

Annex A

The EXPO MILANO *ex ante* control mechanism

Following several corruption scandals that occurred in 2013 and 2014 in the procurement and construction processes of EXPO2015 Milano, the President of ANAC (*Autorità Nazionale Anticorruzione* – National Anti-corruption Authority of Italy) was committed functions of supervision and guarantee of the fairness and transparency of the procurement procedures related to the implementation of the event in June 2014. As part of this assignment in July 2014 ANAC established a special operational unit (UOS) to monitor the projects of the EXPO 2015.

With the establishment of the UOS several rules, procedures and control mechanisms were set as to monitor and exercise “*a priori*” control of the procurement processes (Linee Guida ANAC 17.07.2014).

The establishment of *ex ante* control mechanisms, although not a common practice for Supreme Audit Institutions in OECD countries (only Chile, Italy and Portugal exercise it with regularity) seems adequate for the enforcement of additional integrity measures, necessary to be addressed at the date development stage of the project, and after the recent events.

In fact, this approach could prove useful mainly in specific contexts, such as EXPO 2015, that have already been affected by instances of corruption which have not only contaminated existing tenders but also threaten to undermine future contracting procedures. Indeed, to be effective, *ex ante* controls of documents concerning the award and performance of public contracts for works, services and supplies of goods, by an entity separate from the contracting authority, cannot cover all public tenders but must focus on individual, specific cases with a “high risk of corruption”. For these reasons, using this control system in specific cases, as per Article 19 of Law Decree 90/2014, establishing a UOS within ANAC responds to multiple public interest objectives: it enables the creation of an innovative system of *ex ante* third-party controls on the legality of tender documents, with particular regard to Italian laws and regulations on transparency; it strengthens and safeguards the probity and transparency of the award procedures used; it potentially functions as a way to dissuade future instances of corruption, given the explicit checks on the propriety of each procedural step in the tenders; it helps to restore confidence among operators in the relevant market about the transparency and probity of award procedures and the subsequent management of tenders.

However, it is worth noting that the *ex ante* control of documents concerning award procedures and the performance of public contracts for works, services and supplies of goods, by a party separate from the contracting authority, could exacerbate the time it takes to complete tenders. The entities responsible for assessing risk must ensure that the *ex ante* control clearly identifies the best ways to ensure control effectiveness, without having an excessive effect on the swiftness and efficiency of the administration of the

tender. The establishment of a threshold by ANAC for the exercise of the prior control mechanism is a good step forward to balance the efficiency of the process.

Since its establishment in July 2014, the UOS developed a comprehensive framework for controlling the public procurement procedures of EXPO 2015. This framework includes:

1. the definition of *Linee Operative* (Operative guide)
2. the setting up of seven models of checklists
3. the publishing of *Linee Guida* (Guidelines)
4. the setting up of the *Raccomandazioni* (Recommendations).

Since July 2014 and up to the opening in May 2015, UOS revised all public procurement procedures of the EXPO using this framework. When there were unconformities in the processes, UOS requested additional information to EXPO S.p.A, prior to the clearance. UOS also met regularly with the procurement technical units of EXPO 2015, either in Rome or in Milan, holding more than 20 meetings until that date. The average response time of UOS is five working days between the arrival of the process and the issue of the response, in order to allow the processes to continue without major interruptions or delays, which can be considered as an internationally accepted good practise for review bodies.

Table A.1 presents a summary of the work developed by the UOS as of 16 March 2015, detailed by type of procedure and outcome. At this date, the UOS had reviewed 153 procurement processes, with a total procurement value of around EUR 589 million, with 60% of the processes related to tenders. In 136 processes UOS received the process from EXPO, and for an additional 17 it took the initiative to request clarifications and information from the contracting authorities (CA).

Table A.1. **Procurement procedures reviewed by UOS**

	No.	With comments from UOS (unconformities and legal issues)
Procedure/tenders	92	80
Settlement agreements	2	0
Additional agreements	4	4
Sponsorship	3	3
Request for information	17	0
Conventions	4	4
Tender committees	8	5
Awardings	18	13
Random controls ¹	2	0
Intermediary note	3	0
Total	153	109

Source: ANAC, 16 March 2015.

In 109 (72% of the cases analysed) of the procedures, the UOS detected unconformities or potential failures to meet legal requirements, and requested the correction of the process in one or several aspects. The processes analysed include checklist validations and information about the procurement procedures, usually with a technical note issued by UOS about the type and object of procedure, commenting on the

awarding criteria, the conditions of the supply of the goods or services and contract details. They also included a note issued by the co-ordinator of the UOS control section with remarks and recommendations whenever necessary. In some cases these recommendations included the analysis of the object of the contract, identified incongruences, the changing of the awarding criteria, the elimination or changes in the technical specifications in order to increase competition or the improvement of requisites to assure the quality of the delivery of the goods or services. The analysis was always formalised in a letter with the assessment of each procedure sent by the President of ANAC to EXPO.

For 107 procedures, Expo 2015 S.p.A. has adopted the corrections formulated by the UOS and/or eventually provided the explications and the additional documentation required.

Notes

1. Art. 6.2, Linee guida del 17/07/2014.



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