Collaborative Procurement and Contract Performance in the Italian Healthcare Sector: Illustration of a Common Problem in European Procurement

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Collaborative Procurement and Contract Performance in the Italian Healthcare Sector: Illustration of a Common Problem in European Procurement

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1. Introduction

The safeguarding of health and the pursuit of improved living standards and quality of life are both key Italian and European issues. The Republic of Italy protects health as a basic right of the individual and in the interest of the community, and provides free medical care to the poor (art.32 of the Italian Constitution). The state is responsible for planning and providing a uniform level of healthcare and assigns the necessary resources to regions which have become the main tier of government of healthcare activities. Regions operate through a network of *Aziende Sanitarie* and *Ospedaliere* (healthcare agencies, of which there are about 800 in Italy) which are required to comply with Italian and European legislation on public procurement. The current lack of funds, however, risks undermining the quality of the health service and requires a prompt solution that could be found in public procurement policies. Favouring professional buying and collaborative procurement could help reduce costs and allow further control over the performance of the contracts. Collaborative procurement started later in Italy, compared with other European countries, but the awareness of the need to develop aggregation and central purchasing bodies is presently growing. However, the number of contracting authorities seems to be too high to guarantee the professionalism which is necessary in the modern era.

The need to save costs and expenditure in the Italian healthcare public sector has brought about the establishment of models of collaborative procurement organisations as well as of central purchasing bodies at national and regional levels. The Italian national central purchasing body (CONSIP SpA, *Concessionaria Servizi Informatici Pubblici*),[1] entrusted with the tasks of entering agreements on behalf of other contracting authorities (as well as the healthcare agencies), will have to co-operate with a network of regional central purchasing bodies which should be created in the near future. The need

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[1] As from 1997. For further reference see D. Broggi, *Consip: il significato di un'esperienza, Teoria e pratica tra e-Procurement ed e-Government* (Roma: FrancoAngeli, 2008), pp.9 et seq.

to co-operate is also linked to the fact that prices obtained by the major Italian central purchasing body have become benchmarks for all other Italian public administrative bodies.

This article highlights the main difficulties in undertaking collaborative procurement in Italy, within a wider European perspective. It is the result of a research project[2] that focused on the wide—and not only Italian—problem of improving professional buying. This is aimed at obtaining savings in monetary and workforce terms to intensify control over the execution phase, thus assuring the safeguard of competition during that phase.[3]

The article, after dealing with the main difficulties in collaborative procurement such as the drawing of technical specifications when there is a lack of market knowledge, stresses the importance, not only for Italy, of defining qualitative selection criteria to check bidders' suitability, and proposes the use of penalty clauses, and other instruments in order to ensure quality in contract performance in the healthcare sector. In general, often after the award, the winner does not act correctly as indicated in the contract, and the public administration does not challenge this, accepting partial or less costly fulfilment, thereby effectively accepting an amendment to the subject-matter of the contract. In Italy this, at times, reaches the level of bad faith, as the honest bidder considers in depth the costs implied in the contract, whereas the dishonest bidder wins the award with a very low offer, knowing that he will never be requested to perform exactly what was set out in the contract documents. This is true particularly in the Italian healthcare system where non-compliance with the contract conditions throughout the whole procurement process arises owing to inadequate contract conditions and the lack of control in the execution phase.

2. Aggregation models in services and supply procurement in the healthcare sector

Rationalisation, reduction of expenditure for services and supply procurement are considered a common need of all European countries in the public healthcare public sector, especially insofar as new and different legal tools for purchasing association are starting to be used.[4] Some countries, such as the United Kingdom and France, seem to be very advanced in this regard. These countries have

[2] The research is based on an extensive study of acts and bidding documents of award procedures of many Italian HAs. It focused particularly on all cases involving such authorities before the Italian and European courts. The study also referred to a broader study on public procurement issues on competition and liability of contracting authorities. The research unit of the University of Turin on "Contractual autonomy of health authorities: object limits, organizational structures and cost efficiency" is part of the Research Program of Relevant National Interest (PRIN) on "Health service organisation in a comparative perspective: the Italian model of Health Agencies' structure in comparison with other organizational models" together with the research units of the University of Perugia, University IUAV of Venice and Univesity "G. d'Annunzio" of Chieti-Pescara.

[3] For a wider perspective on the subject see R.Cavallo Perin and G.M. Racca, "La concorrenza nell'esecuzione dei contratti pubblici" (2010) Dir. Amm., forthcoming.

[4] For the Italian legal system see art.59 of Law 288 of December 23, 2001. G. Della Cananea, "Le alternative all'evidenza pubblica, in Rescigno—and Gabrielli (eds), *Trattato dei contratti,* Vol. I, *I contratti con la pubblica amministrazione* (Torino: 2007), pp.381 et seq.; N. Dimitri, G. Piga, G. Spagnolo (eds), *Handbook of Procurement* (Cambridge University Press, 2006), pp.47 et seq.; C.H. Bovis, *EU Public Procurement Law* (Elgar, 2008), pp.94, 315 et seq.; J. Chard, G. Duhs and J. Houlden, "Body beautiful or vile bodies? Central purchasing in the UK" (2008) 1 P.P.L.R. NA26; for a global perspective see S. Arrowsmith, *Reform of the UNCITRAL Model Law on Procurement: Procurement Regulation for the 21st Century* (West, 2009), pp.204 et seq. and L. Knight, C. Harland, J. Telgen, K.V. Thai, G. Callender and K. McKen (eds), *Public Procurement: International Cases and Commentary* (Routledge, 2007), pp.176 et seq.

been using framework agreement for many years,[5] and have already created central purchasing bodies (CPBs) specifically dedicated to the purchase of healthcare products.[6]

Purchasing aggregation can be achieved with the establishment of a central purchasing body on a national level or, more simply, with the unification of purchasing procedures of public providers of homogeneous healthcare services, or with the creation of a network of public bodies created at lower territorial levels.

The fairly recent Italian experience of purchasing associations originated in some cases at the lower levels of healthcare agencies, through the establishment of purchasing associations or of other forms of collaboration. In these cases, one of the parties involved is entrusted with a proxy to manage the entire supply or the services' purchasing procedure or, else, a single part of it. Such experiences evolved towards the establishment of purchasing associations and later allowed the creation of public bodies, in some cases four or five per region, with legal status at sub-regional levels.[7]

Along with the management of supply and services purchasing, these public bodies are also entrusted with other functions such as facilities, logistics, stock and IT management; organisation and management of recruitment procedures; and management of human resources training and wages. Preference is thus given to the model of inter-authority bodies (or networks), an organisational model which proves to be suitable for supporting healthcare agencies' administrative and technical activities. This avoids centralisation of the exercise of such functions within a sole office established at a regional level.

2.1 Main needs and obstacles in purchasing aggregation and association in the healthcare sector

Purchasing aggregation requires detailed planning on the basis of data collected on the purchasing needs expressed by each public authority involved, a precise assessment of the level of complexity related to the different types of goods and services, and an effort to standardise non-homogeneous initial situations among healthcare agencies in order to avoid the risk of having a mere sum of several contract documents laid down by different healthcare agencies. With this aim in mind, a unique national (or better still, European) classification and filing of healthcare products seems essential as far as it will certainly allow definition of technical specifications related to different products that are actually equivalent and will facilitate effective and fair work by the price observatories.[8]

The aggregation of demand for supplies implies co-ordination among different structures which refer to the users of those goods (i.e. the doctors) and may prove to be particularly complex with regard to certain products and services.

[5] As in S. Arrowsmith, "Framework Purchasing and Qualification Lists under the European Procurement Directives" (1999) 8 P.P.L.R. 115 and 168.

[6] See for example the NHS supply chain or the Resah IdF (*Réseau des acheteurs hospitaliers d'Île de France*).

[7] Tuscan Regional Law 40 dated February 24, 1995 art.100, regulating regional health service, provides for strengthening the role of the consortiums, by converting them into Organizations for Technical-Administrative Services to Vast Areas (ESTAV). Central Tuscany ESTAV (Local Health Service Units of Florence, Prato, Pistoia, Empoli; University-Hospital Companies of Careggi and Meyer in Florence), Northwest Tuscany ESTAV (Local Health Service Units of Lucca, Massa-Carrara, Versilia, Pisa, Livorno; University-Hospital Company of Pisa) and Southeast Tuscany ESTAV (Local Health Service Units of Siena, Arezzo and Grosseto; University-Hospital Company of Siena).

[8] See M.D. February 20, 2007, *Approvazione della classificazione nazionale dei dispositivi medici (CND).* The price observatories are entrusted with the task of setting out standards costs, related to typologies and even territorial singularities, mainly for public work contracts. Guzzo, Pignataro and Rizzo, "Efficiency of Procurement Procedures for Medical Devices" in *Handbook of Procurement*, 2006, pp.133 et seq.; Bovis, *EU Public Procurement Law*, 2008, pp.136 et seq.

It seems equally important to assess needs in order to comply with EC competition rules, by identifying the ''relevant market'' and the ''dominant position'' on the demand side. Healthcare agencies often aim to protect and safeguard local SMEs' survival by means of ensuring participation of the latter in award procedures.

The UK and French experiences in CPBs specifically with regard to health products are highly interesting in this respect. They have already standardised and aggregated purchases of several products carried out directly or on account of hospitals.

The main difficulties found in initial Italian experiences of purchasing aggregation seem to involve the need for a far-reaching reorganisation of the competent structures, an excess of time spent in carrying out the most complex award procedures, and obstacles in meeting exactly the quality required and the needs expressed by clinicians regarding the terms of delivery and after-sales assistance.

The difficulties of this experimental phase can be solved by means of a proper reorganisation of collaborative procurement aimed at achieving the necessary synergies, scope and economies of scale. The funds saved as a result of the cut in prices and structural costs can then be assigned to police possible breaches of contract and delivery delays by economic operators, as is discussed further below.

2.2. The Italian experience of a national central purchasing body and of a regional network

In Italy, collaborative procurement started only very recently with CONSIP SpA,[9] the national central purchasing body whose future task will be to co-ordinate a network of regional central purchasing bodies provided for by national statute.[10] CONSIP SpA is a public stock company owned by Italy's Ministry of the Economy and Finance (MEF) that operates on behalf of the state. Its task is to provide information technology to the Italian public administration.[11] CONSIP SpA carries out the functions once exercised by the Italian Provveditorato Generale dello Stato[12] and since 2000 it is entrusted with the Programme for the Rationalisation of Public Expenditure. It expanded its range of activities into the field of public procurement, thus becoming the central purchasing body for services and supply procurements on behalf of other Italian public administrative bodies.[13]

The legislative choices regarding CONSIP's tasks have not been always clear and coherent as is evident in the analysis of the several evolutionary phases of this body, normally coinciding with the approvals of the annual budgetary laws.[14] Stipulation of framework agreements to meet the purchasing

[9] As from 1997, for further reference see Broggi, *Consip: il significato di un'esperienza*, 2008, pp.9 et seq.

[10] Legislative Decree 163 of April 16, 2006 art.33; Law 266 of December 23, 2005 art.1 para.158.

[11] Legislative Decree 414 of November 19, 1997.

[12] Law 488 of December 23, 1999 art.26.

[13] One possible strategy to build a ''centralization index'' for the acquisition of goods and services is the following. CONSIP SpA is the Italian public procurement agency awarding national frame contracts (NFCs), basically, framework agreements with one economic operator and all conditions laid down at the outset—and managing the electronic marketplace (MEPA) on behalf of the Ministry of Economy and Finance (MEF). One measure of centralisation in year t can be defined as follows: CI_t = V_t / Max V_t where, V_t = value of purchases through (NFC + MEPA) in year t; Max V_t = public sector's overall purchases of goods and services that could be handled by the NFCs and MEPA system. By using raw data from the Italian National Statistical Institute (ISTAT) and MEF, Consip's Research Unit computed the following ranges for the 2007 and 2008 centralisation indices: CI_2007 is between 4.2% and 5%; CI_2008 is between 7.4% and 8.9%.

[14] S. Zuccolotto and L. Minganti in L. Fiorentino (ed.), *Lo Stato compratore, L'acquisto di beni e servizi nelle pubbliche amministrazioni* (Bologna: 2007), pp.63 et seq.; R. Caranta, ''Le centrali di committenza'' in R. Garofoli and M.A. Sandulli, *Il Nuovo diritto degli appalti pubblici* (Milano: 2005); B. Marchetti, ''Il giudice delle obbligazioni e dei contratti delle pubbliche amministrazioni: profili di diritto comparato'' in *Atti del Convegno annuale dell'Associazione Italiana dei Professori di Diritto Amministrativo*, 2009, forthcoming.

needs of national and local public administrations and the further attempts to promote purchasing associations among regions, local and healthcare agencies to define common purchasing strategies are considered a fundamental step in the evolution of CONSIP's tasks.[15] For a short period the budgetary law required every public administration to join these agreements. However, soon after, another provision established the obligation for all public administrative bodies to consider quality and price standards set therein as the minimum requirements to be met in purchasing the same services and supplies.[16] Subsequently, the agreements stipulated by CONSIP SpA defined a benchmark and the liability of the public officer who infringes its limits.[17] At present, Italian public administrations are compelled to join CONSIP framework agreements only with reference to certain kinds of goods and services as defined by ministry decree.[18] In contrast with other CPBs, Consip's present activity consists in stipulating contracts pursuant to ministerial mandate and agreements requested by other bodies of the public administration,[19] without acting autonomously on the market. This contrasts with, for example, the position in France, where CPBs involved in the healthcare sector carry out a tender on the basis of health authorities' approximate needs of products or services. In Italy, Consip SpA does not face the risks of the non-acceptance of its agreements, as defined in the maximum amount within a set period of time.

The present initial phase in the development of aggregation of purchases has not yet resulted in the achievement of the full attainment of the goal of reduction of expenditure. This is due to the fact that public administration's budget includes a defined amount of funds for the relevant purchases. The savings obtained following the purchase of certain products can lead to the purchase of more units of the same product in order to keep the actual purchase level on a par to that of the past year. Fund transfers are usually still linked to the previous year's expenditure rather than to effective needs.[20]

[15] Law 388 of December 23, 2000 arts 58–59.

[16] Law 350 of December 24, 2003 art.15.

[17] Law 488 of 1999 art.26 para.3, in replacement, first, of art.3 para.166, of Law 350 of December 24, 2003, and later of art.1, L.D. 168 of July 12, 2004, as amended by the relative law of conversion 191 of July 30, 2004: ''Public administrations may resort to the agreements stipulated pursuant to clause 1, or use its parameters of price-quality, as maximum limits, for the purchase of goods and services pursuant to Presidential Decree No. 101 of April 4, 2002. Stipulation of a contract in violation of this clause is cause of administrative liability; for purposes of calculation of the fiscal damage account shall be taken of the difference between the price foreseen in the agreements and that indicated in the contract. The provisions of this clause do not apply to municipalities with a population of less than 1,000 inhabitants and mountain municipalities with fewer than 5,000 inhabitants.'' The provisions with which the public administrations shall resolve to proceed independently for individual purchases of goods and services are communicated to the structures and offices in charge of management control, for the exercise of functions of surveillance and control, also pursuant to para.4. Any employee who has signed the contract shall enclose a specific declaration certifying, pursuant to and by the effects of arts 47 et seq. of Presidential Decree 445 of December 28, 2000, respect of the provisions of para.3. In the sphere of every public administration, the offices in charge of management control pursuant to art.4 of Legislative Decree 286 of July 30, 1999, have to ascertain compliance with the parameters outlined in para.3, requesting, if necessary, the technical opinion of the Treasury, Budget and Economic Programming with regard to the technical-functional characteristics and economic advantage of the products purchased. Every year, the managers of these offices report to the political office on the results, in terms of reduction of expenditures, obtained through the implementation of this article. These reports are published on their websites by each administration. In the early stages of application, where the offices assigned to management control had not been created, the auditing and reporting tasks were performed by internal control services. See also G.M. Racca, ''Aggregative models of public procurement and secondary considerations'', Seminar on Secondary Considerations in Public Procurements, Orta San Giulio, Novara, Italy, September 11–12, 2009; C. Cost., February 4, 2004, n.36;

[18] D.M. March 1, 2007.

[19] The amount of National Frame Contracts (NFCs) in 2007 was 1.461 mln/Euro and the electronic marketplace (MEPA) amount was 84 mln/Euro.

[20] G.L. Albano and F. Antellini Russo, ''Problemi e prospettive del Public procurement in Italia tra esigenze della pubblica amministrazione obbiettivi di politica economica'' [2009] *Economia Italiana*, forthcoming.

According to the broader devolution of competences to regions and considering the huge difficulties in imposing tasks of the public sector on CONSIP SpA, the most recent statutes provide for the establishment of regional central purchasing bodies in order to build up a network system together with the national purchasing body. The aims set forth consist in the harmonisation of the different programmes for public expenditure rationalisation, in the creation of synergies in using ICT tools for service and supply purchase, and in the obligation for healthcare agencies to join the framework agreements stipulated by the regional central purchasing bodies that have been established.[21] This network of purchasing bodies should not be considered as a territorial organisational division but rather as a network with territorial specialisations in the purchase of different products or services, which should be available for the whole country. This could prevent duplication of award procedures on the same subject-matter and it could promote co-ordination among regional strategies and specialisations, particularly in favour of the healthcare sector.

It is important to highlight that this aggregation of purchasing is also regarded as a fundamental step in optimising professional skills, since it allows the Government to address the present fragmentation and dispersion of these skills. Economic operators could also benefit from the broader aggregate and organised demand, improving their market share and thus achieving higher levels of competition, enjoying the benefits of professional buying. The strategy should not damage SMEs as the lots defined and included in the agreements can be allocated on the territory in different ways and sizes.[22]

2.3. Professional buying and collaborative procurement as a means of improving the use of ICT tools in public procurement processes: the Italian experience in a European perspective

Electronic procurement presently accounts for 5 per cent of all procurement carried out in Europe, whereas an EU forecast[23] foresees 100 per cent of procurement as being carried out as through e-procurement by 2010. This indicates the importance of the improvement of ICT tools for e-procurement particularly, if not exclusively, by professional buyers. Framework agreements and electronic auctions, in particular, require the implementation of adequate professional skills and ICT tools. The above-mentioned organisational models are more suitable for optimising these new contractual patterns provided in this respect by EC legislation on public procurement insofar as they require an essential form of aggregation or association among healthcare agencies.

In Italy, CONSIP SpA can also provide for ICT tools for e-procurement and can co-ordinate the choices of the regions to assure easy interoperability. The establishment of new regional CPBs cannot be separated from the use of technological platforms suitable to run electronic auctions and award procedures as contemplated by the EC Directives.[24]

[21] Law 296 of December 27, 2006 art.1 paras 449–458, 1126, 1127; Fiorentino (ed.), *Lo Stato compratore*, 2007, pp.345 et seq.

[22] Albano and Russo, "Problemi e prospettive del Public procurement in Italia tra esigenze della pubblica amministrazione obbiettivi di politica economica" [2009] *Economia Italiana*, forthcoming.

[23] The Manchester ministerial declaration of November 24, 2005 defines the following target: "By 2010 all public administrations across Europe will have the capability of carrying out 100 % of their procurement electronically and at least 50% of public procurement above the EU public procurement threshold will be carried out electronically." The PEPPOL project is strongly supporting this target.

[24] L. Bertini and A. Vidoni, "Il Mercato Elettronico della Pubblica Amministrazione—MEPA. Scenario, funzionalità e linee di tendenza" (2007) 6 *Quaderni CONSIP*, pp.37 et seq. From an economic perspective, see G. Piga and K.V. Thai (eds), *Economics of Public Procurement* (Palgrave Macmillan, 2007), pp.63 et seq.; Knight et al. (eds), *Public Procurement*, 2007,

The improvement of ICT tools could also be useful for the development of e-marketplaces (MEPA)—managed in Italy by CONSIP SpA—for public procurement below European thresholds,[25] as in the Pan-European Public e-Procurement On-Line Project of Borderless e-Procurement (PEPPOL). The aim of this project is to create a pan-European pilot solution to facilitate EU-wide interoperable public e-procurement for SMEs and to improve the opening of the market of goods and services, as the lack of common standards for electronic data exchange is considered an obstacle at present to cross-border participation.

The framework agreements stipulated by CONSIP seem to be related to the legal structure of a framework agreement stipulated with a single economic operator. However, EC legislation on public procurement provides for others models of framework agreements awarded to several economic operators which could carry out the same services or provide the same supplies simultaneously or alternatively, as well as for the possibility to define only part of the contractual terms and conditions (i.e. technical specification with regard to the rapid obsolescence of many healthcare products), then launching a new competition phase among the economic operators on the framework agreement on the basis of more precisely formulated contractual terms and conditions.[26] This has not yet been experimented with in Italy, but the possibility of keeping some form of comparison during the performance phase is very interesting.

The compulsory use of ICT tools appears even more crucial when a healthcare agency issues an electronic auction or more complex models of dynamic purchasing systems where the economic operators can enter the system and submit a tender at any time. In Italy, the dynamic purchasing system in particular, however, is considered only a potential method and it has not yet been implemented because of its considerable technical complexity.

These are innovative instruments that could meet healthcare agencies' purchasing needs as far as they allow versatility of the services and supplies demand—according to the different preferences and needs expressed by doctors—as well as the offer, since several economic operators can fulfil contractual obligations.[27]

In a wider perspective, the successful use of framework agreements, electronic auctions and perhaps dynamic purchasing systems requires a detailed analysis and collection of information on the purchasing needs of the public administrations concerned. Such data should be stored in online databases to ensure quick and easy data processing and management.[28] This detailed data collection permits a precise outline of terms and technical specifications of the upcoming procurement, also by means of a more complex framework agreement with more economic operators.

In the e-procurement model, contracting authorities could directly choose services and products available pursuant to a previous call for tenders issued by national or regional central purchasing bodies, or even by a CPB of a different European country, thus enjoying the benefits arising from the fact that the contracting authority itself does not need to launch a new award procedure, and can

pp.216 et seq.; J. Bulow and P. Klemperer, "Auctions versus Negotiations" (1996) 1 *American Economic Review* 180; P. Klemperer, "What Really Matters in Auction Design" (2002) 1 *Journal of Economic Perspectives* 169; Y.K. Che, "Design Competition through Multidimensional Auctions" (1993) 4 *Rand Journal of Economics* 668.

[25] Law 296 of December 27, 2006 art.1 para.450.

[26] G.L. Albano, L. Carpineti, F. Dini, L. Giamboni, F. Russo and G. Spagnolo, "Riflessioni sull'impatto economico degli istituti innovativi del codice dei contratti pubblici relativi a lavori, servizi e forniture" (2007) 6 *Quaderni CONSIP*, pp.13 et seq.

[27] R. Cavallo Perin, *La struttura della concessione di servizio pubblico locale* (Torino: Giappichelli, 1998), pp.26 et seq.

[28] Law 244 of December 24, 2007 art.2 para.569.

obtain the best value for money. Furthermore, contracting authorities could choose among several kinds of goods and services and they could identify the contractual terms that best meet their own needs in compliance with the relevant EC competition rules.

3. Bidders' suitability: qualitative selection criteria

The improvement of organisational patterns for services and supply purchasing seems necessary to overcome the difficulties presently found by healthcare agencies in Italy in running public procurement award procedures. These create many judicial disputes alongside the inherent legal effects and practical consequences that can be particularly burdensome in the healthcare sector.

Annulment or interim measures handed down against contracting authorities' decisions originate delays, often incompatible with the provision of healthcare services for citizens; furthermore they can lead to healthcare agencies' liability for damages to the economic operators harmed by an infringement of public procurement rules.[29] In addition to the healthcare agencies' liability for damages, there could be a single officer's liability for unfair behaviour engendering loss of public money and harming the image of the public body.

For this reason the growing complexity of the multilevel legal system (consisting of EU, national and regional sources along with the charters and regulations of healthcare agencies) requires a combination of different professional skills currently scattered among several organisations equally competent to purchase. This could prevent the widespread tendency of Italian healthcare agencies to draw up contractual documents case by case, for each single public procurement, instead of compiling general contractual documents available for every public contract awarded by the contracting authority.[30] The contract documents drawn up by healthcare agencies must face legal as well as technical complexities, mainly in describing the technical specifications of the required goods and services which implies the combination of different professional skills such as those of doctors, chemists and clinical engineers.

The progressive ''stratification'' of clauses in contract documents, without an overall revision, does not ensure the precise definition of each contractual term and element which would be appropriate to satisfactorily identify the criteria for qualitative selection of participants (*quality of bidder*) in comparison with the technical specifications of the services and goods required (*quality of bid*). This has led to the initiation of several infringement procedures by the European Commission[31] which has led to a decision of the Court of Justice of the European Union stating that the quality of bidder must not be evaluated in the award criteria, as it involves purely technical and professional ability of the applicants. This matter is still unclear for many public officers in Europe.

[29] Directive 2007/66 [2007] OJ L335/1.

[30] S. Ponzio, *I capitolati negli appalti pubblici* (Napoli: 2006), pp.9 et seq. Sometimes the above-mentioned difficulties make Healthcare Agencies establish in-house providing relationships: R. Cavallo Perin and D. Casalini, ''L'in house providing: un'impresa dimezzata'' (2006) 1 *Diritto Amministrativo* 51; R. Cavallo Perin and D. Casalini, ''Control over in-house providing organizations'' (2009) 18 P.P.L.R. 227.

[31] See the circular dated March 1, 2007, the Presidency of the Council of Ministries, department for community policies—Principles to be applied by contracting authorities in the choice of selection and award criteria of public procurement for services, with regard to possible consequences pursuant to art.228 EC, specifies that failure to comply with these obligations of correct separation of the two assessments would result in the official's administrative liability before the Italian Corte dei Conti. This means that the official must repay the damages caused on the awarding administration, as the circular specifies that confusion between the two assessments is considered a grave fault. *Emm. Lianakis AE v Planitiki AE* (C-532/06) [2008] E.C.R. I-251. S. Treumer, ''The distinction between selection and award criteria in EC public procurement law—a rule without exception?'' (2009) 18 P.P.L.R. 103, and for the Italian case M.E. Comba, ''Selection and Award Criteria in Italian Public Procurement Law'' (2009) 18 P.P.L.R. 122. See also the resolution passed by the Authority for Monitoring Public Contracts, July 12, 2007 No.250.

It seems necessary to carry out detailed analyses and assessments of the criteria for the evaluation of the quality of the bidder, such as suitability to pursue the professional activity, economic and financial standing as well technical and professional ability. Even though such criteria for qualitative selection can limit, on one hand, the participation of potential bidders, on the other hand, they are suitable for ensuring the exact performance of contractual obligations. There is no doubt whatsoever that the quality of bidders seems essential to that extent, thus requiring the collection and assessment of data on the contractual behaviour and performance of public authorities' contractors.[32] The Italian legal system has well-known and established rules on qualitative requirements, dating back to 1865,[33] for tenderers who have to prove the exact and flawless performance of previous contracts.[34] To that end the contracting authorities have had for a long time the power of excluding unsuitable candidates from awarding procedures as a means of sanction, with exclusion from the award procedures for negligence or bad faith of contractors in fulfilling previous contractual obligations. However, those tools proved ineffective in protecting contracting authorities from breaches of contract and from contractors' incompetence, allowing the award of contracts to economic operators who were inexperienced or acting in bad faith.[35] Currently it is necessary to redefine non-discriminatory tools to collect and assess the ''references'' required to take part in public award procedures. One possibility could involve the use of *customer satisfaction* surveys, thus turning so called ''non negotiable quality'' into ''negotiable quality'' subject to bargaining.[36] This could evolve into a form of ''vendor rating'' system, similar to the ones used by private or privatised enterprises. Obviously these approaches must ensure equal treatment of European undertakings, requiring the definition of a minimum level (suitable for each specific contract) of qualitative requirements that every candidate must meet to take part in the procedure. On the other hand, including such qualitative subjective requirements among the criteria for evaluating the most economically advantageous tender, along with matters such as price and quality, would not comply with EC rules on public procurement and the abovementioned ECJ decision insofar as it would involve confusion between the quality of the tenderer and the quality of the tender.

3.1. The quality of the bid: award criteria and fair and objective awarding

The technical specifications of the subject-matter of public contracts must be defined in detail in the contract documents, in order to provide good healthcare services to citizens. It is also necessary to indicate whether the lowest price or the most economically advantageous tender (where qualitative elements are not yet completely defined in the technical specifications and will have to be evaluated besides the price) are chosen as criteria.

[32] Fiorentino (ed.), *Lo Stato compratore*, 2007, pp.300 et seq. for US experiences. Bovis, *EU Public Procurement Law*, 2008, pp.112 et seq.

[33] L.2248/1865, All. F, as referred in G.M. Racca, *La responsabilità precontrattuale della pubblica amministrazione tra autonomia e correttezza* (Napoli: Jovene, 2000), pp.168 et seq., where the unquestionable and wide range of power of public administrations in excluding operators from public bids had led to several violations which gradually turned away the best undertakings from public procurement.

[34] Royal Decree 2440 of November 8, 1923 art.3 and Royal Decree 827 of May 23, 1924 art.68.

[35] Racca, *La responsabilità precontrattuale della pubblica amministrazione tra autonomia e correttezza*, 2000, pp.210 et seq.

[36] ''Non negotiable quality'' refers to certain aspects which emerge during the execution of the contract which cannot be easily defined and evaluated beforehand, such as the preparation and efficiency of ICT maintenance staff. They can be very efficient and quick in solving a technical problem, or, on the contrary their work can cause a loss of time and not offer a timely solution of the problem, even with a similar timely arrival. G.L. Albano, F. Dini and G. Spagnolo, ''Strumenti a sostegno della qualità negli acquisti pubblici'' (2008) 5 *Quaderni CONSIP*, pp.24 et seq.

With particular reference to the purchase of diagnostic and medical aids, the technical specifications required could be even higher than those standardised by the European Pharmacopoeia and by EU marking as far as this seems the only way to ensure the appropriate quality for healthcare services, thus excluding from the public award procedure those economic operators who offer lower quality products.[37]

The possibility of including conditions in the contract documents governing the performance of the contract concerning social and environmental issues[38] seems of great importance and it could even affect the manufacturing and organisational choices of the competing economic operators.[39] The clauses included in the contracting documents must fairly balance the principle of competition (*favor partecipationis*), which could lead to extensive interpretation of ambiguous contractual clauses, with the principle of equal treatment (*par condicio)* which sometimes imposes a stricter interpretation.

In Italy, the choice of the most economically advantageous tender criterion entails the appointment of an evaluation team whose members must be different from those who took part in the drafting of the contract documents and the call for tenders.[40] However, the team must be endowed with the same professional and technical skills. As for the appointment of the members of the evaluation team, the Italian Constitutional Court recognises the autonomy of regions[41] which can issue different rules from those set by the national *Code of Public Contracts* (Legislative Decree 163/2006). The contract documents and the call for tenders must ensure a precise definition of the powers of the evaluation team, by outlining the relative weight given to each of the criteria chosen to determine the most economically advantageous tender.

The definition of the relative importance of each chosen criterion, as well as of the sub-criteria, to be specified and assessed by the evaluation team along with the provision for a range with an appropriate minimum and maximum spread, is a delicate task. This entails the end of the exercise of discretion of the awarding authority, which is requested to make the appropriate choices balancing quality elements as well as price.

Contract document clauses express the solutions which are considered suitable to ensure the best satisfaction of the needs of the healthcare agency. The subsequent phase of contract award should represent only the objective and binding implementation of the discretionary choices previously made.

The task of the evaluation team must concern only the technical evaluation of the bids. In case of claims, the same evaluation could be carried out with similar results by experts with equivalent skills in front of a court.[42] In some cases, the excessive weighting range left to the members of the evaluation team can bring about distortion in the mathematical sum necessary to identify the best

[37] *Medipac-Kazantzidis AE v Venizeleio-Pananeio* (C-6/05) [2007] E.C.R. I-4557; [2007] 3 C.M.L.R. 16, noted by A. Brown in (2009) 18 P.P.L.R. NA123.

[38] Directive 18/2004 [2004] OJ L134/114 art.26; S. Arrowsmith and P. Kunzlik (eds), *Social and Environmental Policies in EC Procurement Law: New Directives and New Directions* (Cambridge University Press, 2009).

[39] *Gebroeders Beentjes BV v Netherlands* (C-31/87) [1988] E.C.R. I-4635; [1990] 1 C.M.L.R. 287; *Concordia Bus Finland v Helsingin Kaupunki* (C-513/99) [2002] E.C.R. I-7213; [2003] 3 C.M.L.R. 20; *Du Pont de Nemours Italiana v Unita Sanitaria Locale No.2 di Carrara* (C-21/88) [1990] E.C.R. I-889; [1991] 3 C.M.L.R. 25.

[40] The exclusion from the evaluation team of subjects who have an in-depth knowledge of the bidding documents is typically Italian: Contract Code 163/2006 art.84(IV): ''The members of the evaluation team, excluding the Chair, cannot have carried out in the past nor can carry out administrative or technical functions or assignments other than those they carry out in the evaluation process.''

[41] Cost C., November 23, 2007 n.401.

[42] State Council, sect.IV, October 11, 2007, No.5354.

tender, hindering the objectivity of the award. The Italian Antitrust Authority[43] seems to require more and more precision in predetermining the relative weight of each criterion and the related score to assign according to a maximum spread as well as in defining the mathematical formula for assessing the scores in order to select the best bid. Whenever these matters are not correctly set out, bidders can collude in order to manoeuvre the award (so-called *bid rigging*), hence breaking the principle of impartiality and competition.[44] Besides the Antitrust Authority, the EU and national administrative case law have also begun to review with greater attention the implementation of the most economically advantageous tender criterion in order to ensure its objective enforcement.[45] The evaluation teams, because of the variety of their members, are not always aware of the responsibility related to their tasks. More specifically, Italian courts have dealt with the lack of adequate professional skills of the members of the evaluation teams, redefinition and even modification of the evaluation criteria after the receipt of the bids,[46] imprecision in, or absence of, any recorded minutes, and violation of the required confidentiality of the tenders.[47] Such conduct has also been seen in the actions of the national central purchasing body whose task is precisely to ensure the fairness of the award procedures as a benchmark or a model for the regional central purchasing bodies.[48]

[43] As seen, for example, from the decisions of the Authority for competition and the market, issued on April 12, 2001, No.9401, relative to diagnostic tests for diabetes, and June 13, 2001, No.11726, concerning a memorandum of information of CONSIP SpA.

[44] Fiorentino (ed.), *Lo Stato compratore*, 2007, p.140; Dimitri et al. (eds), *Handbook of Procurement*, 2006, pp.28 et seq.; *Fabricom SA v Belgian State* (C-21/03 & C-34/03) [2005] E.C.R. I-1559; [2005] 2 C.M.L.R. 25.

[45] *Fabricom SA* [2005] E.C.R. I-1559; S. Simone and L. Zanettini, ''Appalti pubblici e concorrenza'' in Fiorentino (ed.), *Lo Stato compratore*, 2007, p.140; S. Mirate, ''Autorità antitrust e controllo giurisdizionale sulle valutazioni tecniche'' [2004] Urb e app. 817.

[46] See, for example: State Council, sect.V, September 23, 2002, 4852, *Pedus Service Dussman Srl v Padania Service Scarl and Healthcare Agency 19 of Andria* where clarification is made regarding the fact that indication of specific criteria in the call for bids is admissible only where it does not cause an appreciable alteration in the information which are the basis for the technical and economic choices formulated with the offers. In the case in point, no illegitimacy was found in the alteration of the parameters crystallised in the lex specialis, but in the regulation of the powers of evaluation of the commission only after reviewing the offers of the participants.

[47] State Council, sect.V, February 12, 2008 No.490, *Elilombarda Srl v Azienda Ospedaliera Ospedale Niguarda Cà Granda*, in which it was found that insufficient reporting was filed relative to the methods of conservation of the offers after their seals had been removed; secrecy did not appear ensured where they remained even only theoretically available for consultation by the members of the evaluation team. The judge declares the contract award void and ineffective for the part not performed. T.A.R. Lazio, Latina, February 2, 2007 No.103, *Criosalento Srl v Healthcare Agency of Latina*.

[48] For the disputed cases of CONSIP SpA relative to the healthcare sector see: State Council sect.V, April 4, 2006, No.1752, *Molteni & Co v CONSIP SpA* and confirming appeal by the T.A.R. Lazio, Rome, sect.III, April 20, 2004, No.3401, which annuls the public competition for the supply of pharmaceuticals to the public healthcare structures and the performance of related services (service of shipment and delivery; customer service; reporting service; electronic catalogue) as the winner should have been excluded insofar as it did not possess the ministry authorisation required to produce, import and market the drug, but also because of violation of competition rules that call for exclusion of competitors who have been found guilty of grave violation in submitting erroneous statements relating to the requirements for financial, economic and technical capability. On appeal, the award (annulled by the lower court) was upheld for the supply of sonartomographs and related services as the reports indicated that the activity of technical evaluation of the product was assigned to the technical members and ''the proxy to some members for performance of the investigative or preparatory activities of the elements on which the *plenum* has to decide does not violate the principle of evaluation by the board'': State Council, sect.V, October 20, 2004, No.6878, which voids the decisions of the T.A.R. Lazio, Rome, sect.III, 2004, No.1600, *Esaote SpA v CONSIP SpA*, T.A.R. Friuli Venezia Giulia, March 22, 2003, No.88, *Coop Service Noncello, cooperativa sociale arl v ASS No.6 Friuli Occidentale* confirmed by the State Council, sect.V, July 23, 2002, No.4022, where the previous supplier of the service challenged the acceptance of a CONSIP agreement.

3.2. Quality in contract performance: new tools to prevent breaches of contract

Once the contract is awarded, it must be correctly performed in order to ensure the provision of healthcare services. The performance of the contract highlights the limits of the traditional regulation of the selection procedure as far as it creates an exclusive right for the awarded contractor. Competition is required only within the phase of selection of the bidder who, at the end of the procedure, gains the exclusive right to perform the contract,[49] with a risk that correct performance will not occur. The interest of the winner becomes profit maximisation that can be pursued by sacrificing quality standards. Thus the winner may weigh the costs of breaching the contract against the prospect of the application of penalty clauses that in practice often are not enforced.[50]

Breach of contract is sanctioned through penalty clauses, where provided for, or by claiming for compensation for damages or rescission of the contract.[51] The breach of contract causes damage to healthcare agencies in particular because it can result in failed, incomplete or delayed provision of healthcare services to citizens, thus failing to safeguard their standard of living. It is necessary to take this into account by setting out penalty clauses that are balanced and reasonable and also clear and easily enforceable.

Breaches of contract sanctionable by means of the enforcement of penalty clauses include delay in the delivery of supplies or the delivery of supplies that do not fulfil the quality standards defined in the contract documents[52] or failure to replace products that are rejected as they do not meet the agreed quality requirements.[53] If it is established that the supplies delivered differ from those defined in the contract documents the healthcare agency has the right to refuse the supplies and to insist that the supplier replace them with products consistent with the stipulated requirements; alternatively, the healthcare agency can buy similar products on the market and charge the cost to the defaulting supplier. In Italy, the amount of each penalty clause must be settled in the contract documents and it is estimated not to exceed a tenth of the total value of the supplies or services to be performed, by reference to the percentage generally considered to express the average profit of the contractor.[54]

[49] Fiorentino (ed.), *Lo Stato compratore*, 2007, p.142.

[50] G.L. Albano, F. Dini and G. Spagnolo, ''Strumenti a sostegno della qualità negli acquisti pubblici''(2008) 1 *Quaderni CONSIP*, pp.29 et seq., where an attempt is made to elaborate new clauses to insert in specifications.

[51] Legislative Decree No.163/2006 art.140. This admits the possibility of foreseeing in the call for bids that in case of non-performance of the winner, the classification may be used down to the fifth best offer. Unilateral refusal is, however, admissible by the public party based on art.1671 of the Italian civil code, whereby ''The client may withdraw from the contract, even if performance of the works or services has begun, if it indemnifies the contractor for the expenses incurred, the works performed and lost profits'', normally for reasons of public interest.

[52] Article 18 of the particular specifications for the supply and installation, on a ''turnkey'' basis, of a multistrata computerised tomography required by the radiodiagnostic department of the Hospital Company SS. Antonio e Biagio e C. Arrigo in Alessandria, which included penalties for failure to meet the timing foreseen in the chronological programme for completion of the works and supplies; the penalty was for 1% of the total value of the contract for every calendar day of delay.

[53] In this connection, see also T.A.R. Emilia Romagna, Parma, April 28, 2005, No.239, *A.F.O.M. Medical SpA v Azienda U.S.L. di Piacenza*. F. Cozza, ''La razionalizzazione dei processi nell'acquisizione di apparecchiature elettromedicali'' (2006) *Ragiusan*, pp.80 et seq.

[54] For the use of a similar percentage as a fair definition of the damage for precontract liability for impropriety in awarding a public contract: G.M. Racca, ''La responsabilità contrattuale della pubblica amministrazione'' in *Trattato dei contratti,* Vol. I, *I contratti con la pubblica amministrazione*, 2007, pp.637 et seq; R. Garofoli and G.M. Racca, *Responsabilità della pubblica amministrazione e risarcimento del danno innanzi al giudice amministrativo* (Milan: 2003), pp.193 et seq., where the abrogated art.345 of Law 2248 of March 20, 1865, all. F., Law on Public Works, was considered the reference parameter for quantification of the damage. Lastly, State Council, sect.V, February 12, 2008, No.491*, Esperia SpA v AO San Martino di Genova*, which recognises, as regards the damage for loss of income, in addition to the amount of 10% of the value of the

In practice, however, poor enforcement of penalty clauses even for serious breaches of contracts has been noted, together with the acceptance of contract performance that differs from that stipulated. In these cases the principle of competition is violated and the principle of non-discrimination towards the other bidders is not safeguarded. It is thus necessary to find ways of ensuring compliance with contractual obligations by introducing in the contract documents self-executing penalty clauses or incentive clauses to reward the economic operator able to fulfil its obligations and to satisfy the users' needs, even by means of including in the contract documents the possibility of extending the contractual relationship.[55]

Another possibility might be for unsuccessful bidders and end users to check and report any faulty performance by the winning tenderer.[56]

It can also be noted that the contractual tools defined by the last EC Directives on public procurement aim to spread forms of competition further in the contract performance phase, along with the possibility of redefining some of the contractual clauses or allowing the contracting authority to restart the competition among various contractors in order to choose which one will carry out the supply or service, through a multi-supplier framework agreement.

Another possibility could be to provide, in the contract documents, that in case of bankruptcy or termination of the contract due to grave violations, the participants in the original competition who provide the next best offer after that of the winner, and so forth, would become eligible again, but with the condition, required by the Commission, that all the winning conditions, and not only the economic ones, must remain unchanged.[57] The aggregation of the contractual demands of different healthcare agencies underlines the urgent need for preventing any breaches of contract that could harm each single healthcare agency by establishing strong organisational structures to address such breaches of contract, maybe employing the professional skills and resources no longer used in carrying out the award procedures.

The goal of a fair and exact performance of the contract must also be respected by the contracting authority which has to fulfil its obligation of payment for the services and supply received within a reasonable time period that will not heavily harm the creditor.[58] Frequent delays in paying the amount due by the Italian healthcare agencies, along with the express settlement of excessive payment terms in the contract documents, has given rise to claims by suppliers for a judicial reduction of the payment terms or the payment of interest and compensation for damages. The Italian courts' judgments[59] appear to be too harsh in imposing 30 days as a term for payment, however, since the

contract, also an amount (in this case paid in the measure of 3% of the contract value) for loss of "opportunity" linked to the impossibility, in future negotiations, of using the economic requisite equal to the value of the contract not carried out.

[55] J.J. Laffont and J. Tirole, *A Theory of Incentives in Procurement and Regulation* (Cambridge, Mass: MIT Press, 1993); Albano et al., "Strumenti a sostegno della qualità negli acquisti pubblici" (2008) 1 *Quaderni CONSIP*, pp.32 et seq.

[56] For further reference see Cavallo Perin and Racca, "La concorrenza nell'esecuzione dei contratti pubblici" (2010) Dir. Amm., forthcoming.

[57] Decision of the European Commission of January 31, 2008, Violation Procedure 2007/2309 pursuant to art.266 of the EEC Treaty. Incomplete transposition of the contracting code (Italian), p.8.

[58] Directive 35/2000 [2000] OJ L200/35.

[59] State Council, sect.V, April 12, 2005, No.1638, *AO Senese v Pharmacia Italia SpA*; State Council [ord. caut.], sect.V, July 29, 2003, No.3285, *Soc. Bristol Myers Squibb v Asl 4 Torino*, in [2003] *Rass. Dir. farmaceutico* 1004, which accepted the request for precautionary suspension of a call for bids for the supply of pharmaceuticals and the relative particular specifications, as the clause of exclusion from the competition procedure to which the call referred was flawed by the failure to subscribe to conditions that were derogatory and in contrast with the legislation in terms of payment terms due to the contracting administrations. In other words, the unilateral determination of a payment term higher than that approved by the legislator and the failure to establish a rate for delayed payment by the healthcare agency or hospital winning the

law requires the reduction of the payment term to an equitable one, thus allowing the imposition of a slightly longer term. Moreover, it seems possible that the payment term was in some cases the object of the negotiation or maybe one of the criteria used to identify the most economically advantageous tender.

There is no doubt, however, that the healthcare agencies' delays in paying for the supply and services correctly performed imply a later change of the contractual terms agreed upon or defined in the contract documents as well as an infringement of the principles of equal treatment and competition. This effectively involves an improper request to suppliers to carry out the task of financing contracting authorities. It can also be mentioned that tenderers sometimes increase prices offered since they take into account the costs of the payment delays they have to bear,[60] sometimes claim payment of interest due to delays and sometimes accept (or waive) out-of-court settlements hoping for illicit advantages such as improper contract extensions or renewals. Payment delays in any case also give rise to additional costs for the healthcare agencies and are not consistent with the principles of equal treatment and non-discrimination with regards to the rules set out in the call for tenders and in the contract documents as far as these unforeseen economic events nullify the previous competition that took place within the award procedure and that could have had a different outcome.

One of the further solutions proposed to deal with this issue is the adoption of purchasing cards by the Italian contracting authorities[61] by means of which the additional costs due to payment delays can be negotiated with the issuing bank and will not weigh on all the contractual relationships between the healthcare agency and its creditors.

Reciprocal violations may tend to compensate one another, but this occurs in an entirely improper way with respect to the limitations placed by the principle of competition and transparency to ensure the best use of public resources.

4. Conclusion

Collaborative procurement in the healthcare sector seems still to have a long way to go in Europe in order to attain the necessary savings whilst assuring the quality of goods and services and bearing the cost associated with the evolution of medical science.

Various models of collaborative purchases are implemented in some European countries, but an overall European vision of the issues involved is still missing. Although some European countries have created central purchasing bodies and have been using framework agreements for a long time, regulatory rules at European level have been introduced only recently, slowing down experimentation in other countries, including Italy. With a clearer regulatory system, framework agreement models

contract appears in contrast with the principle of necessary consent of the contracting enterprise to stipulate a derogatory agreement with respect to the terms *ex lege*. T.A.R. Piemonte, sect.II, October 26, 2007, No.3292, *Assobiomedica v Asl 14 di Omegna*; T.A.R. Piedmont, No.250/2004, which voids the provision "communicated verbally" on May 28, 2003, the first day of the competition, ordering the exclusion of the plaintiff because it had not signed for acceptance the clauses of the particular specifications, in the section which set a term for payment and the measure of the interest due in case of failure to respect the payment term. T.A.R. Piemonte, sect.II, January 5, 2004, No.4, *Soc. Takeda farmaceutici Italia v Reg. Piemonte*, in *Ragiusan*, 2004, folder 247, 169.

[60] E. Morley-Fletcher and A. de Marco, "L'innovazione nei sistemi di pagamento come leva per una razionalizzazione delle procedure di acquisto: le purchase cards" in *Lo Stato compratore*, 2007, p.250.

[61] Morley-Fletcher and de Marco, "L'innovazione nei sistemi di pagamento come leva per una razionalizzazione delle procedure di acquisto" in *Lo Stato compratore*, 2007, p.265.

and CPB networks can be developed, including by promoting the definition of common EU standards and benchmarks, with the purpose of strengthening competition in the supply market. Italy is currently testing aggregation models of procurement for supplies and services in the health care sector; more specifically, it is presently testing a network of interconnected CPBs which are experimenting with the use of new ICT tools for the selection of bidders, and for the objective determination of the best offer. The use of technological tools, however, also require a reduction of the number of public buyers (44,000 in the United Kingdom[62] and 55,000 in Italy[63]) in order to improve the professionalism of purchasers.

The aim of such reforms is not only to trim expenditure but also, crucially, to guarantee quality and provide for efficient control of infringements in the execution phase of the contract. Very often, in Italy, contractual equilibrium is distorted following awarding of the contract, thereby undermining the principle of free competition. Thus on the one hand, even serious infringements are tolerated by the public administration without application of penalties or termination of the contract and, on the other, companies are affected by serious delays in payment. Even if it appears particularly evident in Italy, the latter is a common issue in Europe and needs to receive attention from the Commission. Competition must be ensured throughout the whole procurement process, from the contract notice to the end of the execution phase and not only during the selection of the bidder. The author has suggested in this article that consideration should be given here to allowing unsuccessful bidders to have a role in the control of the execution of contracts, as a guarantee of compliance with the contract conditions. This could also be carried out with end users by means of customer satisfaction surveys and monitoring. As a consequence, public bodies would not be led to accept contractual infringements thus better securing the principle of free competition and the quality of healthcare services.

[62] UK Government's operational efficiency programme: collaborative procurement report, May 2009.
[63] Broggi, *Consip: il significato di un'esperienza*, 2008, p.20.