



*Autorità Nazionale Anticorruzione*

**Innovation In Promoting Transparency in Public  
Procurement**

**Regional Workshop**

**Tangier, Kingdom of Morocco, March 3-4, 2020**

**Comparative Reading of key approaches to Corruption  
Prevention**

**Filippo Romano - ANAC**

# Public Procurement And Concession Contracts

- European directives
- Italian legislation (indications for the prevention of the corruption)
  - Monitoring system
  - Risk indicators
  - Development of Risk Indicators
    - Awarding Risk Indicators
    - Contract Execution Risk Indicators

# EU Directives

- **Directive 23/2014** on the award of concession contracts
- **Directive 24/2014** on public procurement and repealing Directive 2004/18/EC
- **Directive 25/2014** on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC
- Enforcement deadline of EU Member States (two years starting from the EU directives publication)

# EU Directives

The award of public contracts/concessions by or on behalf of Member States' authorities has to comply with the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the **free movement of goods, freedom of establishment** and the **freedom to provide services**, as well as the principles deriving therefrom, such as **equal treatment, non-discrimination, mutual recognition, proportionality and transparency**. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as ensuring that those principles are given practical effect and public procurement is **opened up to competition**.

# EU Directives

## **Conflicts of interest**

Member States shall ensure that contracting authorities take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

The concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority that are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

# EU Directives

**Rules applicable to the communications**

**Criteria for qualitative selection**

- Exclusion grounds
- Selection criteria

**Awarding procedures**

**Awarding criteria**

# **Directive 24/2014 on public procurement and repealing Directive 2004/18/EC**

## **Awarding procedures**

- 1. Open Procedure**
- 2. Restricted procedures**
- 3. Negotiated procedure with negotiation**
- 4. Competitive dialogue**
- 5. Innovation partnership**
- 6. Negotiated procedure without prior publication**

# **Directive 24/2014 on public procurement and repealing Directive 2004/18/EC**

## **Techniques and instruments for electronic and aggregated procurement**

- 1. Framework agreements**
- 2. Dynamic purchasing systems**
- 3. Electronic auctions**
- 4. Electronic catalogues**
- 5. Centralised purchasing activities and central purchasing bodies**



# **Directive 24/2014 on public procurement and repealing Directive 2004/18/EC**

## **Threshold amount**

- **Supply and service contracts EUR 221.000**
- **Supply and service contracts EUR 144.000 (Ministry and government Contracting Authorities)**
- **Work contracts EUR 5.548.000**
- **Social service contracts EUR 750.000**

# **Directive 24/2014 on public procurement and repealing Directive 2004/18/EC**

## **Award of the contracts**

- 1. Most economically advantageous tender**
  
- 2. Low price**

## **Particular aspects**

**Life-cycle costing**

**Abnormally low tender**

# **Directive 24/2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC**

## **Sectors**

- **Gas and heat**
- **Electricity**
- **Water**
- **Transport services**
- **Ports and airports**
- **Postal services**
- **Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels**

# **Directive 24/2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC**

## **Threshold amount**

- EUR **443.000** for supply and service contracts as well as for design contests;
- EUR **5.548.000** for works contracts;
- EUR **1.000.000** for service contracts for social and other specific services listed in Annex XVII (Health and social and related services, Administrative social, educational, healthcare and cultural services, Compulsory social security services, restaurants services...)

# **Directive 24/2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC**

## **Main differences with respect the classical sector**

- **Thresholds for services and supplies**
- **Negotiated procedures (it is not necessary any justification in order to utilize this procedure)**
- **Qualification system (Contracting entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification)**

# The Italian Public Procurement Legislation

## **Decree N. 50/2016 of the Prime Minister under Parliament mandate (Law 11/2016)**

- **Rules on the Classical Sector, Utilities Sectors and Concessions (same principles, exclusions rules, qualification, procedures, time limits)**
- **Administrative procedures , competences and rules for the civil servants involved in the public procurements**
- **Rules and legislation for the execution of the contract**
- **Arbitration, transaction arrangement, administrative and judicial appeal**

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# The Italian Public Procurement Legislation

.....

- **The supervision of the public procurements and concessions by means an independent Agency (National Anticorruption Authority)**
- **The monitoring of Public Contracts and Concession Contracts**
- **The prevention of the corruption of public contracts by means of the *ex ante* control of the tender documents**
- **The *ex ante* control of Transaction arrangement in the litigation during public contracts execution**



## **Italian Legislative framework**

- ✓ Legislative Decree No. 150/2009
- ✓ Law No. 190/2012 - Anti-Corruption Law
- ✓ Legislative Decree No. 33/2013
- ✓ Legislative Decree No. 39/2013
- ✓ D.P.R. No. 62/2013
- ✓ National Anti-Corruption Plan 2017-2019
- ✓ Law Decree No. 90/2014, converted with modifications by the Law No. 114/2014
- ✓ Law No. 124/2015
- ✓ Legislative Decree No. 97/2016
- ✓ Implementation of the European Directives No. 2014/23/UE, 2014/24/UE, 2014/25/UE. Legislative Decree No. 50/2016







## **The Institutional Mission of the Authority**

The new institutional mission of A.N.AC. consists in the prevention of corruption in public administrations and in subsidiaries and state-controlled companies through the implementation of transparency in all aspects of management; through supervisory activities in the framework of public contracts, and in every area of the public administration that can potentially develop corruption phenomena, as well as through the orientation of the behaviors and activities of public employees by means of advisory and regulatory interventions



## **National Anticorruption Authority (ANAC)**

### **ANTICORRUPTION**

- 1. To adopt the National Anticorruption Plan**
- 2. To verify the adoption of the Anticorruption Plan by Public Administrations and Entities subjected to the law according to indications of Actional Anticorruption Plan**
- 3. To apply sanctions in cases of the breach of the law**



## **National Anticorruption Authority (ANAC)**

### **ANTICORRUPTION**

#### **Anticorruption National Plan**

- 1. Indications do detect the risk area**
- 2. Individuation of risk indicators (for public contracts, for example)**
- 3. Management of the risk**

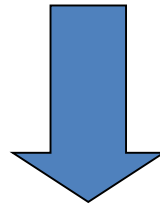


**National Anticorruption Authority (ANAC)**

**PUBLIC PROCUREMENT**

**Public procurement Directives**

**2014/23/UE, 2014/24/UE e 2014/25/UE**



**ITALIAN PUBLIC PROCUREMENT CONTRACTS LAW**

**Legislative Decree**

**18th April 2016, n. 50**

## **National Anticorruption Authority (ANAC)**

### **PUBLIC PROCUREMENT**

#### **1. Supervision of public procurement in order to guarantee:**

- The transparency**
- The quality of the works, services and supplies carried out by means of the contract**
- The free competition among competitors**
- The economicity of the works, services and supplies carried out by means of the contracts**



**MONITORING OF PUBLIC PROCUREMENT**



## **Legislative Decree n. 50/2016**

### **PUBLIC PROCUREMENT**

- 1. General principles**
- 2. Excluded contract**
- 3. Thresholds**
- 4. Contracts, Concessions and PPP**
- 5. Awarding Procedures and limitations**
- 6. Awarding Criteria**
  - 1. Lowest price**
  - 2. The most economical advantageous tender**



## **National Anticorruption Authority (ANAC)**

### **MONITORING OF PUBLIC CONTRACTS**

**Since year 2000 ANAC (previously Public Procurement Authority) developed an IT Monitoring system**

- 1. till 2006 only for works contracts**
- 2. since 2007 also for services and supplies contracts**

## **National Anticorruption Authority (ANAC)**

### **MONITORING OF PUBLIC CONTRACTS**

**The law against the organized crime (law 136/2010) establishes the payments control of all contractors and subcontractors by means of the Contract Code given by ANAC. Each bank payment has to outline the contract code**





## National Anticorruption Authority (ANAC)



### MONITORING OF PUBLIC CONTRACTS

**The amount per year for public procurement in Italy is about 150 billions of Euro.**

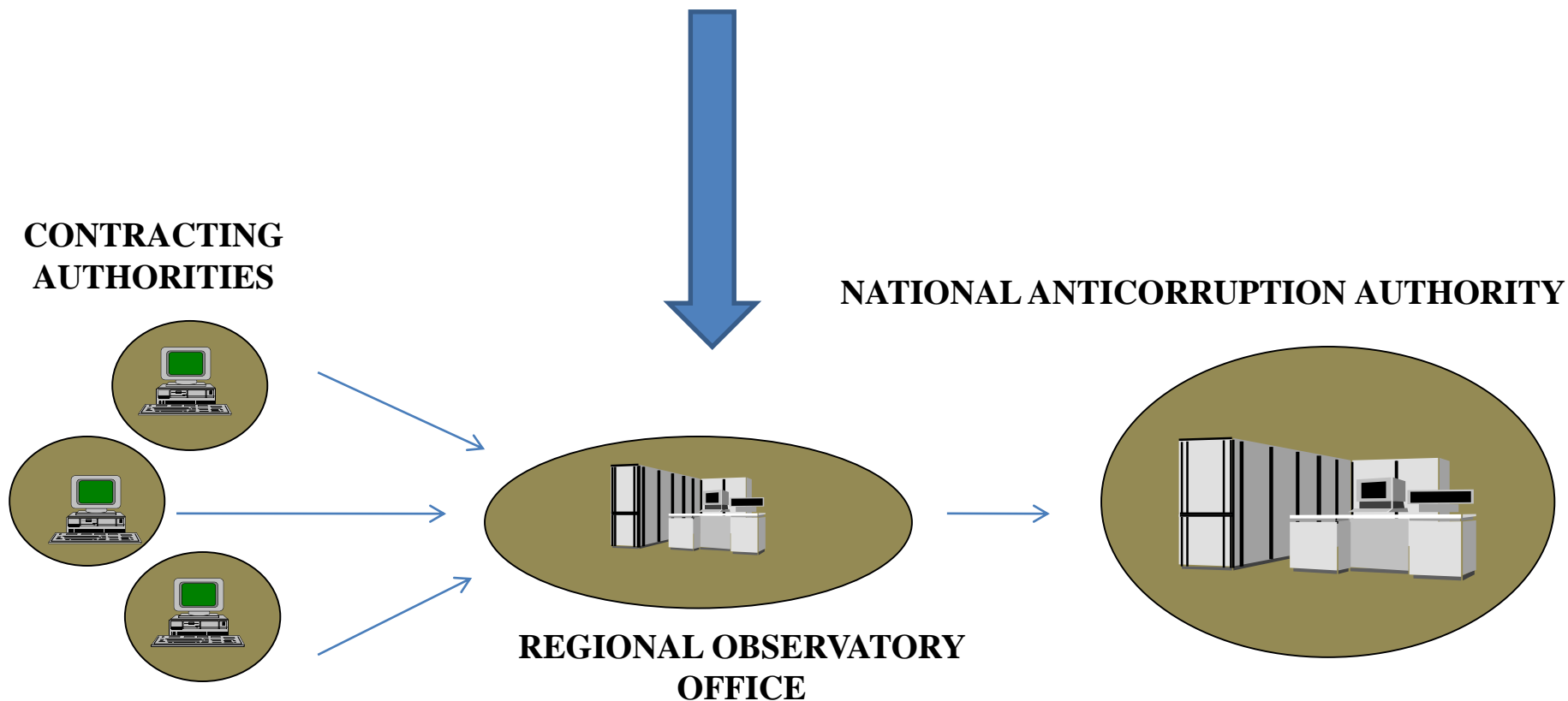
**The amount over the thresholds is about 100 billions of Euro**

**The number of contracts beyond the EU thresholds are about 300.000 per year**

**The number of contracts under the thresholds are more than 10 millions per year**



# PUBLIC CONTRACTS DATA FLOW





## **DATA OF CALL FOR TENDER IN ORDER TO ENSURE TRANSPARENCY**

- A. In the administrative activity of the Public Administrations and Public Companies**
- B. In the Public Procurement System**



## A. Transparency in the administrative activity of the Public Administrations and Public Companies

- 1. Publication of information of Public Contract: Preliminary documents of the administration; European Official Gazette, Italian Official Gazette, Newspaper (depending on the amount of the contract with respect thresholds)**



- 1. Annual statistical report subdivided for awarding procedure outlining the Contractors**



## **B. In the Public Procurement System**

**ANAC COLLECTS, ANALYSES AND PUBLISHES ALL  
RELEVANT PUBLIC PROCUREMENT INFORMATION  
(PUBLIC PROCUREMENT LAW (PPL), Art.213)**

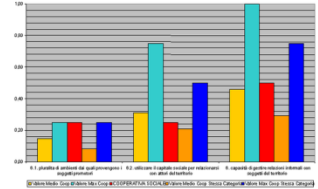
### **1. INFORMATION COLLECTED**

- **Tender and contract notices**
- **Awarding procedures**
- **Awarding criteria**
- **Awarded contracts**
- **Tenderers and Contractor**
- **Contract execution**
- **Payments**



## B. In the Public Procurement System

### 2. DATA ARE PROCESSED IN ORDER TO :



- **Verify the Gap between actual and planned costs**
- **Verify the Gap between actual and scheduled times**
- **Verify dysfunctions**
- **Calculate reference costs for works, supply and service contracts**
- **Produce statistical reports for the European Commission (Directive 20014/24/CE, art. 85)**





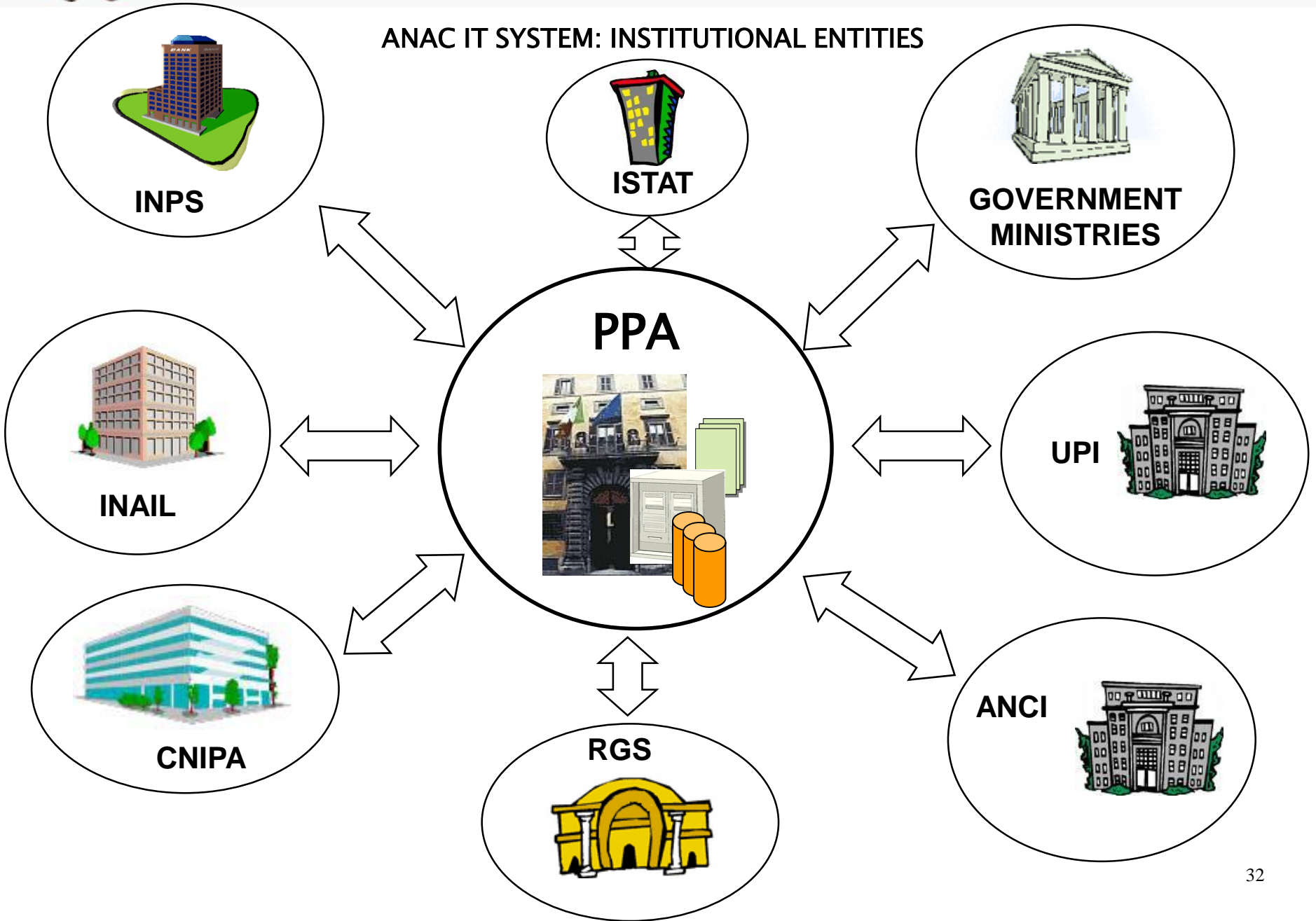
## **B. In the Public Procurement System**

### **3.DATA OF CALL FOR TENDER IN ORDER TO ENSURE TRANSPARENCY IN THE PUBLIC CONTRACTS MARKETS :**

- **3-years planning and annual programmes**
- **Tender and contract notices**
- **Awarded contracts**
- **List of qualified contractors**
- **Guidelines and reference documents for Contracting Authorities**



**ANAC IT SYSTEM: INSTITUTIONAL ENTITIES**







## Qualified contractors

REGIONE LAZIO

Ricerca per provincia:

[FROSINONE](#)

[LATINA](#)

[RIETI](#)

[ROMA](#)

[VITERBO](#)

Risultati per la ricerca delle attestazioni:

DENOMINAZIONE	CODICE FISCALE	INDIRIZZO
" CLER COOP. LAVORATORI ELETTRICI ROMANI SOC. COOP.VA "	<a href="#">00091020560</a>	VIA AURELIA N.8, TARQUINIA, 01016
" EUROTRADE S.R.L. "	<a href="#">13636021001</a>	VIALE REGINA MARGHERITA, ROMA, 00198
" G.PROCACCIANI 2 S.R.L."	<a href="#">05457250586</a>	VIALE PALMIRO TOGLIATTI N.1666, ROMA, 00155
" IMPRESERVICES SOCIETA' A RESPONSABILITA' LIMITATA "	<a href="#">01659170565</a>	STRADA PROVINCIALE ORTANA KM. 16.500, SORIANO NEL CIMINO, 01038
" SOL. TECK - SOCIETA' COOPERATIVA A R.L. "	<a href="#">01277380620</a>	VIA NOMENTANA, 403, ROMA, 00162
" 2 M COSTRUZIONI - S.R.L."	<a href="#">03930941004</a>	VIA GIACOMO PERONI, ROMA, 00131
"A.D. COSTRUZIONI S.R.L."	<a href="#">08257531007</a>	VIA G. GESMUNDO, GUIDONIA MONTECELIO, 00012
"A.F.I. ABRUZZO FINANZIARIA IMMOBILIARE S.R.L."	<a href="#">07456511000</a>	VIA SERMONETA, ROMA, 00179
"AMAG BUILDING - S.R.L."	<a href="#">11046651003</a>	VIA MELEGNANO, 31 ROMA, ROMA, 00188
"AN.CO CONSULTANTS - S.R.L."	<a href="#">06674091001</a>	VIA DEI DURANTINI, ROMA, 00157
"BERTELLI S.A.S. DI DANIELE E DAVIDE & C."	<a href="#">07456481006</a>	VIA CISTERNESE, LANUVIO, 00040
"BORGIA COSTRUZIONI S.R.L."	<a href="#">06406861002</a>	VIA ANNOVAZZI, CIVITAVECCHIA, 00053
	<a href="#">02075860599</a>	STR.REG.148 PONTINA KM. 101,600SNC, TERRACINA, 04019
	<a href="#">07872591008</a>	TRAV. DI SANTA MARIA GORETTI, SNC - FRAZ. CERRETO REGINA MARGHERITA NETTUNO, NETTUNO, 00048



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Codice Fiscale Azienda	00091020560	Indirizzo	VIA AURELIA N.8
Denominazione		CAP	01016
Partita IVA		Città	TARQUINIA
		Nazione	ITALIA

Nota Bene  
A tutte le stazioni appaltanti

Si comunica che è presente in rete il comunicato del Presidente del 10 giugno 2011 sul periodo transitorio di cui all'art. 357 del D.P.R. 207/2010, con cui vengono indicate le modalità operative per la partecipazione delle imprese agli appalti di lavori pubblici.

### Ultima Attestazione:

DATA RILASCIO	CODICE SOA	NUMERO ATTESTAZIONE	REGOLAMENTO	ATTESTATO
03/10/2008	02751850047	5133/35/00	DPR 34/2000	<a href="#">VISUALIZZA PDF</a>



# Contractor's quality certification



Titolo nome e cognome		Codice Fiscale		Titolo nome e cognome		Codice Fiscale	
Franco Attanasi		TINFNC45B01D024F					
Direttori Tecnici:							
Titolo nome e cognome		Codice Fiscale		Titolo nome e cognome		Codice Fiscale	
Geom. Angelo Attanasi		TINNGI.88T31D024V					
Categorie e classifiche di qualificazione:							
Cat.	Class.	C.F. direttore tecnico cui è connessa la qualificazione		Cat.	Class.	C.F. direttore tecnico cui è connessa la qualificazione	
OG3	1						
OG8	1						
Attestazione n.: 5133/35/00		( N.ro progr./Codice SOA )		- Sostituisce l'attestazione n.:		( N.ro progr./Codice SOA )	
Date	rilascio attestazione originaria		scadenza validità triennale		scadenza intermedia (cons. stab.)		
	03/10/2008		02/10/2011				
Date	rilascio attestazione in corso		effettuazione verifica triennale		scadenza validità quinquennale		
	03/10/2008				02/10/2013		
Copia del documento autenticato con firma digitale e archiviato nella banca dati della Autorità per la vigilanza sui lavori pubblici							
Il legale rappresentante Nazzareno Romani			timbro SOA		Il direttore tecnico Giuseppe Benigni		



## **The results of the monitoring:**

- **Annual report to the Government and Italian Parliament**
- **Free competition**
- **Number of contracts**
- **Amount of Contracts**
- **Critical aspects of the management of contracts with respect to the law provisions**
- **Advice on amendments of the secondary legislation**
- **Contracts variation during contract execution**



## **The results of the monitoring:**

### **Transparency of the market**

- **Tender publication**
- **EU Official Gazette; Italian Official Gazette, newspapers, etc.**
- **Date of publication of call for tender and expire date for presentation of tender and reduction of the publication time of call for tender (motivation)**
- **Set of published information (qualification, warranty, lot subvision, CPV codes, Etc.)**

## **The results of the monitoring:**

### **Prevention to corruption (for each CA check)**

- **Correct evaluation of the thresholds according to EU directives transposed in the Italian Law (number of similar contract during each year, etc.)**
- **Frequency of Negotiated procedures**
- **Number of negotiated procedures in respect of all procedures**
- **Amount of contracts of negotiated procedure in respect of all contracts**



## **The results of the monitoring:**

### **Prevention to corruption (for each CA check)**

- Frequency of claims**
- Variants (number and amount during contract execution)**
- Duration of the contract with respect the duration established in the contract**
- Award frequency of the same contractor**
- Cases in which the Contracting Authority don't use the centralized purchasing body**



## **THE NEW PP-ANAC IT SYSTEM WILL GUARANTEE IN A REAL TIME:**

- The reporting to the Government and to the Parliament**
- The verification of the correctness of Contracting Authorities in implementing public contracts also with the respect of the transparency**
- The individuation of the cases in which the risk of corruption is very high**





## **Focus on the special powers of the President of A.N.AC.**

**Measures for extraordinary and temporary management** Law Decree 24 giugno

2014, n. 90 - Art. 32

### **Best Practice 1**

Law provision of an innovative and disruptive measure, aimed at the complete execution of the contract under the criminal proceeding, able to immediately intervene in situations where corruption phenomena have arisen to contrast them, without interfering with the normal activity of the company.

*“In the event that the judicial authority processes some crimes against the public administration, that is, in presence of detected anomalous situations and nevertheless symptomatic of illegal conducts or criminal events attributable to a company awarded a contract for the construction of public works, services or supplies, the President of A.N.AC. proposes to the competent Prefect, either:*

- ✓ to order the renewal of the corporate bodies by replacing the person involved and, if the company does not abide by the terms established, to provide for the extraordinary and temporary management of the contractor only for the full implementation of the contract covered by the criminal proceedings;*
- ✓ to engage in the extraordinary and temporary management of the contracting company limited to the complete execution of the contract subject to criminal proceedings.”*



## **Focus on the special powers of the President of A.N.AC. Measures for extraordinary and temporary management Best Practice 1**

The appointment of a trustee in charge of the management is aimed at the specific contract, not the entire company, and constitutes a temporary and emergency solution that could benefit both the company and the public administration:

The company, though the contract is managed by a third person, can keep performing his obligations while the money is frozen on a special dedicated account. In case of acquittal the money is given back to the company, whereas in case of conviction it can more easily be seized

The public work (or procurement of goods and services) is not hampered by the judicial inquiry, with positive impact on the citizens and the employees of the contractor as well.



## Collaborative supervision

### Best Practice 2

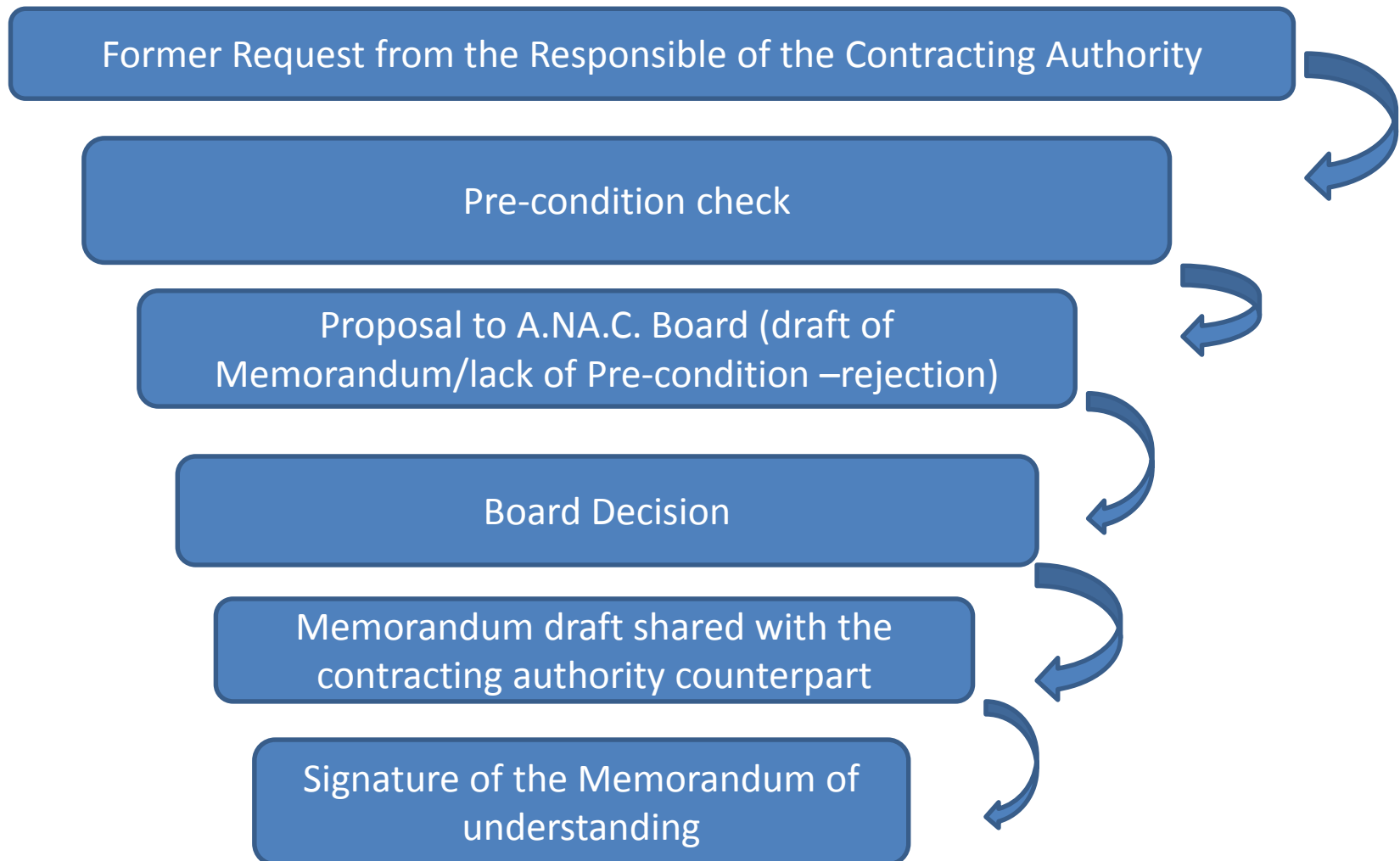
ANAC introduced “collaborative supervision” as a particular and exceptional form of verification of documentation of public procurement, above all preventive, aimed at fostering a profitable control collaboration with the contracting authorities and thus guaranteeing the correct functioning of the tender operations and the contract execution, also to the goal to prevent attempts of criminal infiltration in the tenders.

This approach marks a cultural change: ANAC no longer intervenes to sanction and condemn illicit behavior *ex post* (after the fact), when damage done is often difficult to remedy, but to prevent anomalies *ex ante* (before they occur) by guiding the administration towards better and more transparent choices, discouraging improper economic operators to participate to the awarding procedure.

The “Collaborative Supervision” can be activated upon request of the contracting authorities.

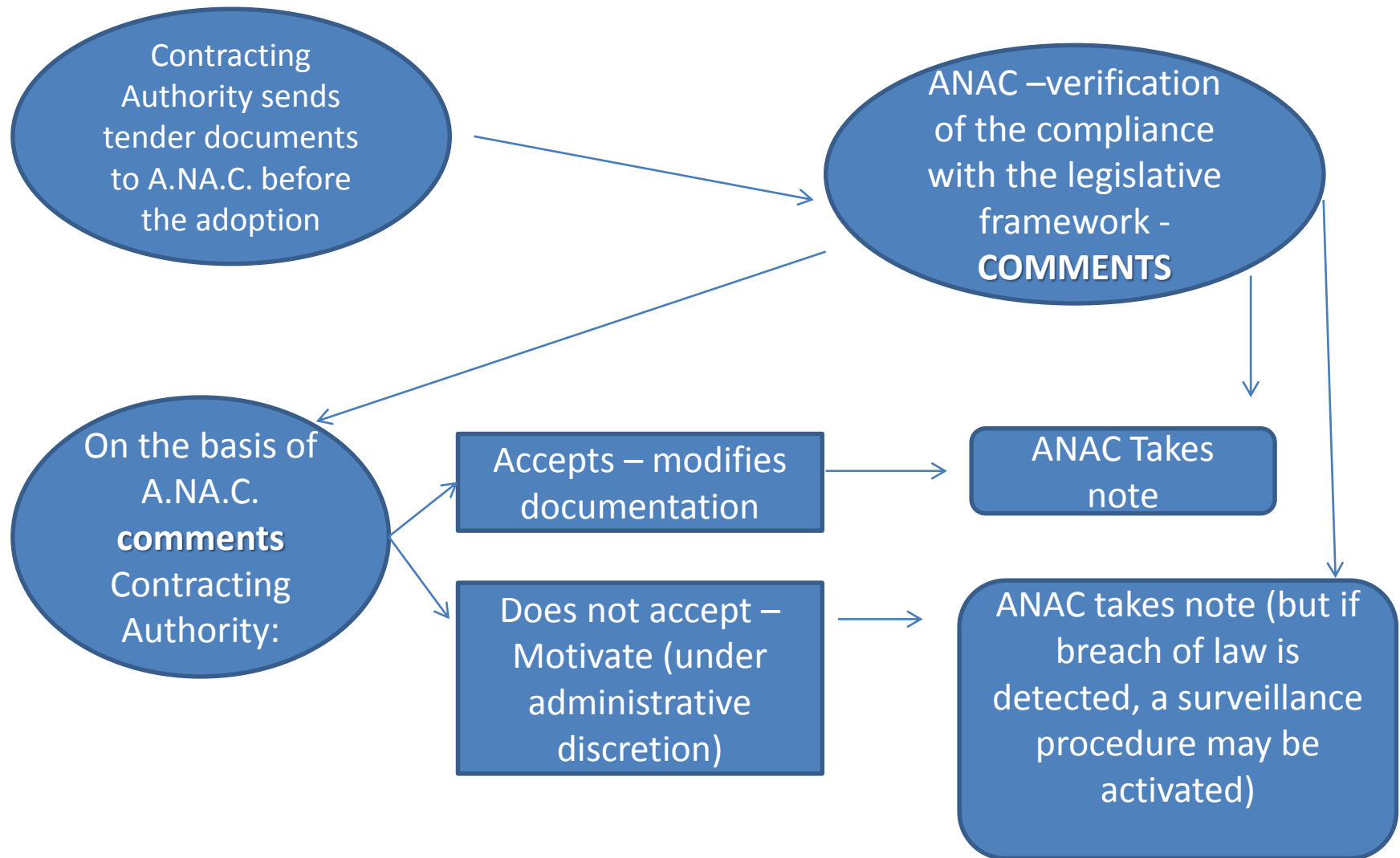
The novelty appears to respond to the contracting authorities’ needs. Memoranda of Understanding specifying the conditions and the methods for the implementation of “collaborative supervision” have been signed among ANAC and several contracting authorities.

# Procedure: Memoranda of understanding



# Procedure

## Preventive supervision (a)



# Procedure

## Preventive supervision (b)

- Stages of Tender procedure to be submitted to collaborative supervision:
  - 1) Tender documents;
  - 2) Appointment of the selection board and list of participants;
  - 3) Tender reports; exclusions of economic operators.
  - 4) Estimated award
  - 5) Definitive award.

Thank you for your attention