission of the bid.

It shall be mandatory for all works and services performed under a contract, whose amounts exceed £100,000,000, to request a provisional security deposit.

15

## **Art. 28**

*(Time-limits for opening bids)*

The award procedures shall specify the time limit for the opening and reading of the bids, which shall take place in public.

Until that date, the parcels received containing the bids shall be specially marked and kept under lock and key.

The envelope and any other evidence shall also be kept. Only bids received by the time limit for submission shall be accepted.

The parcels, which shall be intact, shall be opened, the bids read, and the essential parts initialled.

The names and addresses of the bidders and their final bid prices, both overall and for individual components, as well as other elements relevant to the bid, shall be read out.

It shall also be stated whether proposals for variations or alternatives have been submitted, and by whom.

Other elements contained in the individual bids shall not be disclosed.

The models and samples shall be submitted at the same time as the bid.

Minutes shall be taken of the entire bid opening procedure, clearly stating that the bids have been read and any objections raised.

Bids not received by the time limit shall be listed in the minutes or in an appendix thereto.

The date of receipt and any reasons, insofar as they are known, for not having submitted the bid within the time limit shall also be indicated.

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<sup>15</sup> **Original text (Decree no. 10/2000):**

Art. 27

(Provisional security deposit)

The bid shall be accompanied by a security deposit, paid in cash or by bank draft or by bank or insurance guarantee, equal to 5% (five percent) of the bid amount.

The security deposit shall cover the failure to sign the contract due to a decision of the successful bidder and shall be released upon award of the contract, i.e. no later than 90 days after the submission of the bid.

It shall be mandatory for all works and services performed under a contract, whose amounts exceed £50,000,000, to request a provisional security deposit.

### **Legislative amendments**

**Decree no. 62/2000, Article 2:**

Art. 2

The amounts indicated in Articles 27 and 38 of Decree no. 10 of 20 January 2000 shall be increased from 50,000,000 lire to 100,000,000 lire.



A bid that is received by the commissioning authority within the specified time limits – which shall be documented – and which, for reasons not attributable to the bidder, was not available at the time of the opening of bids, shall nevertheless be considered to have been duly received.

The other bidders shall be promptly informed in writing of the above, with confirmation that the integrity of the envelope has been verified, indicating the information specified in the previous paragraph. This bid shall be included with all its essential details in the minutes, or in an appendix thereto.

Bidders and their representatives shall be allowed, upon written request, to read the minutes and the related appendices and to countersign the minutes.

The minutes shall not be published.

The bids and their attachments shall be carefully stored and not disclosed.

This obligation shall also apply in the case of negotiated contracts.

### **Art.29**

#### *(Examination of the bids)*

It shall not be necessary to examine bids that have not been submitted within the time limit set in the tender notice, or those that do not comply with the requirements.

Bids shall be examined from an accounting, technical and economic point of view and, if necessary, with the assistance of a Committee of technical experts from both outside and within the contracting authority.

In the event that the total amount of one of the items listed - by ordinal numbers in the bid (positions) - does not correspond to the unit price indicated, the latter shall nevertheless be considered valid for calculation purposes.

If the unit price is indicated both in figures and in words, in the event of any discrepancy between the two, the price expressed in words shall prevail.

If the contract provides for a lump sum, the total value considered shall be independent of any indication of unit prices.

### **Art. 30**

#### *(Clarifications on the content of bids)*

After the opening of the parcels containing the bids, and until the contract is awarded, the contracting authority may only contact a bidder to obtain clarifications on the bid, on any proposed variations or alternative bids, and on the planned methods of execution.

The results of such contacts shall be kept confidential and, if deemed appropriate, may be put in writing.

If bidders refuse to provide the requested clarifications and data, their bid shall no longer be considered.

### **Art. 31**

#### *(Evaluation of bids)*

The following shall be excluded from the above examination:

- a) bids that have not been submitted by the time limit established in the tender notice or letter of invitation,
- b) bids that do not comply with the provisions of this Decree;



- c) bids submitted by participants who have made agreements with each other that constitute an unacceptable restriction of competition,
- d) proposals for variations or partially alternative bids, when the contracting authority has expressly stated that it will not accept them.

In public tender procedures, the suitability of bidders shall first be verified.

The contract cannot be awarded for a bid with a price deemed inadequate, i.e. too high or too low.

If a bid price appears too low or too high and it is not possible to determine its appropriateness on the basis of the calculations in the documents accompanying the bid, the bidder shall be asked to provide, in writing, clarifications on the calculations made to determine the price of the entire service or partial services.

When evaluating suitability, consideration shall be given to the cost-effectiveness of the overall construction works, the technical solutions adopted, or other favourable conditions in the execution of the works.

Proposals for variations or partially alternative bids shall be examined, unless the contracting authority has expressly stated in the tender notice or tender specifications that these will not be accepted.

Temporary joint ventures or other forms of association among companies formed for the purpose of submitting a joint bid shall be considered, for all intents and purposes, in the same way as individual participants, provided that they carry out the works directly or through their associated companies.

### **Art. 32**

#### *(Revocation of the tender)*

The tender may be revoked:

- a) if the tender specifications must be modified substantially;
- b) when the contracting authority, at its discretion, deems it necessary and appropriate.

The revocation shall be immediately communicated to the participants, indicating the reason and any intention to organise a new tender.

### **Art. 33**

#### *(Cancellation of the tender)*

The tender may be cancelled:

- a) when no bids meeting the required conditions have been received;
- b) when, from the bids received or other elements, there is a substantiated suspicion that the participating companies have made agreements with each other to predetermine the outcome of the tender;
- c) if the considerations resulting from the bids of the companies are too high compared to current market prices;
- d) when there are other serious reasons.

The cancellation shall be immediately notified to the participants, indicating the reason and any intention to organise a new tender.

### **Art. 34**

#### *(Award period)*

The award period shall start with the initiation of the relevant procedure and shall end with the decision of the contracting authority.



This period shall be as short as possible and in any case no longer than the time needed by the contracting authority to quickly examine and thoroughly evaluate the bids.

However, it shall not exceed 30 calendar days; a longer period may be allowed only in justified cases.

It shall be established that the contractor remains bound by its bid until the expiry of the award period.

### **Art. 35**

*(Award)*

The decision-making body of the contracting authority shall decide the successful bidder on the basis of a summary report prepared following the evaluation of the bids.

In the event of a tie between two or more bids, the contract shall be awarded to the company that is not currently providing similar works or services to the contracting authority.

In the event of a further tie, a draw shall be held in the presence of representatives of the companies concerned.

Within ten days of the award, the contracting authority shall notify the successful bidder and the other participants of the outcome of the tender.

The outcome of the tender shall be determined by a specific decision of the decision-making body. If the procedure reveals that it is impossible to respect the limits of the commitment undertaken, the contracting authority may sign a contract for an amount limited to the sum available.

Companies invited to participate that do not intend to submit a bid shall still be required to send a thank you letter, otherwise their inclusion in the register shall be suspended.

## **RECURRING SERVICES**

### **Art. 36**

*(Recurring services)*

Before organising a tender, the contracting authority shall obtain authorisation from the competent body to commit the estimated amount for the services required.

Services shall not be fragmented in order to access simpler award procedures; on the contrary, each Office shall, where possible, group the services together and organise a tender to cover the related service needs for the entire year.

The offices of the contracting authority shall be responsible for drafting specifications and other technical documents for the maintenance of goods, installations and equipment.

### **Art. 37**

*(Tender)*

The procedures for selecting potential suppliers and conducting the tender shall be carried out in accordance with the conditions and methods set out in this Decree.



## THE CONTRACT

### Art.38

*(Final security deposit and ten-year security deposit)*

For amounts exceeding £100,000,000, the contractor shall be obliged to provide a final security deposit for the performance of the contract and for any future damage.

The security deposit, equal to 10% of the bid submitted, shall consist of a guarantee issued by a credit institution or insurance company. It shall be provided upon signing the contract and shall remain valid for the entire duration of the works until testing or successful technical verifications have been completed.

The ten-year guarantee provided for in Article 58 of Law no. 96 of 17 September 1999 may consist of an insurance guarantee or policy or other guarantee identified by the Regulations adopted by the Autonomous State Corporations pursuant to Article 6, paragraph 1, numbers 7) and 10) of Law no. 88 of 26 November 1980, with a ten-year duration starting from the date of testing or successful technical verifications. Such policy shall cover the risks of total or partial collapse of the work, as well as the risks arising from serious construction defects. In relation to works with an average duration of less than ten years and to particular types of works identified in the aforementioned Regulations of the Autonomous State Corporations, the obligation to provide a guarantee may be waived or the duration of the guarantee to be provided may be proportionally reduced with the authorisation of the contracting authority.

For the guarantee to be valid, it shall be essential that the commissioning authority has recognised the suitability and quality of the guarantor.

The guarantee declaration shall be in writing, accompanied by an express waiver of the benefit of prior enforcement for the duration of the contract, and shall be drawn up in accordance with the instructions of the commissioning authority. <sup>16</sup>

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<sup>16</sup> **Original text (Decree no. 10/2000):**

Art.38

Final security deposit and ten-year security deposit

For amounts exceeding £50,000,000, the contractor shall be obliged to provide a final security deposit for the performance of the contract and for any future damage.

The security deposit, equal to 10% of the bid submitted, shall consist of a guarantee issued by a credit institution or insurance company. It shall be provided upon signing the contract and shall remain valid for the entire duration of the works until testing or successful technical verifications have been completed. For a period of ten years from the date of testing or successful technical verifications, an insurance guarantee or policy equal to 10% of the works carried out (ten-year guarantee) shall be provided by the contracting authority.

For the guarantee to be valid, it shall be essential that the commissioning authority has recognised the suitability and quality of the guarantor.

The guarantee declaration shall be in writing, accompanied by an express waiver of the benefit of prior enforcement for the duration of the contract, and shall be drawn up in accordance with the instructions of the commissioning authority.

#### **Legislative amendments**

##### **Corrigendum of 11 February 2000**

###### Single Article

Due to a material error in the drafting of Decree no. 10 of 20 January 2000, "Ratification of Decree no. 121 of 25 November 1999 (regulating public contracts for works, services and supplies complementary to public works)", the corrections to Articles 38 and 39 contained in the corrigendum to Decree no. 121 of 25 November 1999 regulating public contracts for works, services and supplies complementary to public works duly published on 10 December 1999, have been omitted.

Therefore, the correct wording of such articles shall be the following:



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#### Art.38

##### Final security deposit and ten-year security deposit

For amounts exceeding £50,000,000, the contractor shall be obliged to provide a final security deposit for the performance of the contract and for any future damage.

The security deposit, equal to 10% of the bid submitted, shall consist of a guarantee issued by a credit institution or insurance company. It shall be provided upon signing the contract and shall remain valid for the entire duration of the works until testing or successful technical verifications have been completed. For a period of ten years from the date of testing or successful technical verifications, the contractor shall provide an insurance guarantee or policy equal to 10% of the works carried out (ten-year guarantee).

For the guarantee to be valid, it shall be essential that the commissioning authority has recognised the suitability and quality of the guarantor.

The guarantee declaration shall be in writing, accompanied by an express waiver of the benefit of prior enforcement for the duration of the contract, and shall be drawn up in accordance with the instructions of the commissioning authority.

#### Art.39

##### Guarantee withholdings

As a guarantee, the contracting authority shall withhold one tenth of the final consideration paid, resulting from the 10% withholdings applied to the payment of the amounts relating to works progress report, for a maximum period of 18 months after the testing or final technical procedures.

The release of the amount of the guarantee withholdings shall, in any case, be subsequent to the acceptance of the ten-year security deposit.

#### **Decree no. 62/2000, Article 2:**

##### Art. 2

The amounts indicated in Articles 27 and 38 of Decree no. 10 of 20 January 2000 shall be increased from 50,000,000 lire to 100,000,000 lire.

#### **Decree no. 62/2000, Article 3:**

##### Art. 3

Paragraph 3 of Article 38 of Decree no. 10 of 20 January 2000 shall be amended as follows:

"The ten-year guarantee provided for in Article 58 of Law no. 96 of 17 September 1999 may consist of a ten-year insurance guarantee policy starting from the date of testing or successful technical verifications. Such policy shall cover the risks of total or partial collapse of the work, or the risks arising from serious construction defects. In the case of works with an average duration of less than ten years, the duration of the guarantee may be reduced proportionally with the authorisation of the contracting authority".

#### **Decree no. 100/2001, Article 3**

##### Art. 3

Paragraph 3 of Article 38 of Decree no. 10 of 20 January 2000 shall be amended as follows:

"The ten-year guarantee provided for in Article 58 of Law no. 96 of 17 September 1999 may consist of a ten-year insurance policy starting from the date of testing or successful technical verifications. Such policy shall cover the risks of total or partial collapse of the work, or the risks arising from serious construction defects. The policy template shall in any case be approved by the Directorate-General of Public Finance. In the case of works with an average duration of less than ten years, the duration of the guarantee may be reduced proportionally with the authorisation of the contracting authority, subject to the favourable opinion of the Directorate-General of Public Finance".

#### **Delegated Decree no. 97/2011, Article 25:**

##### Art. 25

1. Article 38, paragraph 3, of Decree no. 10 of 20 January 2000, as already amended by Article 3 of Decree no. 100 of 29 October 2001, shall be replaced by the following:

"The ten-year guarantee provided for in Article 58 of Law no. 96 of 17 September 1999 may consist of an insurance guarantee or policy or other guarantee identified by the Regulations adopted by the Autonomous State Corporations pursuant to Article 6, paragraph 1, numbers 7) and 10) of Law no. 88 of 26 November 1980, with a ten-year duration starting from the date of testing or successful technical verifications. Such policy shall cover the risks of total or partial collapse of the work, as well as the risks arising from serious construction defects. In relation to works with an average duration of less than ten years and to particular types of works identified



**Art.39<sup>17</sup>**  
*(Guarantee withholdings)*

As a guarantee, the contracting authority shall withhold one tenth of the final consideration paid, resulting from the 10% withholdings applied to the payment of the amounts relating to works progress report, for a maximum period of 18 months after the testing or final technical procedures.

The release of the amount of the guarantee withholdings shall, in any case, be subsequent to the acceptance of the ten-year security deposit.

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in the aforementioned Regulations of the Autonomous State Corporations, the obligation to provide a guarantee may be waived or the duration of the guarantee to be provided may be proportionally reduced with the authorisation of the contracting authority.”.

<sup>17</sup> **Original text (Decree no. 10/2000):**

Art.39

Guarantee withholdings

As a guarantee, the contracting authority shall withhold one tenth of the final consideration paid, resulting from the 10% withholdings applied to the payment of the amounts relating to works progress report, for a maximum period of 18 months after the testing or final technical procedures.

The release of the amount of the guarantee withholdings shall, in any case, be subsequent to the acceptance of the final security deposit.

**Legislative amendments**

**Corrigendum of 11 February 2000**

Single Article

Due to a material error in the drafting of Decree no. 10 of 20 January 2000, "Ratification of Decree no. 121 of 25 November 1999 (regulating public contracts for works, services and supplies complementary to public works)", the corrections to Articles 38 and 39 contained in the corrigendum to Decree no. 121 of 25 November 1999 regulating public contracts for works, services and supplies complementary to public works duly published on 10 December 1999, have been omitted.

Therefore, the correct wording of such articles shall be the following:

Art.38

Final security deposit and ten-year security deposit

For amounts exceeding £50,000,000, the contractor shall be obliged to provide a final security deposit for the performance of the contract and for any future damage.

The security deposit, equal to 10% of the bid submitted, shall consist of a guarantee issued by a credit institution or insurance company. It shall be provided upon signing the contract and shall remain valid for the entire duration of the works until testing or successful technical verifications have been completed. For a period of ten years from the date of testing or successful technical verifications, the contractor shall provide an insurance guarantee or policy equal to 10% of the works carried out (ten-year guarantee).

For the guarantee to be valid, it shall be essential that the commissioning authority has recognised the suitability and quality of the guarantor.

The guarantee declaration shall be in writing, accompanied by an express waiver of the benefit of prior enforcement for the duration of the contract, and shall be drawn up in accordance with the instructions of the commissioning authority.

Art.39

Guarantee withholdings

As a guarantee, the contracting authority shall withhold one tenth of the final consideration paid, resulting from the 10% withholdings applied to the payment of the amounts relating to works progress report, for a maximum period of 18 months after the testing or final technical procedures.

The release of the amount of the guarantee withholdings shall, in any case, be subsequent to the acceptance of the ten-year security deposit.



**Art.40**  
*(Insurance coverage)*

The contractor shall also be required to take out an insurance policy that protects the contracting authority from all risks of execution arising from any cause, except those resulting from design errors, insufficient design and force majeure. The policy shall also provide for a civil liability guarantee for damage to third parties and to the work that is the subject of the contract during the execution of the works, until the date of issue of the positive testing or technical verification certificate.

The contracting authority shall have the right, in the case of works of significant value or particular artistic importance, to take out a specific insurance policy - known as CAR (Contractors' All Risk) - which shall cover all risks arising from the construction or renovation, both for the contracting authority and for the various contractors involved in the execution of the works.

**Art.41**  
*(Signing of contracts)*

The contracting authority shall notify the successful bidder of the place and date of the contract signing.

The contract shall be signed within 60 days of the date of the award decision and shall become effective after ratification provided for by law.

The contract shall be drawn up in writing by the competent office, signed by both parties in two originals, a photocopy of which shall be delivered to the contractor after its registration.

The following documents shall constitute an integral part of the contract:

- a) the tender specifications;
- b) the documents relating to the works to be carried out;
- c) the price lists;
- d) the letter of invitation to the tender;
- e) any other documents.

The above documents shall contain all the information necessary to determine the quantitative and qualitative characteristics of the works.

The contract shall contain the following information:

- nature and scope of the service;
- the base amount of the contract, gross and net of the discount offered;
- the percentage discount offered;
- the name of the person authorised to sign the contract;
- the name of the technical manager of the successful bidder;
- the name of the technical safety manager in compliance with the provisions of Law no. 31 of 18 February 1998;
- the amount of the minimum instalments required for the issue of payment certificates;
- the time limit for completing the works and the penalty to be applied for each day of delay beyond the time limit for completion of the works.

If the successful bidder fails to sign the contract within the specified time limits, the contracting authority may contact the second-best bidder.

**Art.42**  
*(Registration)*



Contracts worth more than £50,000,000 shall be registered with the Registry and Record Keeping Office.

Registration costs, including stamp duties, shall be borne entirely by the contractor.

#### **Art.43**

*(Administrative and tax obligations for foreign successful bidders)*

Foreign successful bidders shall undertake, upon acceptance of the service, to comply with the administrative and tax regulations in force in the territory.

#### **Art. 44**

*(Executive documentation)*

The documentation required for the execution of the works shall be made available to the contractor in a timely manner.

Before starting the works, if deemed necessary, a protocol shall be drawn up and accepted by both the commissioning authority and the contractor, concerning the condition of the access routes and the ground, the drainage ditches and collectors, as well as other structures and installations in the vicinity of the construction site.

In any case, the contractor shall be required to carry out, within the limits of what is envisaged for the normal fulfilment of contractual obligations, regularity checks and verifications and to report any verified or suspected defects to the commissioning authority.

### **PERFORMANCE OF THE CONTRACT**

#### **Art. 45**

*(Delivery of the construction site)*

Unless otherwise agreed, within forty days of signing the contract, the contracting authority shall deliver the construction site to enable the contractor to initiate the contracted works.

In urgent cases, following the final award decision, the contracting authority may order the immediate delivery of the construction site, provided that the contract has been signed.

The time limit for completion of the works shall start to run from the date of the report on the commencement of works.

#### **Art. 46**

*(Performance)*

The commissioning authority shall have the right to monitor the performance of the service provided for in the contract in order to verify that the works are being carried out correctly and in accordance with the project.

In this regard, it shall have free access to the sites, workshops and warehouses where the contractual services are performed, even in part, or where the materials and components necessary for the execution of the works are produced or stored.

Upon request, the working drawings or other documents relating to the performance of the contract shall be made available for examination.

The contractor shall perform the service under its own responsibility and in



accordance with the contract.

It shall comply with the laws and administrative regulations and shall also be responsible vis à vis its employees for the fulfilment of all legal, administrative, professional and work safety and hygiene obligations in force.

At any time, the contracting authority may verify the contractor's compliance and, if it finds any non-compliance, may issue service orders to remind the contractor of its obligations.

Unless otherwise agreed, the commissioning authority shall provide free of charge the possibility to use, either exclusively or jointly: a) the necessary space on the construction site to set up storage areas and carry out the works, b) access routes, c) appropriately distributed connections to the water and electricity supply networks.

The contractor shall protect the works carried out by it, as well as the equipment entrusted to it for the execution of the works, from theft and damage until the moment of testing.

Upon request of the commissioning authority, the contractor shall also protect the above from damage caused by winter weather and remove ice or snow, if necessary.

#### **Art. 47** *(Findings)*

If, during the execution of the works, objects of historical, artistic or scientific value are found in the ground, the contractor shall inform the manager of the works before taking any further action to recover or alter them and shall hand over the objects after receiving the appropriate instructions.

#### **Art.48** *(Subcontracting and transfer of the procurement contract)*

Subcontracting and the transfer of the procurement contract shall be regulated in accordance with Articles 2 and 3 of the Law on public procurement contracts.

Following a documented request from the contractor to the contracting authority, the preliminary examination of the requests shall be carried out by the manager of the works or another technical expert identified by the contracting authority.

When the preliminary examination is concluded, the decision-making body, with a reasoned report signed by the head of the authority, shall decide whether to accept or reject the request.

#### **Art.49** *(Price revision)*

Normally, price revision shall not be permitted.

Only in special cases and in accordance with the provisions of Article 46 of Law no. 96 of 17 September 1999, where expressly provided for in the contract, such revision shall be permitted and shall be carried out in accordance with the provisions of the contract.

In this case, the price revision, which may be carried out either during or at the end of the works, shall apply to the amount of the works executed after the increase.

#### **Art.50**



*(Works management and accounting)*

The works management shall be carried out by the contracting authority or by an external professional expressly appointed by the decision-making body.

The works management shall be entrusted by the contracting authority on the basis of the professional expertise required by the legislation in force.

The contracting authority shall entrust the accounting activities related to the works exclusively to a technical expert employed by it.

**Art.51**

*(Obligations of the Manager of the Works)*

During the execution of the works, the Manager shall be responsible for:

- the acceptance of materials;
- the takeover of the works;
- the supervision on the execution of the works;
- the issuance of service orders, requirements and instructions for the best performance of the works and provision of services;
- the prior notification to the contracting authority of any changes to the original amount of the works arising from any cause, in accordance with Article 56 of this Decree;
- ordering, also in agreement with the official designated by the contracting authority, suspensions and extensions of the works;
- establishing, in agreement with the designer, any changes during construction and issuing authorisations, in accordance with Article 56 of this Decree;
- verifying that the works perfectly correspond to the subject matter of the contract, pointing out any non-compliance and, where these are deemed acceptable, assessing the damage suffered by the contracting authority and charging the related costs to the contractor;
- keeping the handbook of the manager of the works and other records required by this Decree;
- preparing the works progress and final payment reports;
- proposing new prices after submitting detailed analyses;
- fulfilling any other obligation provided for in the specifications and in the regulations in force, including the drafting of forms for requesting the initiation and completion of works;
- the compliance with and the application of the rules in force on safety and hygiene at work to the extent of his competence;
- preparing all the documents needed for testing, along with any accompanying reports;
- collaborating with the tester in the assessment operations for which his presence is required and countersigning the testing certificate.

**Art.52**

*(Service orders)*

The contracting authority and the manager of the works shall have the power to issue service orders and establish rules relating to the execution of the works, which the contractor shall strictly comply with.

The contractor may raise reasoned objections to service orders.

If the parties do not agree on the provisions of such orders, the contractor shall nevertheless be obliged to comply with them, provided that they do not conflict with statutory provisions.



**Art.53**  
*(Execution time-limits)*

The time-limits for the execution of public works shall be established in the contract.

If no time-limit for starting the execution of works has been agreed, the commissioning authority shall be obliged to provide the contractor with an indication of the date. The contractor shall start the works within 10 working days of the invitation by the commissioning authority and shall notify it thereof.

In the event of a delay in the execution of the works attributable to the contractor, the latter shall be required to compensate the contracting authority according to the terms specified in the contract or in the special tender specifications.

The amount of the costs of assistance to the works and of the penalty shall be deducted from the price of the works.

The contractor shall be required to notify the manager of the works, by registered letter, of the date on which it expects the works to be completed; the manager of the works shall be required to verify that the works have been completed on that date and to draw up a specific report on the completion of the works following an adversarial procedure with the contractor.

**Art.54**  
*(Suspension and extension of works)*

If the contractor considers that it is prevented from regularly performing the service, it shall immediately inform the commissioning authority in writing.

If it fails to notify the above, it shall only be entitled to assert its claims if the commissioning authority has been formally informed of the facts and their consequences.

The execution time-limits shall be extended if the impediment is determined by the following:

a) circumstances caused by the commissioning authority, b) force majeure events, particularly adverse weather conditions or other circumstances beyond the contractor's control.

The contractor shall do everything reasonably possible to continue the works.

As soon as the causes that led to the suspension cease, the contractor shall resume the works without delay, notifying the manager of the works thereof.

These suspensions shall be documented by the manager of the works in specific reports countersigned by the contractor and signed by the contracting authority. Such reports shall be attached to the accounting documents, since the suspensions shall be taken into account when determining the new time required for completing the works.

In the event that the execution is interrupted for a presumably long period, although the impossibility of performing the service does not become permanent, the services performed up to that point shall be paid for based on the prices agreed in the contract, and the costs already incurred by the contractor for the part of the works not yet performed shall also be compensated.

In any case, the contractor shall be entitled to reimbursement of surveillance costs for the entire period of suspension, since it retains responsibility for the construction site throughout the period of suspension.

If the suspension period lasts longer than three months, either party to the contract may terminate the contract at the end of that period by giving formal



written notice.

If the contractor is not responsible for the interruption, the costs for clearing the site shall also be reimbursed, unless these are already included in the consideration for the services already performed.

If the contractor is unable to complete the works within the established time-limits for reasons beyond its control, it shall be entitled to submit a reasoned request for an extension before the expiry of the time-limits.

After the granting of the extension, the longer duration of the works shall not entail any right to compensation for the contractor.

## **Art.55**

### *(Works accounting)*

The assessment of works and supplies covered by the contract may be carried out using the documents listed below, either by employing standard manual procedures or by introducing specific IT equipment and procedures.

The contracting authority shall reserve the right to identify the most appropriate solution to be included in the special tender specifications relating to the works to be carried out, as further specified in the internal regulations.

The documents to be used shall be the following:

1. handbook of the manager of the works;
2. works journal;
3. books of measurements and supplies;
4. accounting register;
5. summary of the accounting register;
6. works progress reports;
7. certificates for the payment of advance instalments and of the final bill.

The handbook of the manager of the works shall include all the elements necessary to verify the technical and economic progress of the works. In it, the manager of the works shall note down, in particular, service orders, new prices, suspensions and resumptions of works, any objections, and any changes to the project and/or contractual documents.

The works journal, filled out by the site manager, shall record the daily progress of the works, the number and qualifications of the site workers, the main equipment used, and the main events relating to the works.

The book of measurements of works and of supplies, filled in by the manager of the works, shall chronologically trace the progress and advancement of the works; all the data, measurements and notes necessary for the qualitative and quantitative assessment of the works and of the supplies shall be recorded therein after consultation with the contractor. If the contractor, by the early closure of excavations, openings or other areas, prevents the measurement of the works, it shall bear the costs necessary to bring them back into view. The individual books and their pages shall be numbered consecutively, and the cover shall indicate the subject matter of the contract and the name of the contractor, as well as the number of pages and the name of the person responsible for filling them out.

The surveys shall be carried out together with the contractor, who shall sign each annotation. In the event of refusal, the manager of the works shall automatically carry out the surveys and make the annotations.

In the case of handwritten entries, no erasures covering what has been written or abrasions shall be permitted.

Each annotation shall be preceded by a progressive number, the date of the survey, the item number referred to in the price list, and the data shall be placed in appropriate columns.



The books may be supplemented by attachments (weighing reports, graphs, etc.). Each of these attachments shall indicate the number and page of the book to which it refers, the date of filling in and the signature of the person responsible for filling it in, of the manager of the works and of the contractor.

The accounting register shall record and classify the individual measurements of the works and the notes relating to the works carried out, as shown in the books of measurements and supplies.

The record-keeping procedures shall be the same as those previously indicated for the book of measurements.

Each works entry indicated in the accounting register shall contain references for its unequivocal identification in the book of measurements.

Each entry shall be preceded by a progressive number, the item number referred to in the price list, the date of transcription, a brief description of the entry, the inputs, the unit of measurement, the products, the unit price referred to in the list, the amount and any other information that the manager of the works or person responsible for drawing up the accounting documents deems appropriate.

At the end of each transcription, the manager of the works shall invite the contractor to sign the register, followed by its own signature.

When the amount of the works that can be paid reaches, net of the contractual percentage discount, the amount of the instalment for advance payment, the register shall be closed each time with an indication of the date, the amount and the signature of the manager of the works and of the contractor.

The advance payment shall be recorded in the register, indicating the date and net amount. The register shall then be reopened, recording the amounts paid and the net amounts paid in order to obtain, at the end of the works, the total gross amount and the total net amount paid.

The contractor shall never refuse to sign the register, but may indicate any reservations it deems appropriate, which it shall be required to explain within 15 days of signing with reservations. Any reservations not explained within the above time limit shall be considered void.

The manager of the works or the person responsible for drawing up the accounting documents may make counter-reservations.

The contractor's signature without reservations shall determine the definitive acceptance of the accounting documents to which it refers.

The addition of a new reservation may only refer to the works entry following the previous signature.

The summary of the accounting register shall indicate each entry in the accounting register, classifying them in appropriate boxes according to the relevant item in the list. Each box shall consist of two columns, one for quantities and one for amounts; the heading shall include the title of the work, the item number, the unit of measurement and the unit price.

Each time a payment certificate is issued, a continuous line shall be drawn to close the boxes; the progressive number of the certificate shall also be indicated.

However, the filling-in may be omitted if the works to be accounted for only comprise a small number of categories of works.

The progress of the works shall be established on the basis of the accounting register whenever the amount of the works carried out reaches the minimum amount specified in the contract; on the basis of this progress, the relevant payment certificate shall be issued.

The works progress report shall include a summary of all works executed and supplies provided since the start of the contract and this information shall be obtained from the accounting register or its summary. Copies of any new prices shall be attached to it.



The works progress report shall be signed by the manager of the works and, where applicable, by the person responsible for accounting.

After the works progress report has been filled out, the contracting authority shall issue the relevant payment certificate, if the contract provides for payment in instalments, within a maximum of 90 consecutive days from the date of accrual. This document shall include the guarantee withholdings referred to in Article 39, which, based on the gross amount, shall determine the net amount to be paid to the company.

Advance payments for materials shall be deducted when the works for which they were actually used are accounted for.

Advance payments shall have no influence on the contractor's liability and warranty against eviction; these payments shall in no way be considered as partial acceptance of the overall service.

Within 30 consecutive days of the certificate confirming the positive outcome of testing or of technical verifications, the manager of the works shall draw up the final bill. This document shall be transmitted to the head of the contracting authority, who, after reviewing and, if necessary, amending it, shall ask the contractor to sign it.

The latter shall indicate the reservations recorded in the accounting register, under penalty of forfeiture. Once the time limit for signing has expired and the contractor has not signed (except in cases of force majeure), the final bill shall be deemed to have been accepted in full.

All documents relating to the contract shall be attached to the final bill, including a copy of the project approval, all the accounting documents listed, a copy of the contract, all reports, service orders and the contractor's final invoice.

The acceptance without reservations of the payment of the final bill shall exclude any possibility of subsequent claims by the contractor.

Any penalties for late payment shall be outlined in the tender specifications.

#### **Art.56**

##### *(Deviations from original expenditure forecasts)*

Deviations from the original forecasts may be requested by the designer and the manager of the works and approved by the bodies referred to in Article 8 of the framework law:

- if the deviation is lower than or equal to 7.5%, it may be approved upon submission of an expert opinion and the final accounting documents;
- if the deviation is between 7.5% and 20%, it shall be approved in advance with the submission of an expert opinion;
- if the deviation exceeds 20%, the appropriateness of a new contract may be considered.

#### **Art. 57**

##### *(Testing)*

Without prejudice to the provisions of Law no. 46 of 7 May 1984, Article 12 of the Framework Law and Articles 208 and 209 of Law no. 87 of 18 July 1995, all works and services carried out pursuant to the contract, whose amounts exceed £800,000,000, shall be tested in accordance with the provisions of the relevant tender specifications.



Testing shall be completed within 180 consecutive days from the date of completion of the works.

In the case of complex works or works of a specific nature, the special tender specifications may extend this time limit for a period not exceeding 360 consecutive days from the date of completion of the works.

#### **Art.58**

*(Purpose of testing)*

Testing shall involve a series of verifications, including:

- a) the execution of the work according to standard practice, in compliance with technical requirements and in accordance with the contract and any duly approved variations;
- b) the correspondence of the materials used or supplied with those ordered.

#### **Article 59**

*(Appointment of the tester)*

The appointment of the tester shall be made by the Ministry responsible for the contract in question, after consultation with the contracting authority and on the basis of professional expertise.

Testing may be entrusted to a maximum of three technical experts (Testing Commission) with high-level, specific qualifications for the type of works and their complexity.

The appointment may also be made during the execution of the works upon request by the contracting authority and, in any case, within thirty days from the date of completion of the works.

The tester or members of the Testing Commission shall not have performed any function relating to the authorisation, control, supervision or execution of the works subject to testing.

#### **Art.60**

*(Obligations of the contractor related to testing)*

The contractor shall provide the tester with the workforce, materials and equipment necessary to carry out all the verifications carried out at the sole discretion of the tester; the resulting costs shall be borne by the contractor.

The parties shall sign the testing certificate within twenty days of notification of the completion of testing. The certificate may be signed with reservations, which shall be explained within fifteen days, under penalty of forfeiture.

The tester shall verify the content of the statement on reservations and reply to the contractor within 30 days.

If the contractor refuses to sign the testing certificate within the set time limit, this shall be considered definitively accepted.

#### **Art.61**

*(Powers of the tester)*

The tester shall be required to draw up written reports containing any observations he deems appropriate.

The report shall indicate any reservations regarding known defects, penalties or non-compliance with the contract, as well as any objections raised by the contractor.



Each of the parties to the contract shall receive a copy of the report.

The tester shall take note of the content of any confidential report drawn up by the manager of the works and shall respond to any reservations duly expressed by the contractor.

Within 180 consecutive days from the date of the report on the completion of the works, the tester shall issue the testing certificate indicating whether and under what conditions the works can be tested, what defects and shortcomings have been identified, specifying in any case the sums due to the contractor, and ruling on disputes, reservations and objections.

## **Art.62**

*(Ex officio execution)*

Ex officio execution shall be permitted when, due to defects revealed by the testing certificate, gross negligence or non-compliance with contractual obligations, the contractor jeopardises the successful completion of the works.

The contracting authority shall arrange for the execution of any additional works required, either directly or by means of another contract.

## **Art.63**

*(Internal regulations)*

The contracting authorities shall be permitted to draw up regulations governing negotiation activities for internal use only.

The internal regulations, approved by the Congress of State, shall not contrast in any way with the framework law and with this Decree.

## **Art.64<sup>18</sup>**

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<sup>18</sup> **Original text (Decree no. 10/2000):**

Art.64

(Transitional rule)

In order to enable contracting authorities to draw up, in accordance with Article 9 of this Decree, the new registers of companies eligible to participate in tenders, the registers held by the authorities shall be used until 31 December 2000. Applications for inclusion in the new registers referred to in Articles 8 and 9 of this Decree shall be submitted to the relevant Entities by 31 July 2000 at the latest.

In order to enable contracting authorities to draw up, in accordance with Article 9 of this Decree, the new registers of companies eligible to participate in tenders, the registers held by the authorities shall be used until 31 December 2001.

Applications for inclusion in the new registers referred to in Articles 8 and 9 of this Decree shall be submitted to the relevant authorities by 31 October 2001 at the latest.

### **Legislative amendments**

#### **Decree no. 62/2000, Article 4**

Art. 4

Article 64 of Decree no. 10 of 20 January 2000 shall be replaced by the following:

In order to enable contracting authorities to draw up, in accordance with Article 9 of this Decree, the new registers of companies eligible to participate in tenders, the registers held by the authorities shall be used until 31 December 2001.

Applications for inclusion in the new registers referred to in Articles 8 and 9 of this Decree shall be submitted to the relevant authorities by 31 October 2001 at the latest.

#### **Decree no. 100/2001, Article 4**

Art. 4

Article 64 of Decree no. 10 of 20 January 2000 shall be replaced by the following:



*(Transitional rule)*

In order to enable the register to be drawn up, in accordance with Article 9 of this Decree, the registers held by the authorities shall be used until the creation of the register of companies, which shall take place by means of the measure referred to in Article 8 by 31 March 2002.

During the transitional period, new companies may be registered in the registers held by the authorities.

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<sup>1</sup>Art.64

In order to enable the register to be drawn up, in accordance with Article 9 of this Decree, the registers held by the authorities shall be used until the creation of the register of companies, which shall take place by means of the measure referred to in Article 8 by 31 March 2002.

During the transitional period, new companies may be registered in the registers held by the authorities.

