

## **THE PRINCIPLE OF EQUIVALENCE IN PUBLIC PROCUREMENT PROCEDURES FOR MEDICAL DEVICES: APPLICATIVE LIMITS, BURDEN OF PROOF, AND THE LOGICAL SEQUENCE OF THE EVALUATION COMMITTEE'S ASSESSMENT**

The judgment of the Third Quater Section of the Lazio Regional Administrative Court (TAR Lazio-Rome), 30 March 2026, No. 5928, provides significant clarification regarding the proper application of the principle of equivalence within public procurement procedures.

The TAR Lazio upheld the appeal brought by the economic operator ranked second in a competitive tender procedure launched by the Umberto I University Hospital of Rome for the supply of specialist medical devices, annulling the award of the lot concerning a neuronavigation system for brain surgery that had been granted to the successful competing company, and ordering the Contracting Authority to proceed with a new award in favor of the claimant.

The ruling is of particular interest because it addresses, in a highly technologically complex sector such as medical devices, the applicative limits of the principle of equivalence and the conditions for the lawfulness of the related technical assessment carried out by the tender evaluation committee.

First of all, the Court reconstructs the doctrinal framework within which the principle of equivalence operates. In line with the established case law of the Council of State – particularly the judgments of the Third Section, 13 March 2025, No. 2066, and the Fifth Section, 2 July 2025, No. 5706 – the TAR reiterates that this principle, deriving from EU law, allows the Contracting Authority to admit tenders offering products that do not perfectly correspond to those described in the *lex specialis*, provided that they are capable of satisfying, in a substantially compliant manner, the required technical specifications.

However, this mechanism encounters an insurmountable limit in cases of *aliud pro alio*. Where the discrepancy in the tender is such as to amount to the proposal of a product substantially different from the one requested, its admission would ultimately undermine the very principle of competition that equivalence is intended to safeguard, since it could have discouraged the participation of other economic operators due to the apparently mandatory nature of the characteristics required by the tender documentation.

With regard to the classification of technical requirements, the Court – recalling the judgment of the Third Section of the Council of State, 9 May 2024, No. 4155 – clarifies that the distinction between structural specifications, which are excluded from the application of the principle of equivalence, and functional specifications,

which are excluded from the application of the principle of equivalence, and functional specifications, to which the principle may instead apply, does not depend on the intrinsic nature of the requirement itself. Rather, it depends on whether the *lex specialis* expressly identifies the objectives and administrative needs that the technical specification is intended to satisfy.

In the absence of such clarification – as in the case examined by the TAR Lazio, where Annex 1A merely described the characteristics of the neuronavigation system without indicating its functional purpose – the requirement must be classified as structural, with the consequent inapplicability of the principle of equivalence.

The aspect of greatest practical relevance in the decision, however, concerns the correct logical and procedural sequence of the equivalence assessment.

On this point, the TAR clearly states that such an assessment, being aimed at verifying the substantive admissibility of the tender and excluding that it constitutes a case of *aliud pro alio*, belongs to the tender admission phase and must necessarily precede, both logically and chronologically, the attribution of technical scores.

It is therefore not permissible to overlap the two evaluative stages. A committee that identifies technical discrepancies and merely reflects them in the attribution of a lower score, without issuing an express and reasoned assessment of equivalence, adopts an unlawful *modus operandi*. In the specific case, the Evaluation Committee had proceeded directly with the allocation of scores during the sessions held in September 2025, notwithstanding the fact that the successful tenderer had failed to submit – as expressly required by the tender rules and by point 1 of the technical specifications – any declaration of equivalence or the related supporting documentation.

The subsequent attempt to remedy this deficiency through a retrospective review of the tenders, carried out during the session of 30 October 2025 following the claimant's application for annulment in self-review proceedings, was deemed by the Court incapable of curing the original defects of the procedure. According to the TAR, an equivalence assessment formulated *ex post*, after the proposed award has already been adopted, constitutes an inadmissible reversal of the logical sequence imposed by public procurement law and amounts to an *ex post* reasoning intended to justify an assessment that should have been carried out at an earlier stage.

Likewise, the technical report prepared by the Administration during the judicial proceedings – lacking both date and signatures – was considered inadequate to remedy the motivational *deficit* of the procedure.

In conclusion, the judgment provides operational guidance of considerable interest for Contracting Authorities. It highlights the need to draft tender documentation by distinguishing between structural and functional requirements and, in the latter case, by expressly identifying the needs that the technical specification is intended to satisfy.

Where the *lex specialis* permits recourse to the principle of equivalence, the declaratory and evidentiary burden placed upon the tenderer must be specifically regulated, while failure to comply with such obligations must be assessed as grounds for the inadmissibility of the tender.

Finally, evaluation committees are required to formalize and provide reasons for the equivalence assessment during the admission phase, prior to any attribution of technical scores, avoiding improper overlaps between procedural stages that public procurement law necessarily keeps distinct.

Through this decision, the TAR Lazio reconstructs with particular rigor the doctrinal framework within which the principle of equivalence operates in public procurement law, reaffirming its pro-competitive function while at the same time precisely delineating its substantive and procedural boundaries.

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