

Officers of the Board of the Centre

Meeting of the Officers of the Board, May 2022

FOR DECISION

SECOND ITEM ON THE AGENDA

Proposed allocation from the General Fund to the Campus Improvement Fund

1. On 4 April 2019, the Government of the Italian Republic and the Centre signed a Memorandum of Understanding which outlined the commitment of Italy to support the renovation and improvement works of the Centre's headquarters in the framework of a comprehensive multi-annual plan. As a first step, Italy undertook to contribute to the Centre the sum of €3.0 million towards the renovation of the Africa 10 and 11 pavilions. This amount was paid in two instalments whereby €361,000 was received on 27 June 2019 and €2,639,000 was received on 11 May 2020. It also was understood that the Centre would not commit to any financial liabilities exceeding €3.8 million, available in the Campus Improvement Fund.
2. The budget of €3.8 million included various components of the overall works – from the demolition to the reconstruction including electrical and mechanical systems as well as the Learning Innovation Lab's IT technology, overall equipment and the furniture. While this budget included a contingency, it was based on information mainly obtained from the market in 2018.
3. The Request for Proposals (RFP) was launched in April 2021. As a result of changes in the market, all submissions received by the Centre indicated higher prices than the anticipated budget for this work, mostly as a result of cost increases in raw materials. The Centre signed the renovation contract with the selected supplier on 9 July 2021 with the final price being €187,000 higher than anticipated. Design and oversight costs also came in €30,000 over budget, as these are proportional to the main contract. To mitigate this, the Centre made revisions to some smaller components including the finishing items, however this has not made a significant difference.
4. Since the original budget of €3.8 million was elaborated, the Centre has refined its requirements regarding the multimedia control room, the Innovation Lab main stage as well as other related Information Technology systems through detailed market research. This has resulted in a need for an additional €164,000 in funding over the original budget.
5. In February 2022, the selected supplier informed the Centre that due to the significant increase in prices of raw materials, among others, relating to the impact of the pandemic and the demand driven market, it had no choice but to request the Centre to increase its original contract value by 13.7% otherwise it would not be in a position to honour its contract

and would call for its termination with the corresponding contractual indemnity in order to show good faith of the parties. The increase represents the average impact on the various price increases of raw materials and other related costs on the overall contract of the renovation. This is based on two decrees issued by the Italian Authorities¹ (Extract of the relevant sections in Annex I, translated by the Centre). Based on a detailed analysis and independent confirmation (refer to Annex II), the requested increase to the contract totals €464,000.

6. The anticipated date of renovation completion is set on 30 September 2022. While the supplier has pre-ordered various materials to minimize any future price increases in the ever changing market and as the Centre is also advancing its procurement relating to the Innovation Lab and its related IT components, there is still a risk of continued price increases up to the full completion of the renovation. To ensure that sufficient funding is available and to avoid any delays, the Centre is including a contingency of €155,000 or 18 per cent of the total requested funds of €845,000 to mitigate such risk. Unspent funds can subsequently remain in the Campus Improvement Fund for the subsequent renovations of other pavilions.
7. As a result of the above described events, the Centre is faced with having insufficient funding in its Campus Improvement Fund to cover all remaining costs to complete the renovation works to achieve fully completed pavilions ready for occupation. In summary:

Works	Variation in costs
Renovation contract signed with supplier (as a result of procurement process)	€187,000
Increased design and oversight costs	€30,000
Increased costs of multimedia and IT components of the Innovation Lab	€164,000
Increase in costs relating to the renovation contract due to changing market	€464,000
Increase in funding requested	€845,000
Contingency (18% of above amounts)	€155,000
Total additional funding requested	€1,000,000

8. Given the situation outlined above and the authority of the Officers of the Board under Article III, paragraph 5 of the Statute of the Centre², the Centre proposes that an amount of €1 million be transferred from the General Fund to the Campus Improvement Fund to cover the incremental renovation costs of the renovation of the Africa 10 and 11 pavilions.

Point for decision

9. **The Officers of the Board are requested to approve the proposed transfer of €1 million from the General Fund to the Campus Improvement Fund, pursuant to Article III, paragraph 5 of the Statute of the Centre.**

April 2022

¹ Italian Authorities (Ministry of Infrastructure and Mobility) issued 2 related decrees: D.M. 11/11/2021 and D.M. 05/04/2022.

² Article III, paragraph 5 of the Statute of the Centre provides that the Officers of the Board "shall be empowered, to take decisions in the name of the Board each time the officers consider that it is in the interest of good management of the Centre that a question referred to them between two sessions of the Board be settled without waiting for the next session of the Board, and that such question is not of sufficient importance to justify the convening of an extraordinary session of the Board. Every measure taken by virtue of this delegation is to be made the subject of a report for presentation to the Board on the occasion of its next session."

Annex I

Decree issued on 11 November 2021

The Decree in few words: Current Governmental Code for Public Contracts was issued in 2006, as from that year a Commission for the Survey of the Cost of Building Materials was established, publishing yearly the list of most relevant construction materials for which costs have increased more than 8-10%. In the past decade this list was short and quite irrelevant, while in 2021-22 it has become significant.

Ministry of Sustainable Infrastructure and Mobility

DEPARTMENT FOR PUBLIC WORKS, LIVING AND URBAN POLICIES - WATER INFRASTRUCTURE, HUMAN AND INSTRUMENTAL RESOURCES
DIRECTORATE-GENERAL FOR THE REGULATION OF PUBLIC CONTRACTS AND THE SUPERVISION OF LARGE WORKS

Detection of percentage changes, up or down, greater than 8 per cent, occurring in the first half of the year 2021, of the individual prices of more significant building materials.

THE GENERAL DIRECTOR

GIVEN the legislative decree n. 163 of 12 April 2006, and subsequent amendments and additions, bearing

«Code of public contracts relating to works, services and supplies in implementation of directives 2004/17 / EC and 2004/18 / EC " and, in particular, Article 133;

GIVEN the legislative decree n. 50 of 18 April 2016 containing the «Code of public contracts» in implementation of Directives 2014/23 / EU, 2014/24 / EU and 2014/25 / EU on the award of concession contracts, on public procurement and on the procurement procedures of utility companies in the sectors of water, energy, transport and postal services and, in particular, art. 106 as well as Article 216, paragraph 27-ter, introduced by Article 128, paragraph 1, letter g) of Legislative Decree no. 56 of 19 April 2017, which is without prejudice to the previous regulations referred to in the aforementioned article 133 of legislative decree no. 163 of 12 April 2006, for public contracts awarded before the entry into force of the new code and in progress;

GIVEN the decree of the Minister of Infrastructure and Transport n. 346 of 4 August 2014, bearing the remodelling, identification and definition of the number and tasks of non-level executive offices of the Ministry of Infrastructure and Transport;

GIVEN the decree of the President of the Council of Ministers n. 190 of 23 December 2020 "Regulations on the organization of the Ministry of Infrastructure and Transport ";

GIVEN the Presidential Decree of the Council of Ministers n. 115 of 24/06/2021 "Regulation containing amendments and additions to the decree of the President of the Council of Ministers of 23 December 2020, n. 190, concerning the organization regulations of the Ministry of Infrastructure and Transport, now the Ministry of sustainable infrastructures and mobility as per law decree n. 22 of 03/01/2021 ";

GIVEN art. 1-septies of the decree law 25 May 2021, n. 73, bearing "Related urgent measures to the COVID-19 emergency, for businesses, work, young people, health and local services ", converted with amendments from the law of 23 July 2021, n. 106;

GIVEN the opinion expressed by the Legislative Office of this Department no. 14956 of 8 April 2009, bearing application issues in relation to Article 1 of Law Decree no. 162 of 2008, converted with amendments by law n. 201 of 2008;

GIVEN the opinion expressed by the Legislative Office of this Department no. 30433 of 9 August 2021, containing operational indications regarding the adoption of ministerial decrees pursuant to art. 1-septies, paragraphs 1 and 8, of the decree-law of 25 May 2021, n. 73, converted with amendments by law 23 July 2021, n. 106.

GIVEN the decree of the Minister of Infrastructures n. 12273 of 19 September 2007 establishing the Central Advisory Commission for the Survey of the Cost of Building Materials;

GIVEN the decree of the Minister of Infrastructures n. 14347 of 6 November 2007 for the appointment of the members of the Central Advisory Commission for the detection of the cost of building materials, as well as amended and integrated with subsequent decrees of the Minister of Infrastructure and Transport no. 317 of 9 April 2009 and n. 111 of 5 March 2010, of the Ministry of Infrastructure and Transport no. 1129 of 12 February 2014, n. 1919 of 13 March 2014, n. 104 of 25 May 2015, n. 17 of 26 January 2018, n. 95 of 18 March 2019, n. 109 of 26 March 2019, n. 2 of 26 February 2020 and, most recently, no. 5 of 25 February 2021;

GIVEN the decree of 30 June 2005 of the Deputy Minister of Infrastructure and Transport bearing "Survey of the average prices for the year 2003 and of the annual percentage changes for the year 2004, relative to the most significant construction materials, pursuant to Article 26, paragraphs 4-bis, 4-quater and 4-quinquies, of the law n. 109 of 11 February 1994, and subsequent amendments and additions ";

HAVING REGARD to the decree of 11 October 2006 of the Minister of Infrastructure, on "Price survey average for the year 2004 and the annual percentage changes for the year 2005, and the average prices and percentage changes for the purpose of determining compensations, relating to construction materials more significant, pursuant to articles 133, paragraphs 4, 5, and 6, and 253, paragraph 24, of legislative decree no. 163 of 12 April 2006, and subsequent amendments and additions ";

HAVING REGARD to the decree of 2 January 2008 of the Minister of Infrastructures containing «Survey of average prices for the year 2005 and the annual percentage changes for the year 2006, and the average prices and variations percentages for the purpose of determining compensations, relating to construction materials plus significant pursuant to articles 133, paragraphs 4, 5 and 6, and 253, paragraph 24, of legislative decree no. 163 of 12 April 2006, and subsequent amendments ", as confirmed by the decree of 13 October 2011 adopted in compliance with the sentence of the Council of State - Section IV- n. 2961 of May 16, 2011;

HAVING REGARD to the decree of 24 July 2008 of the Minister of Infrastructure and Transport containing «Detection of average prices for 2006 and annual percentage changes for 2007, and average prices and percentage changes for the purpose of determining compensations, relating to construction materials more significant ";

HAVING REGARD to the decree of 30 April 2009 of the Minister of Infrastructure and Transport containing «Detection of average prices for the year 2007 and percentage changes, on a half-yearly basis, exceeding eight percent, relating to the year 2008, for the purpose of determining the compensation of the individual prices of materials from most significant construction "issued in derogation of the provisions of Article 133, paragraphs 4, 5 and 6 of legislative decree n. 163 of 12 April 2006, and in implementation of article 1, paragraphs 1, 3 and 7 of the law decree n. 162 of 23 October 2008, converted, with amendments, by law no. 201 of 22 December 2008;

HAVING REGARD to the decree of 9 April 2010 of the Minister of Infrastructure and Transport containing «Detection of average prices for the year 2008 and percentage changes, higher than ten percent, relating to the year 2009, for the purpose of determining the compensations, of the individual prices of building materials plus significant ";

[OMISSIS]

CONSIDERING that the Advisory Commission in the session of 10 November 2021 expressed its favourable opinion, as per the minutes of the Commission on the same date, about the results of the investigation carried out by the Directorate General for the regulation of public contracts and supervision of major works;

CONSIDERING that it shares the aforementioned opinion with which the Advisory Commission approved the detection of percentage changes, increasing or decreasing, of more than 8 percent, of individuals prices of the most significant building materials, which occurred in the first half of the year 2021, compared at the average prices recorded with reference to the year 2020;

DECREES

Article 1

1. Pursuant to art. 1-septies, paragraph 1, of the decree law 25 May 2021, n. 73, converted with amendments from the law of 23 July 2021, n. 106, are found in the attached Annex no. 1, which forms part integral and substantial of this decree:

a) the average prices, for the year 2020, relating to the most significant building materials;
b) the percentage changes, increasing or decreasing, exceeding 8%, in the prices of materials from most significant construction, which occurred in the first half of the year 2021, compared to average prices detected with reference to the year 2020.

2. Pursuant to art. 1-septies, paragraphs 3 and 5, of the decree-law of 25 May 2021, n. 73, converted with amendments from the law of 23 July 2021, n. 106, are indicated in the attached Annex no. 2, which forms part integral and substantial of this decree, the average prices of the most significant building materials for each of the years 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, as well as the relative percentage changes that occurred in the first half of the year of the year 2021.

Article 2

The compensations of the most significant building materials are dealt with within the limits of resources and with the modalities referred to in art. 1-septies of the decree law 25 May 2021, n. 73, converted with modifications from law 23 July 2021, n. 106.

Rome, 11/11/2021

The Ministry of Sustainable Infrastructure and Mobility

Decree issued on 4 April 2022

The Minister of Infrastructure and Sustainable Mobility

GIVEN the legislative decree 12 April 2006, n. 163, and subsequent amendments, containing "Code of public contracts relating to works, services and supplies in implementation of Directives 2004/17 / EC and 2004/18 / EC" and, in particular, Article 133, paragraphs 3 and 6;

GIVEN the legislative decree 18 April 2016, n. 50, containing the "Code of public contracts" in implementation of directives 2014/23 / EU, 2014/24 / EU and 2014/25 / EU on the award of concession contracts, on public procurement and on the procurement procedures of supplying bodies in the water, energy, transport and postal services sectors and, in particular, article 216, paragraph 27-ter, which is without prejudice to the previous regulations referred to in the aforementioned article 133, paragraphs 3 and 6, of legislative decree 12 April 2006, n. 163 for public contracts awarded before the entry into force of the new code and in progress;

GIVEN the decree-law of 25 May 2021, n. 73, converted, with modifications, by the law of 23 July 2021, n. 106, on "Urgent measures related to the COVID-19 emergency, for businesses, work, young people, health and local services" and, in particular, Article 1-septies;

GIVEN the law of 30 December 2021, n. 234, containing "State budget for the financial year 2022 and multi-year budget for the three-year period 2022-2024" and, in particular, Article 1, paragraph 398;

GIVEN the decree-law of 27 January 2022, n. 4, converted, with modifications, by the law of 28 March 2022, n. 25, containing "Urgent measures in the field of support to businesses and economic operators, labour, health and local services, connected to the emergency from COVID-19, as well as to contain the effects of price increases in the electricity sector" and, in particular, article 29, paragraph 13;

GIVEN the decree-law of 21 March 2022, n. 21, on "Urgent measures to counter the economic and humanitarian effects of the Ukrainian crisis." and, in particular, Article 23, paragraph 1;

CONSIDERING that paragraphs 1 and 2 of article 1-septies of the aforementioned decree-law no. 73 of 2021, establish that the Ministry of Sustainable Infrastructure and Mobility shall proceed, by 31 October 2021 and 31 March 2022, with its own decree, to detect the percentage changes, increasing or decreasing, exceeding 8 percent, which occurred respectively in the first and second half of the year 2021, of the single prices of the most significant construction materials and that for these materials there is an increase or decrease, within the limits set out in paragraphs 3, 4, 5 and 6 of the same article 1-septies;

CONSIDERING that paragraph 4 of the aforementioned article 1-septies provides that the compensation requests for increases must be presented, under penalty of forfeiture, by the contractor to the contracting authority within fifteen days from the date of publication in the Official Gazette of the decree to be adopted in implementation of the provisions of paragraph 1 of the same article 1-septies, relating to the reference semester;

CONSIDERING that, on the basis of the provisions of paragraph 6 of the aforementioned article 1-septies, it is possible to meet requests for compensation within the limits of 50 per cent of the resources specifically set aside for unforeseen events in the economic framework of each intervention, without prejudice to the relative sums the contractual commitments already undertaken, as well as any additional sums available to the contracting authority for the same intervention and allocated annually;

CONSIDERING, also, that the same paragraph 6 of the aforementioned article 1-septies provides for the possibility of using the sums deriving from auction discounts, if a different destination is not envisaged on the basis of current regulations, as well as the sums available relating to other completed interventions under the responsibility of the same contracting authority and for which the relative tests have been carried out and the certificates of regular execution have been issued in compliance with the expense accounting procedures, within the limits of the residual authorized expense;

HAVING REGARD to paragraph 8 of the aforementioned article 1-septies which provides for the establishment, at the Ministry of Sustainable Infrastructure and Mobility, of the Fund for the adjustment of prices, with an initial endowment of 100 million euros for the year 2021, to which the subjects indicated in paragraph 7 of the same article 1-septies may have recourse, within the limits and up to the amount of available resources, in the event of insufficiency of the resources referred to in the aforementioned paragraph 6;

CONSIDERING that the aforementioned paragraph 8 of the aforementioned article 1-septies mandates the regulation of the methods of use of the Fund itself to a specific decree of the Minister of Sustainable Infrastructure and Mobility, guaranteeing equal access for small, medium and large construction companies and proportionality for those entitled to allocate resources;

GIVEN the decree of the President of the Republic of 28 December 2000, n. 445;

GIVEN the decree of the President of the Republic October 5, 2010, n. 207, containing the "Regulations for the execution and implementation of the legislative decree 12 April 2006, n. 163, containing «Code of public contracts relating to works, services and supplies in implementation of directives 2004/17 / EC and 2004/18 / EC" and, in particular, articles 61 and 90;

GIVEN the decree of the Minister of Sustainable Infrastructure and Mobility of 30 September 2021, n. 371, published in the Official Gazette of the Italian Republic of 28 October 2021, n. 258, containing "Methods of use of the Fund for the adjustment of the prices of building materials referred to in Article 1-septies, paragraph 8, of the decree-law of 25 May 2021, n. 73, converted, with modifications, by the law of 23 July 2021, n. 106 ";

GIVEN the circular of the Ministry of Sustainable Infrastructure and Mobility prot. n. 43362 of November 25, 2021, on "Operating procedures for the calculation and payment of the compensation of the prices of the most significant building materials pursuant to Article 1-septies of Legislative Decree n. 73/2021, converted with amendments by Law no. 106/2021 ";

CONSIDERING that, pursuant to paragraph 3 of the aforementioned article 1-septies, the compensation is determined by applying to the quantities of the individual materials used in the work carried out and accounted for by the construction manager, or noted under the responsibility of the construction manager in the measurement book, from 1 July 2021 to 31 December 2021 the increases or decreases in the relative prices detected by the decree relating to the second half of the year 2021 referred to in paragraph 1, with reference to the date of the offer, exceeding 8 for one hundred if referring exclusively to the year 2021 and exceeding 10 percent overall if referring to several years;

CONSIDERING that, for the purposes referred to in Article 1-septies, paragraph 8, of the aforementioned decree-law no. 73 of 2021, the Ministry of Economy and Finance has established a specific expenditure chapter 7006 in the forecast of the Ministry of Sustainable Infrastructure and Mobility - CDR 2 - assigned to the Directorate General for the regulation of public contracts and the supervision of large works;

CONSIDERING that, pursuant to article 1, paragraph 399, of the aforementioned law no. 234 of 2021, the expenditure of 100 million euros for 2022 is authorized for the purposes of offsetting the prices of the most significant construction materials with reference to the second half of the year 2021 and which, for the purposes referred to in the aforementioned article 1-septies, this expense must flow into the Fund for the adjustment of prices referred to in paragraph 8 of the same article;

CONSIDERING that, pursuant to and for the purposes of article 1-septies, paragraph 8, of the decree-law no. 73 of 2021, to the adoption of a decree governing the methods of use of the Fund for the adjustment of prices with reference to the second half of the year 2021, guaranteeing equal access for small, medium and large construction companies, as well as the proportionality, for those entitled, in the allocation of resources;

CONSIDERING that it is necessary to refer to articles 61 and 90 of the decree of the President of the Republic October 5, 2010, n. 207, for the purpose of identifying small, medium and large construction companies referred to in Article 1-septies, paragraph 8, of the aforementioned decree-law no. 73 of 2021;

CONSIDERING, in order to ensure the categories of small, medium and large enterprises equal access to the resources of the Fund for the adjustment of prices relating to the second half of the year 2021 and equal to 100 million euros, to have to assign to each of the three categories, similarly to what is established by the aforementioned decree of the Minister of Sustainable Infrastructure and Mobility September 30, 2021, n. 371, an almost equivalent portion of the aforementioned Fund equal to 34 per cent for the "small enterprise" category, 33 per cent for the "medium enterprise" category and 33 per cent for the "large enterprise" category;

DECREES

ART. 1

1. For the purposes of offsetting the requests duly received by the subjects indicated in article 1-septies, paragraph 7, of the decree-law of 25 May 2021, no. 73, converted, with modifications, by the law of 23 July 2021, n. 106, submitted within the terms of forfeiture provided for in paragraph 4 of the same article 1-septies and considered admissible, the Fund for the adjustment of prices, with a total endowment equal to Euro 100,000,000.00 for the second half of the year 2021, is broken down as follows:

a) 34 percent to the "small business" category which, for the purposes of this decree, must be understood as a business in possession of the requirements set out in Article 90 of the Presidential Decree no. 207 of 2010 or in possession of the qualification in the first or second ranking referred to in Article 61 of the Decree of the President of the Republic no. 207 of 2010;

b) 33 percent to the "medium-sized enterprise" category which, for the purposes of this decree, must be understood as a company in possession of the qualification from the third to the sixth ranking referred to in Article 61 of the Decree of the President of the Republic no. 207 of 2010;

c) 33 percent to the "large enterprise" category which, for the purposes of this decree, must be understood as a company in possession of the qualification in the seventh or eighth ranking referred to in Article 61 of the Presidential Decree no. 207 of 2010.

2. Each company contributes to the distribution of the resources assigned to the categories identified in paragraph 1 exclusively on the basis of its qualification pursuant to part II, title III, of the Presidential Decree no. 207 of 2010, regardless of the amount of the contract awarded.

3. In the case of temporary groupings of horizontal and vertical competitors pursuant to article 37 of legislative decree 12 April 2006, no. 163, and Article 48 of Legislative Decree 18 April 2016, no. 50, each grouping contributes to the distribution of the resources assigned to the categories identified in paragraph 1 exclusively on the basis of their qualification, pursuant to part II, title III, of the decree of the President of the Republic no. 207 of 2010, by the agent company, regardless of the amount of the contract awarded.

4. In the case of economic operators established in other states adhering to the European Union, as well as those established in signatory countries to the public procurement agreement or in countries which, on the basis of other rules of international law or on the basis of international agreements or bilateral agreements signed with the European Union or with Italy, allow participation in public tenders under reciprocity conditions, the identification of the category of belonging referred to in paragraph 1 is carried out on the basis of the documentation produced, pursuant to article 47 of the legislative decree 12 April 2006, n. 163 or Article 49 of Legislative Decree 18 April 2016, no. 50.

ART. 2

1. With the decree referred to in article 1-septies, paragraph 1, of the decree-law of 25 May 2021, no. 73, converted, with modifications, by the law of 23 July 2021, n. 106, the percentage changes, increasing or decreasing, of more than 8 percent, occurred in the second half of the year 2021, of the single prices of the most significant building materials are recorded.

2. Within forty-five days from the date of publication in the Official Gazette of the Italian Republic of the decree referred to in paragraph 1, each of the subjects indicated in paragraph 7 of the aforementioned article 1-septies shall send the request for access to the Fund referred to in paragraph 8 of the same article 1-septies using the platform accessible through the link <https://compensazioneprezzo.mit.gov.it> and filling in, for each request for access to the Fund, the specific form available on that platform and signed with a digital signature or other type of qualified electronic signature.

3. The form available on the platform referred to in paragraph 2 contains the following information, provided and certified under one's own responsibility, pursuant to and for the purposes of Article 47 of the Presidential Decree of 28 December 2000, no. 445, by the subjects indicated in paragraph 7 of the aforementioned article 1-septies:

a) main data of the contract, such as the name of the contracting authority, the name or company name of the contracting company, the CIG code, the date of signing the contract or delivery of the work as a matter of urgency;

b) certification that the contract was in progress as of 25 July 2021 and that only the works carried out and accounted for from 1 July 2021 to 31 December 2021 were considered for the compensation;

c) date of submission of the compensation request by the contractor;

d) category to which the applicant company belongs, identified according to the criteria referred to in Article 1;

e) amount of compensation requested by the company and considered admissible by the contracting authority in accordance with the surveys relating to the second half of the year 2021 carried out with the decree adopted in implementation of the provisions of article 1-septies, paragraph 1, of the decree - law n. 73 of 2021, as well as in implementation of the provisions of article 1-septies, paragraph 8, second sentence, of the decree-law no. 73 of 2021, as well as the circular of the Ministry of sustainable infrastructures and mobility prot. n. 43362 of 25 November 2021;

f) amount of financial resources referred to in Article 1-septies, paragraph 6, of Law Decree no. 73 of 2021 and usable in relation to the compensation request submitted by the contractor;

4. As part of the distribution of the Fund, provided that the total amount of eligible requests falls within the overall availability of the Fund for the compensation relating to the second half of 2021, in the event that there is an excess and a simultaneous insufficiency of resources within the allocated quotas to each of the categories of small, medium and large enterprises, for the purpose of disbursing resources to the subjects referred to in article 1-septies, paragraph 7, of decree-law no. 73 of 2021, the Directorate General for the regulation of public contracts and the supervision of major works provides for the distribution of the Fund shares on the basis of the amounts of the requests admitted to contributions, according to the principle of proportionality referred to in paragraph 1 of this article.

[OMISSIS]

ART. 5

1. In the case of temporary groupings of competitors referred to in article 1, paragraph 3, the subjects indicated in article 1-septies, paragraph 7, of the decree-law of 25 May 2021, no. 73, converted, with modifications, by the law of 23 July 2021, n. 106, assign the resources relating to compensation to the agent company, which allocates the resources to the companies belonging to the grouping on the basis of agreements between the same companies.

ART. 6

1. The Directorate General for the regulation of public contracts and the supervision of major works communicates to the subjects indicated in Article 1-septies, paragraph 7, of the decree-law of 25 May 2021, no. 73, converted, with modifications, by the law of 23 July 2021, n. 106, the allocation of resources assigned to them according to the procedures set out in this decree, for the purpose of their payment to the company that has submitted an application for compensation.

2. The allocation of resources to the subjects indicated in article 1-septies, paragraph 7, of the decree-law no. 73 of 2021 is published on the website of the Ministry of Sustainable Infrastructure and Mobility.

3. The Directorate General for the regulation of public contracts and the supervision of large companies proceeds to carry out the checks relating to the requests made by the subjects indicated in Article 1-septies, paragraph 7, of Decree-Law no. 73 of 2021, according to the procedures set out in Chapter V of the decree of the President of the Republic of 28 December 2000, n. 445.

ART. 7

1. In order to reduce the time for allocating the resources of the Fund for the adjustment of prices for the first half of the year 2021 in relation to the applications submitted within the terms provided for in Article 2, paragraph 2, of the Minister's decree of sustainable infrastructures and mobility 30 September 2021, n. 371, the existence of the requirements and conditions for access to this Fund can also be demonstrated by means of a specific declaration issued under their own responsibility by the subjects indicated in Article 1-septies, paragraph 7, of the decree-law no. 73 of 2021, pursuant to and for the purposes of Article 47 of the Decree of the President of the Republic of 28 December 2000, no. 445 and similar in content to that provided for in Article 2, paragraphs 2 and 3.

2. Any resources of the Fund for the adjustment of prices relating to the first half of the year 2021, exceeding the total amount assigned to the subjects indicated in article 1-septies, paragraph 7, of the decree-law no. 73 of 2021 following the outcome of the procedure referred to in Articles 4 and 5 of the aforementioned ministerial decree no. 371 of 2021, are used for the recognition of compensation relating to the second half of the year 2021 and are divided and assigned according to the proportions and methods provided for in this decree.

3. In the event of a further increase, as a result of legislative measures, of the resources of the Fund for the adjustment of prices relating to the second half of the year 2021, the same are divided and assigned according to the proportions and methods provided for in this decree.

This decree, after transmission to the supervisory bodies, is published in the Official Gazette of the Italian Republic.

Rome, 05/04/2022

The Ministry of Infrastructure and Sustainable Mobility

Annex II – Technical opinion on the contractor's request for a price review

Luca IMBERTI

C.so Dora 12 – 10051 Avigliana (TO)

C.so Duca degli Abruzzi, 6 – 10128 Turin

Tel. 011.18868652 Cellular phone 333.9694946

E-mail: info@architettoimberti.it

VAT No 07935680012 - Tax Code MBRLCU68B02D969M

I, Luca Imberti, registered in the Register of Architects of the Province of Turin under No 5126, Court of Turin Official Technical Consultant (registration no 2825 of 24 November 2001), Expert (registration no 652 of 24 September 2002), technical consultant to the Turin Provincial Tax Commission, commissioned by ITCILO (ref. Senior Facilities Officer Facilities and Internal Service Antonio Giangregorio) with registered office in Turin (TO), Via Maestri del Lavoro no 10, have drawn up the following technical consultancy report on the request for "renegotiation of the financial conditions" set out in the Procurement Contract entered into with Gruppo Dimensione SpA on 9 July 2021, concerning works for "Conservation and modernization - Pavilion Africa 10", submitted following significant increases in material costs in 2021 and 2022.

More specifically, in the above request, dated 22 February 2022, the contractor asked ITCILO for a compensatory adjustment in the fee amounting to 13.7 percent of the entire contractual amount. This calculation was based on the provisions of Decree-Law No 73 of 25 May 2021 (converted into Law No 106/2021), and in particular Article 1-septies, as well as the later Decree-Law No 4 of 27 January 2022 (converted into Law No 25 of 28 March 2022).

It also mentioned the price review arrangements adopted by CERN in Geneva for other works contracted to the same company (toilet blocks), applied at a rate of 8 percent with effect from 1 February 2022.

In a subsequent "Report on the impact of the high cost of materials" dated 12 April 2022, Gruppo Dimensione SpA informed ITCILO of the exceptional circumstances under which all those involved in the production process were operating due to exponential increases in construction materials.

The contractor also listed the increases contained in the table in Ministerial Decree No 84 of 5 April 2022 as supporting evidence for its calculation of the average price increase percentages.

For some price items, the contractor also attached data taken from the monthly survey platform Pricepedia.it.

In addition to these tools, for some products not covered by the above Ministerial Decree, the contractor cited price changes in price lists or letters reporting increases sent by the major manufacturers of building materials (polystyrene, porcelain stoneware flooring, plasterboard and mineral wool, vinyl flooring and glass).

In the specific case of concrete, the requesting company cited changes in prices specific to the construction site in question charged to the contractor by Calcestruzzi SpA.

All price increase percentages were set out in three tables for the following material categories respectively:

building and structural works;

electrical/firefighting/data systems;

mechanical/water and plumbing systems.

To sum up, Gruppo Dimensione SpA calculated that the price increase compared to its previous request of 22 February 2022 should amount to a total of €. 568,952.54, corresponding to 16.79 percent of the agreed contractual amount.

Having examined the information provided by the contractor in its "Report on the impact of the high cost of materials" and related attachments, with particular regard to the type of reference data used as the basis for its calculations and the methods used to prepare them, my observations are therefore as follows:

- Article 44 of the Contract Agreement signed by the parties does not provide for any price review;

- the Contract was awarded on an individual basis and may be amended with the consent of both parties according to Article 16.2;

- with a gap of only two months between the first price review request dated 22 February 2022 and the subsequent report dated 12 April 2022, Gruppo Dimensione SpA calculated a percentage price increase of no fewer than 3.09 percentage points - from 13.70 percent to 16.79 percent. Furthermore, the company did not properly justify this increase in its calculations or in the explanatory part of the report;

- although the contractor referred to certain legislation to justify the compensation for material price increases/decreases, it adopted a different calculation method from that set out in that legislation: the calculation of the incremental percentages for the various materials does not appear to be uniform or in line with the provisions of the legislation relied on, especially as regards the percentage increases relating to concrete, insulation, aluminium sheets, flooring and cladding, silicon, aluminium, plasterboard, double-glazing, external fixtures and fittings and related polycarbonate components;

- Article 1-septies, paragraph 3 of Law No 106 of 23 July 2021 (extended and expanded by the 2022 Budget Law to cover works carried out and accounted for in the second half of 2021) provides that, "The compensation shall be determined by applying the upward or downward changes in the relevant prices identified by the Decree referred to in paragraph 1 to the quantities of the individual materials used in the works carried out and accounted for by the works manager from 1 January 2021 to 30 June 2021 (subsequently extended to 31 December 2021) with reference to the offer date, exceeding 8 percent if related exclusively to 2021 (...)". In addition, the Ministry of Infrastructure and Sustainable Mobility Explanatory Circular on "operating procedures for calculating and paying a price compensation for the most significant construction materials pursuant to Article 1-septies of Decree-Law No 73/2021, converted with amendments by Law No 106/2021" states, inter alia, that: "works accounted for in the calendar year that the offer was submitted are excluded from the compensation (...)".

In conclusion, the contractor's estimate does not seem to consider these legal provisions as it bases its analysis "on amounts for the works present in the contract's bill of quantities, deducting the sum for supplying materials from the initial totals that were inclusive of labour" (see "Report on the impact of the high cost of materials" of 12 April 2022).

Regarding the issue of uniformity when compiling and updating the regional price schedules, Legislative Decree No 4 of 27 January 2022, as amended, provides that, " (...) for contracts relating to works, the contracting authorities, may, for the purposes of determining the cost of the products, equipment and processes pursuant to Article 23, paragraph 16 of Decree-Law No 50 of 18 April 2016, increase or reduce the results of the regional price schedules referred to in paragraph 7 of Article 23, following the results of

surveys carried out by the Ministry of Infrastructure, and Sustainable Mobility on a six-monthly basis pursuant to paragraph 2 (...) of Article 11 of the aforementioned Decree.

I cannot therefore fully endorse the calculations carried by Gruppo Dimensione SpA – particularly as regards their estimated percentage of 16.79 percent of the entire amount of the contracted works - because they are irrelevant and refer to rules that are not applicable to this case - for which reference values are set out in tables not yet published in the Italian Official Gazette.

Notwithstanding the fact that it is desirable that an agreement should be reached between the parties with a view to an amicable settlement, ITICILO is not a public body but an international organization (article 16 Decree - law 50/2006). As such, it is not subject to the procurement code or private contract law but is only obliged to follow international law.

Theoretically, if the calculations carried out by the contractor as set out in the "Report on the impact of the high cost of materials" are left unchanged, and if the calculation methods set out in the "Post-Covid-19 Support Decree " (Decree-Law No 4 of 27 January 2022 converted into Law No 25 of 28 March 2022) are applied, the percentage price compensation for construction materials in this case would be approximately 12.76 percent of the contractual amount (€ 568,952.54 - 5 percent = € 540,504.91 x 80 percent = € 432,403.93).

However, in view of the construction material price increases during 2021 and 2022, I feel that the compensation proposed by Gruppo Dimensione SpA in its request dated 22 February 2022, i.e. the maximum percentage of 13.7 percent of the contractual amount of the works, is reasonable and acceptable.

I hope that this report answers all your questions. Please contact me if you need further clarification.

Turin, 26 April 2022
The technical consultant
Luca IMBERTI