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Guidelines for the application of Article 16 of Law 206/2023 – Provisions on the procurement of quality supplies for public administrations**1. Purpose and scope**

Article 16 of Law No 206 of 27 December 2023 – “*Provisions on the procurement of quality supplies for public administrations*” - contains provisions aimed at enhancing and protecting the quality of Italian and European products, including sustainability aspects, and at promoting the effective participation of micro, small and medium-sized enterprises, including local ones, in public procurement procedures.

The aforementioned provision therefore indicates, for the purposes of these guidelines, and of their objective and scope of application, the purpose of “***enhancing and protecting the quality of Italian and European products***”, as well as encouraging participation in the relevant public procurement procedures of **micro, small and medium-sized enterprises, including local ones**, as identified pursuant to Ministerial Decree 18/04/2005 of the Ministry of Production Activities on “Adjustment to Community rules of the criteria for identifying small and medium-sized enterprises” published in the Official Journal No 238 of 12 October 2005, as amended, most recently by Directive EU 2023/2775 issued by the European Commission on 17 October 2023 and published in the Official Journal of the European Union on 21 December 2023.

These guidelines shall apply to the procedures initiated by the contracting authorities referred to in Article 1(a) of Annex I. 1 (*Definitions of entities, contracts, procedures and instruments*, former Article 13, paragraph 6 of Legislative Decree No. 36 of 31 March 2023), concerning the supply of products.

2. References to the context regulatory framework

Paragraph 1 of the aforementioned Article 16, in so far as it provides that these guidelines shall indicate criteria for measuring the level of quality of products, including aspects relating to sustainability, which the contracting authorities will also assess on the basis of compliance with environmental, social and labour obligations, refers, inter alia, in particular and expressly, to Annex X to Directive 2014/24/EU, also taking into account the provisions of Article 57(2) of Legislative Decree No. 36/2023, establishing the Public Procurement Code, hereinafter “Code”.

Specifically, it provides that contracting authorities and concession-granting entities contribute to the achievement of the environmental objectives set out in the Action Plan for the environmental sustainability of consumption in the public administration sector, through the inclusion, in the design and tender documentation, of at least the technical specifications and contractual clauses contained in the minimum environmental criteria (MEC), defined by decree of the Ministry for the Environment and Energy Security.

With reference to the actual participation of micro, small and medium-sized enterprises, including local ones, in tendering procedures, reference should certainly be made to the

wording of Article 58 of the Code, according to which contracts are divided into functional, performance or quantitative lots in accordance with the categories or specialisations in the field of works, services and supplies: in the contract notice, the contracting authorities motivate failure to divide the contract into lots taking into account European principles on promoting a level playing field for small and medium-sized enterprises. Moreover, in the case of subdivision into lots, the relevant value must be adjusted to ensure the effective possibility of participation by micro, small and medium-sized enterprises; without prejudice to the prohibition of artificial pooling into lots, the contracting authorities shall indicate in the same act the qualitative or quantitative criteria actually followed in the division into lots.

In accordance with the provisions of paragraph 2 of the same Article 16, among the criteria for evaluating the most economically advantageous tender referred to in Article 108, paragraph 4, of the Code, the contracting authority may consider, for each of the product items that make up the tender, the level of compliance with the quality parameters provided for in these guidelines.

That provision provides that the tender documents are to lay down the criteria for the award of the tender, which are relevant to the nature, subject-matter and characteristics of the contract. In particular, the same paragraph provides that the most economically advantageous tender (MEAT), identified on the basis of the best value for money, is to be assessed on the basis of objective criteria, such as qualitative, environmental or social aspects, linked to the subject-matter of the contract. It is also provided that the contracting authority, in order to ensure the effective identification of the best quality/price ratio, values the qualitative elements of the tender and identifies criteria to ensure an effective competitive comparison on technical profiles. Specific provisions are laid down for the procurement of IT goods and services.

3. General principles and guidelines

Contracting authorities shall ensure, in procurement procedures relating to supplies, also in the application of rules already in force that require, as mentioned above, the possession of sector-specific requirements, the enhancement of **quality, understood in a broad sense, as encompassing the environmental and social sustainability of products**, both Italian and European, through the provision of requirements and bonus scores; at the same time, shall ensure, in the same way, the participation in the same procedures of **micro, small and medium-sized enterprises**, as well as **local businesses**, understood as having an impact in terms of environmental sustainability: by way of example, in the performance of supply-related activities (transport, commissioning/in-service, waste generation, possible reuse and recycling procedures, etc.); bonus scores will also be provided for the quality of the product in terms of social sustainability, from the point of view of employment relationships and equal opportunities – for example, the highest or lowest level, also already reached in previous award procedures, of practices guaranteeing equal opportunities and working conditions or employment of young people – or quality characteristics (possible voluntary quality and origin/traceability mark).

To this end, the contracting authority will first identify the specific needs and the purpose of the procurement of products, subsequently carrying out an assessment of the consistency and relevance of the criteria and parameters for measuring the quality of products, as provided for in these guidelines, with respect to the purposes identified.

In a third phase, it will assess the proportionality of the type or level of the individual criteria and parameters for measuring quality in relation to the objective, type, and purpose of the award procedure.

In the contract notice or notice of the procedure, and in general in the tender documentation, in order to allow the submission of an informed proposal by the tenderers and the evaluation of the tenders by the tender commission consistent with the objectives of the contracting authority, it is necessary that the criteria and parameters are indicated - already in the notice or in any other act initiating the award procedure - as far as possible, in a detailed and precise manner, and defining, in an equally clear and analytical manner, the qualitative levels to which the envisaged scores correspond.

The tendering law must also provide for the need to produce appropriate documentation attesting to the specific ways in which the participants in the tender intend to comply with the obligations laid down in the list of international social and environmental conventions set out in Annex X to Directive 2014/24/EU.

Contracting authorities may consider introducing, in the tender documentation, a deadline by which the successful tenderer is required to submit a technical report outlining the measures it commits to implementing for environmental purposes and to promote the effective participation of local micro, small and medium-sized enterprises. These measures may concern the optimisation of logistics for the reduction of transport-related environmental impacts by also referring to the information to be found along the supply chains.

4. Criteria for measuring the quality level of products and their production

In the context of the evaluation of tenders during the call for tenders, with particular regard to the enhancement of the qualitative elements of the tender, the following could be considered, as possible rewarding criteria: company certification according to the ISO 9001:2015 technical standard, an international standard adopted in Italy by UNI, the national standardisation body, which sets the standard requirements for a quality management system and can be applied to any organisation, large or small, regardless of the field of activity. With reference to the qualitative aspects, including the organisational structure of a company, this standard indicates a business approach aimed at continuous improvement, both in the production area and in terms of occupational well-being. Organizations with a UNI EN ISO 9001:2015 certified quality management system demonstrate their commitment to greater organizational efficiency, through a precise definition of the objectives and their review once they have been achieved. For the measurement of the quality level of products, also with reference to performance, environmental and safety characteristics, it is appropriate to request documentary evidence on the basis of which to verify compliance with the regulations or European directives relevant for the affixing of the CE mark, referred to in Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011.

Compliance with the technical standard ISO 45001:2018 on the health and safety of workers can also be considered a reward criterion.

In order to verify the above requirements, the contracting authority may request a verification by a conformity assessment body referred to in Regulation 765/2008.

Where the products, which are the subject of the tender, are not subject to specific harmonised standards or do not fall within the scope of the aforementioned regulation, they must comply with the requirements of Legislative Decree No 206/2005 (Consumer Code), which, although it does not provide for the regular affixing of the CE marking, is stringent with regard to product safety and the minimum information accompanying it, in order to be able to easily retrace the supply and production chains.

The quality level of a supply can also be measured through the concept of proximity, understood as a possible reward requirement, taking into account the environmental impact due to the performance of all those activities related to the supply subject to the tender (transport to and from the contracting authority, commissioning/in-service of the supplies, production of waste, replacement and collection of used products, any reuse and recycling procedures, etc.), with particular regard to the reduction of CO₂ levels.

When assessing the economically advantageous tender, the contracting authority may, in the context of the reward requirement criterion, assign a score to undertakings which have provided, at the expression of interest stage, an environmental impact analysis including actual energy consumption for all stages of supply (transport to and from the contracting authority, commissioning/in-service of supplies, production of waste, replacement and collection of used products, any reuse and recycling procedures, etc.).

The contracting authority will assess the possible bonus for those companies that are more virtuous, particularly concerning the reduction of CO₂ levels.

A rewarding requirement for the award of a tender for the provision of works and services can be both certification to the ISO 14001:2015 technical standard and EMAS registration (an acronym for Eco-Management and Audit Scheme) to which companies wishing to assess and improve their environmental performance can adhere, in line with the provisions of Regulation (EC) No 1221/2009 of the European Parliament and of the Council, also known as EMAS III, which aims to improve the environmental aspects of organisations through compliance with current environmental legislation and continuous improvement of environmental performance.

These standards place emphasis on life cycle thinking for the certification of the management system, taking into account the economic, environmental and social consequences of a product or production process over its entire life cycle, and demonstrate the commitment of certified companies to environmental protection and continuous improvement of their environmental performance.

Attention is drawn to the desirability of awarding the possession of UNI CEI EN ISO 50001 certification, which refers to the energy management system and therefore to possible reductions in energy consumption in production processes.

The above is also in accordance with the Integrated National Energy and Climate Plan 2030 pursuant to Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018, as provided for in Decree-Law No 77 of 31 May 2021 - *Governance of the National Recovery and Resilience Plan and initial measures to strengthen administrative structures and to accelerate and streamline procedures.*

5. Criteria for measuring the qualitative level of products in terms of sustainability

With regard to the evaluation of tenders during the tendering procedure, for the purposes of environmental and social sustainability, it is decisive to include among the award criteria

the relevant Minimum Environmental Criteria based on the products being supplied. The authority selects which of the MEC award criteria are applicable to the product being supplied. Rewarding criteria may also include rewarding requirements of ethical and social relevance.

In the case of a product category not covered by specific MEC, reference can be made to the possession of accredited environmental labels or certifications (e.g. EU Ecolabel, Made Green in Italy national scheme, environmental footprint assessment programme of the Ministry for the Environment and Energy Security).