



Gatti Pavesi Bianchi

COVID-19 Update
TENDER PROCEDURES

3 April 2020

TENDER PROCEDURES

According to the Ministry of Infrastructure and Transport's note ("MIT Note"), dated 23 March 2020 (whose contents, however, became available only few days later) the suspension of the terms relating to administrative procedures (from 23 February 2020 until 15 April 2020), set forth by art. 103, par. 1 of the Legislative Decree No. 18/2020 ("Cura Italia Decree"), applies also to tender procedures regulated by Legislative Decree No. 50/2016 ("Public Contracts Code").

The suspension shall apply to all terms and deadlines set (i) by the tender documentation or (i) by the tender committees. However, all the activity, on both contracting authority's and bidder's side, might be carried out within the original deadline or within a shorter deadline than that resulting from the suspension. In addition, the MIT suggests that the contracting authorities should respect, as far as possible, their own deadlines.

Therefore, any assessment relating to the suspension of such deadlines must be carried out on a case-by-case basis, as every contracting authority should clarify whether the terms must be considered suspended or not.

Furthermore, it should be pointed out that:

(i) the tender committees are allowed to carry out the examination of the technical bids, and every reserved session, through videoconferencing systems (also in light of art. 77, par. 2 of the Public Contracts Code). Otherwise, it seems difficult, in the current scenario, to carry out regularly public sessions (i.e. the session aimed at opening the envelopes containing the bids submitted), unless videoconferencing systems are used in order to allow all the bidders to participate in the session;

(ii) the deadlines to submit bids following a site-visit (pursuant to art. 79, par. 2 of the Public Contracts Code) are reasonably suspended and should be extended;

(iii) no clarification has been provided by the Ministry with regard to the suspension of the 35-day standstill period following the awarding of the tender, during which the execution of the contract is not allowed (pursuant to art. 32 of the Public Contracts Code). However, please note that the failure to suspend the standstill period would be incompatible with the suspension of the procedural time-limits set by the Cura Italia Decree with regard to the administrative justice. In other words, the contracting authority would be allowed to execute the contract before the expiry of the time-limit within which a non-successful bidder might challenge the final award. On this point, further clarifications by the Government would be appropriate.

Moreover, INPS provided for further clarification on tender procedure matters through the communication No. 1374 of 25 March 2020, which clarifies that the Certificates attesting the regularity of contributions ("DURC") fall within the category of "certificate and permits" referred to in art. 103, par. 2 of the Cura Italia Decree. Therefore, the DURC expiring between 31 January 2020 and 15 April 2020 shall remain valid and effective until 15 June 2020.

TEAM



Senior Associate

Maria Pia Larné

Mariapia.larne@gpblex.it



Senior Associate

Elisabetta Patelli

Elisabetta.patelli@gpblex.it

We assist our clients in relation to matters and disputes concerning public contracts and concessions, competition law and other regulated sectors, town planning and building regulation, all administrative aspects concerning production activities and environmental protection legislation.

Disclaimer This publication is provided by Gatti Pavesi Bianchi Studio Legale Associato and has been duly and professionally drafted. However, the information contained therein is not a legal advice and cannot be considered as such. Gatti Pavesi Bianchi Studio Legale Associato cannot accept any liability for the consequences of making use of this issue without a further cooperation and advice is taken.

CONTACTS

Milan

Piazza Borromeo, 8
20123 Milano (MI)
Tel. +39 02 8597 51
Fax +39 02 8094 47
studio@gplex.it

Rome

Piazza dei Caprettari, 70
00186 Roma (RM)
Tel. +39 06 6813 4961
Fax +39 06 6813 4701
studioroma@gplex.it

gplex.it