1. Legislative framework - What are the legal regulations for public procurement?

Which regulations apply above the thresholds?

Legislative Decree no. 163 of April 12, 2006, “Codice dei contratti pubblici relativi a lavori, servizi e forniture in attuazione delle direttive 2004/17/CE e 2004/18/CE” [Regulation of public procurement regarding works, services and supplies implementing Directives 2004/17/EC and 2004/18/EC], published in the Official Journal no. 100 of May 2, 2006 - Ord. Suppl. no. 107, and effective from July 1, 2006, regulates all awarding procedures for both above threshold and below threshold procurement.

Which regulations apply below the thresholds?

Legislative Decree no. 163/2006 also applies to below threshold procurement (Art. 121-125). Until a specific regulation of the matter is issued and made effective, the procurement of supplies and services per day of work (by direct administration or negotiated procedures) shall be temporarily regulated by D.P.R. no. 384 of August 20, 2001.

2. What are the national and regional media for the publication of contract notices?

Above the thresholds:

The contracting authorities, before advertising the call for tenders nationally, must despatch notices to the Commission by electronic means, using the format and methods of despatch specified in Annex X to the Public Procurement Code (Art. 66). Tender notices are also advertised in the Official Journal of the Italian Republic – Special Series regarding public procurement, on the “Purchaser’s profile” prepared by the general contractor, and not later than two working days later in the web site of the Ministry of Infrastructures and Transports, as defined in Decree no. 20 dated April 6, 2001 of the Ministry of Public Works, and in the Observatory’s web site, with indication of the details of publication in the Official Journal.
In any case, notices and calls for tender published within the national territory should not contain information differing from those of notices and calls for tender transmitted to the Commission. Notices and calls for tender are also published twelve days after their transmission to the Commission, or five days after said transmission in cases of urgency, in the form of an abstract on at least two of the main national daily newspapers and on at least two of the most read local newspapers of the place where the contracts will be executed.

**Below the thresholds:**

There is no obligation of publication and transmission in the supranational framework for below-threshold works contracts: calls for tenders are published not only in the Purchaser’s profile, but also in the Ministry of Infrastructures’ web site and, in the form of an abstract, on a national daily newspaper and a local newspaper, in the Official Journal or in the Court Notice Board of the Municipality where the works will be carried out, if the contract price exceeds or not Euro 500,000, respectively. For below-threshold supplies and services contracts, below-threshold calls for tender and invitations to tender are published in the Official Journal of the Italian Republic – Special Public Procurement Series, in the web site of the Observatory of Public Procurement or in the General Contractor’s notice board. The legal effects connected to advertisement are in any case effective from the date of publication in the Official Journal.

**3. Which procurement procedures are used?**

**Above the thresholds:**

Tenderer identification procedures, which include the natural and necessary step of selecting the best offer based on the lowest price or most economically advantageous (value for money) offer criteria, may be distinguished into:

a) ordinary procedures (open or restricted), which can be used in general at the General Contractor’s discretion depending on specific contract requirements;

b) procedures that can be admitted only when compulsorily required:
   - a) negotiated procedure with advertisement;
   - b) negotiated procedure without advertisement;
   - c) competitive dialogue;
   - d) design contest;
   - e) dynamic purchase system.
The procedure is selected by the authority with determination to award a contract, together with the tender selection criterion, and is disclosed in the tender notice (when the selection of an open or restricted procedure, negotiated procedure with publication or competitive dialogue requires said deed to be published).

**Below the thresholds:**

A) For below-threshold works contracts (art. 122-123):

The terms for receiving applications and for the submittal of tenders are considerably reduced. The negotiated procedure is always admitted for works whose price is not greater than Euro 100,000. Abnormal tenders can be automatically excluded (if at least 5 tenders have been received) without using the verification and exclusion procedure for abnormally low price offers and without enclosing preventive price justifications to the offer.

B) For supplies and services contracts (art. 124):

The Prior Information Notice is optional and is published in the Purchaser’s profile; the general contractors are not required to publish the notice concerning the results of the awarding procedure. If the lowest price criterion is used, the general contractor may include in the call for tenders the automatic exclusion from the competition of the offers showing a rebate percentage of a minimum abnormality threshold. This option is excluded if the number of offers submitted is less than 5: in this case, the general contractors may evaluate the consistency of each offer that appears as abnormally low on the basis of specific criteria.

For below-threshold contracts, the authority may purchase works, supplies and services on a daywork basis, through direct administration or negotiated procedure. Before a specific regulation is issued on the matter, the temporary regulation of supplies and services on a daywork basis is the DPR no. 384 of August 20, 2001, within the limits of its compatibility with the new Code’s provisions.

The central awarding authorities may therefore purchase works and services on a daywork basis for amounts below € 137,000, while the other general contractors may use this option for amounts below € 211,000. Purchase on a daywork basis is only admitted in connection with the scope and amount limits of the individual expense items, which must be previously identified by each general with regard to its own specific requirements. Furthermore, this option is also allowed in the following cases:
a) if a previous contract is terminated or, in default of the contracting party, when necessary or convenient to obtain the performance of works within the term established in the contract; b) in case of need to complete the performance of works not included in the current contract, if their execution cannot be imposed within the main scope of the same contract; c) if supplies and services are purchased in a strictly necessary measure, in the case of expired contracts, in default of performance of ordinary contractor selection procedures; d) in case of urgency, determined by objectively unforeseeable events, in order to avoid any dangerous situation for persons, property, animals, or for public health and safety, or for historical, artistic and cultural heritage assets.

As to the different purchase methods, the Code specifies that in case of direct administration, purchases should be made with own materials or means or specifically purchased or rented and with the general contractors’ own personnel, or with personnel specifically hired for the purpose, under the supervision of the person in charge with the procedure (art. 125, paragraph 3).

The negotiated procedure is a procedure where procurement takes place by awarding the work to a third party. In such a case, a distinction should be made based on the price of services and supplies: below Euro 20,000, the entity in charge with the procedure may opt for direct awarding, but if the price is € 20,000 or greater, the awarding procedure must comply with the principles of transparency, proportionality, equal treatment, after consulting at least 5 economic operators, if this number of appropriate subjects does exist, identified with market surveys or registered in specific lists.

Up to the date of effectiveness of the new regulation, the negotiated procedure for prices of € 20,000 or more shall comply with Art. 5 of D.P.R. no. 384/2001, which requires for the invitation letter to specify the scope of the work, any guarantees, technical specifications, the quality and methods of execution, prices, payment conditions, a declaration of compliance with the established conditions and penalties, as well as with law provisions. Furthermore, the entity in charge with the procedure shall ask at least 5 quotations, to be prepared according to the invitation letter’s instructions. The negotiated procedure may be regulated with a simple private deed or by a specific letter written by the purchaser to order supplies and services (where the items mentioned must be the same as those contained in the invitation letter). The requirement to ask for multiple quotation is not compulsory when the specificity of the supply or service to be purchased is well-known for its technical or market features, or when the expense amount does not exceed € 20,000 (VAT not included), or when the expense amount does not exceed € 40,000...
(VAT not included), but the supplies or services must be purchased due to urgent and unforeseeable public order requirements.

4. Which time-limits must be considered?

**Which limits apply above the thresholds?**

<table>
<thead>
<tr>
<th>PROCEDURE</th>
<th>OPEN</th>
<th>RESTRICTED</th>
<th>NEGOTIATED</th>
<th>COMPETITIVE DIALOGUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terms for the submittal of offers from the notice transmission date</td>
<td>Not less than 52 days</td>
<td>May be reduced from 36 to 22 days by publishing a Prior Information Notice</td>
<td>7 days in case of electronic transmission of the notice</td>
<td>5 days if free, direct and complete access to the specifications and documents is guaranteed</td>
</tr>
<tr>
<td>Terms for submittal of applications</td>
<td>Not less than 37 days</td>
<td>7 days in case of electronic transmission of notice</td>
<td>7 days in case of electronic transmission of notice</td>
<td></td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th><strong>Submittal of offers since transmission of the invitation to tender</strong></th>
<th><strong>Not less than 40 days/ 5 days if complete access is guaranteed</strong></th>
<th><strong>Established by the general contractor, but cannot be less than 20 days (unless in case of urgency)</strong></th>
</tr>
</thead>
</table>

#### Reduction of terms for receiving urgent tenders

<table>
<thead>
<tr>
<th>Procedures</th>
<th>Restricted Negotiated with publication</th>
<th>Negotiated without publication</th>
<th>Competitive dialogue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term for submittal of applications</td>
<td>Not less than 15 days after the publication of the call for tenders in the Official Journal of the Italian Republic (after transmitting the call for tenders to the Commission)</td>
<td>The contracting authority will establish the terms taking into account the complexity of the work and the term normally required to prepare the offers</td>
<td></td>
</tr>
<tr>
<td>Transmission offers</td>
<td>Not less than 10 days after receiving the invitation letter</td>
<td></td>
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</tbody>
</table>
The timescale for receiving offers are extended in order to allow all the tenderers to get all the necessary information about how to prepare the offers if, for any reason, the offers can be prepared only after inspecting the sites or after consulting on site the documents enclosed to the Specifications;

A) in open procedures
If the general contractors do not offer free, direct and complete electronic access to the specifications and supplementary documents, these should be transmitted not later than 6 days after receiving the application, which must have been submitted within the terms before the due date established for the submittal of offers. Provided that it has been requested within the term established, the supplementary information on specifications and supplementary documents shall be transmitted at least 6 days before the due date established for the reception of offers;

B) in restricted procedures, negotiated procedures with publication and competitive dialogue
A copy of the specifications and supplementary documents shall be enclosed in the invitation to candidates; otherwise, the invitation shall indicate the web site where access to the capitularees and supplementary documents is made electronically available or the address where a request for said documentation can be sent, which shall be an entity other than the general contractor that fulfils the awarding procedure;
- provided that it has been requested within the terms specified, the supplementary information should be notified at least 6 days before the term established for the reception of offers. In restricted and urgent negotiated procedures, this term is reduced to 4 days.

Which limits apply below the thresholds?

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Open</th>
<th>Restricted</th>
<th>Negotiated with publication</th>
<th>Negotiated without publication</th>
<th>Competitive dialogue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term for reception of applications</td>
<td>Not less than 7 days after the publication of the call for tenders</td>
<td>Not less than 7 days after the publication of the call for tenders</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>In case of urgency (for reasons specified in the call for tenders)</td>
<td>Not less than 10 days after the publication of the call for tenders in the Italian Official Journal</td>
<td>Not less than 10 days after the publication of the call for tenders in the O.G.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Term for offer reception</td>
<td>Not less than 15 days after publication in the Italian Official Journal. This term can be reduced to 10 days, but never to less than 7 days, if a Prior Information Notice has been issued</td>
<td>Not less than 10 days after the invitation letter. Except for negotiated procedures without publication, this term can be reduced to 10 days, but never to less than 7, if a Prior Information Notice has been issued. The terms are always effective from the date of reception of the invitation letter.</td>
<td></td>
<td></td>
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</tbody>
</table>

Temporary awarding to the best tenderer shall be approved by the competent authority within 30 days. Final awarding becomes effective after verification that the necessary requirements are fulfilled.

The contract shall be executed (signed) within 60 days after final awarding, or within any different term established in the call for tenders, and approval shall be given within the subsequent 30 days after the awarding, or any different term established in the call for tenders.
Which evidence can be requested in the course of an application?

In order to be eligible for participation in a contract awarding procedure for supplies and services, the competing entities shall prove (by submitting a statement in compliance with DPR 445/2000) that they fulfil all the requirements and ensure that the general contractor will be enabled to check this compliance at any time during the competition procedure:

1) general requirements (Art. 38) - strictly correlated to the entity, its ethical fitness and its “personal situation”. In brief, the competitor is legally allowed to propose itself as a contracting party for the general contractor only if it fulfils ethical, reliability, and regular control/management requirements, which must be ensured by providing evidence that no criminal record or “anti-mafia” measures have been taken against it;

2) technical and financial requirements (Art. 41) – these consist in providing bank statements (from at least two different banks); financial statements or balance sheets abstracts; a statement concerning the global corporate turnover, and a description of the services or supplies provided over the three previous years, which are identical to those defined in the scope of the contract. These references required have the purpose of offering a guarantee for the creditworthiness of the company and its financial stability.

3) technical and professional requirements (Art. 42) – these are specified in the call for tenders or in the invitation letter. Professional fitness requirements shall be certified by showing evidence of the company’s registration in the specific professional or trade registers existing in the respective Member States. The general contractors may also ask for specific certifications, issued by independent organizations, providing evidence of the company’s compliance with certain quality assurance or environmental regulations/standards.

5. Who wins? Which award criteria apply?

According to the Public Procurement Code, subject to any applicable national legal, regulatory or administrative provisions regarding the remuneration of specific services, the best offer should be awarded based on either the lowest price or the economically most advantageous (value for money) offer criteria, provided that the criterion selected is specifically indicated on the call for tenders (Art. 81).
Which criteria apply above the thresholds?

According to the Code of Public Procurement (Art. 83):

a) offer evaluation criteria are established in the call for tenders, and they may include criteria such as environmental requirements;

b) the relative weight assigned to each evaluation parameter must be specified, also using a threshold, which can be expressed with a given numerical value: the difference between the threshold score and the maximum score attributable to the item referred to that threshold must be appropriate;

c) for each evaluation criterion, a general contractor may establish sub-criteria or sub-scores;

d) in order to determine criteria and scores, the general contractor (if not in the condition to independently do so) will appoint one or more experts with a decree or with a “resolution to contract”;

e) in the event that the awarding authorities deem it impossible to determine a relative weight for demonstrable reasons, the awarding authorities shall disclose the decreasing order of importance attributed to the criteria;

f) the awarding commission, before opening the envelopes containing the offers, shall establish general motivational criteria to be referred to for the attribution of a score between the maximum and minimum specified in the call for tenders for each evaluation criterion or sub-criterion.

Which criteria apply below the thresholds?

Awarding criteria (lowest price or most economically advantageous or value for money) are the same as for above-threshold contracts. The applicable procedure shows some differences (see paragraph 3).

7. Where can I file a complaint?

For tenders above the thresholds:

Any complaint or dispute aimed at involving the administration authorities due to a violation of the competition rules may be filed with the Authority for the Surveillance of Public Works (whose operating range, as defined in the Code of Public Procurement, now also extends to services and supplies) or with the Authority ensuring fair market competition.
The deeds used for awarding procedures, as well as any assignment and design contests regarding works, services and supplies, can be contested either by filing a complaint to the competent Administrative Regional Court (with possible appeal to the State’s Council) or by submitting an “extraordinary appeal” to the President of the Republic. The administrative judge may also adopt precautionary measures under the applicable legislation (Art. 21 and 23-bis of Law no. 1034 dated December 6, 1971, and Art. 3, paragraph 4, of Law no. 205 dated July 21, 2000, in addition to the instruments of execution defined by Articles 33 and 37 of Law no. 1034 dated December 6, 1971).

In the event of particularly serious and urgent disputes, the entity legally entitled to file a complaint may propose the adoption of temporary measures as may seem to be indispensable during the time required to file a full complaint on the merits and an interlocutory application. The complaint shall be filed with the President of the competent Regional Administrative Court on the merits and the President, or the Judge appointed by the President, shall make a decision after listening to the parties, if feasible, and omitting any other formality. Any consequent provision to be issued involving a bid-bond shall be in any case effective for no more than 60 days.

Disputes connected with contract execution (that is, not regarding public evidence contractor selection steps) may also be dealt with by out-of-court settlement procedures, such as amicable settlement (after compulsorily listening to the opinion of the Law Officers of the authority or, if no high officer is available, only for disputes concerning a price of over Euro 100,000) for each controversy regarding the duties connected with the contract.

**For tenders below the thresholds:**

The same considerations apply as those described for above-threshold contracts.

**8. e-procurement**

In the Italian legal system, Art. 42, par. 1, of Directive 2004/18, establishes that “any and all communication and exchanges may take place, at the awarding authority’s discretion, wither by mail, fax or electronic means” is not applicable for a temporary period of three years after the date of effectiveness of the Code (Art. 253, paragraph 12). However, the two procedures consisting in electronic auctions and dynamic purchasing systems have been regulated in compliance with EU Directives.
9. Where can I find further information?

Web site of the Ministry of Infrastructures:  
http://www.infrastrutturetrasporti.it/page/standard/site.php

Web site of the Authority for the Surveillance of Public Works:  
http://www.autoritalavoripubblici.it/

The long version of the vademecum on Italian public procurement is available on  
www.eurosportelloveneto.it/pubblicazioni/67366_Eurosport.pdf  
(Only Italian version)