INTRODUCTION

The concession of the new Brescia – Milan highway\(^1\) has been assigned through an international public bid, according to the proposal of Brebemi SpA as promoter in a Project Financing scheme. The selection of competitors has been accomplished in 2002, the provisional assignment has been given in 2003 and the definitive concession has been granted in 2004. The procedure followed the existing legislation at the bid start, the Merloni ter (109/94 and subsequent modifications).

The Merloni law has completely redrawn the public works concession procedure. First of all, the modification of its juridical nature is confirmed according to the EU regulations: the concession becomes a contract, not an administrative measure.

Second, it states that the object of the contract is constituted by:

- financing of works;
- definite and executive design
- works execution;
- infrastructure management, that is the right to organize and to sell the public service to people paying a toll.

During the bid development the law was changed (the new version is defined as Merloni quater) with some modifications about the concession obligations and the same bid procedures, but the previous version of the law was applied to this procedure as it was already started.

The main differences between the two laws are indicated in the following table

\(^1\) The new infrastructure is constituted by about 50 km highway and 50 km complementary roads, links the main economical areas of Lombardia and is situated in a very congested corridor.
The concession in a PF scheme according to the Merloni law

<table>
<thead>
<tr>
<th></th>
<th>Merloni ter</th>
<th>Merloni quater</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promoter pre-emption to the best competitors proposal through project adjustment</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Negotiation between promoter and competitors</td>
<td>Yes</td>
<td>Yes, with pre-emption right</td>
</tr>
<tr>
<td>Public contribution</td>
<td>Max 50%</td>
<td>Not fixed</td>
</tr>
<tr>
<td>Concession period</td>
<td>Max 30 years</td>
<td>Not fixed</td>
</tr>
</tbody>
</table>

The new law is facing some problems with reference to the competition (see in the table the pre-emption for the promoter), whereas the public financing (the new version admits a share higher than 50%) and the concession period (now even longer than 30 years) should be minor problems, unless past negative experience of the highway national concessionaires are considered (when the concession was still an administrative act).

**BID PROCEDURE ACCORDING TO THE CONCEDENT INTERPRETATION (AUCTION VS. NEGOTIATION)**

The main law aspect, sensitive and qualifying simultaneously, particularly in the first version, without the promoter pre-emption, is the negotiation phase.

In a first phase the law rules a bid to select two competitors vs. the promoter. This bid is organized according to the economically most advantageous proposal criteria (evaluation through a mix of technical and economical parameters), having the promoter design as the bid base.

**Quantitative and qualitative parameters adopted for the evaluation**

Parameters and relative weights have been defined to determine the economically most advantageous proposal. In this specific case the parameters and the weights were the following:

- operation procedure 20 points;
- technical-esthetical evaluation 12 points;
- toll level for users 18 points;
- concession period 16 points;
- construction period 15 points;
The selected parameters have been the same used in the first phase (selection of the competitors proposal), and with the same relative weights with the exception of the qualitative parameters (technical and esthetical evaluation and operation procedure). The selection of the only quantitative parameters strengthens the auction concept versus negotiation concept.

Certainly, this type of bid includes qualitative and trust aspects as well. Consequently, the public decision-maker has to be strong and have competence and skill to manage technically and economically the discussion with the promoter and the competitors. Some discretion in the evaluation and selection process of the winner is indeed inevitable. It is probable that the capability of negotiation could develop through experience and time. This bid to assign a concession of a completely new highway infrastructure was the first and unique in Italy; therefore the auction choice was probably unavoidable, considering also the guarantee in terms of transparency.

On the other hand the negotiation could have spared a few doubtful results from a technical standpoint. The negotiation could have also forced the grantor and the competitors to concentrate on more interesting and qualifying parameters, perhaps covering also designing aspects.

In particular the negotiation could have avoided to the competitors three raisings on some parameters that are:

- economical return 10 points;
- sub concession transfers 9 points.
- construction period, reached to a fantastic time of 31 months (not impossible, but objectively questionable);

- economical return that, selected the participants with adequate guarantees, dimensions, technical capabilities, etc., is not simply reducible, unless running the risk of financial feasibility, having simultaneously to guarantee good managing levels;

- last, the transfer to the grantor (ANAS) of a sub-concession revenues quote, parameter that shows some interests conflict of the decision-maker.

**BID RESULTS – CONSEQUENCES ON THE CLIENTS AND THE COMMUNITY, ON THE GRANTOR, ON THE CONCESSIONAIRE**

**First phase bid – Competitors Design Selection**

<table>
<thead>
<tr>
<th>Elements of proposal evaluation</th>
<th>Basis values of tender (Promoter design)</th>
<th>Values resulted from tender 1st phase (Competitors design)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tariff level (Euro/km)</td>
<td>Light vehicles 0.06998</td>
<td>0.0657812</td>
</tr>
<tr>
<td></td>
<td>Heavy vehicles 0.12443</td>
<td>0.1169642</td>
</tr>
<tr>
<td>Concession period (years)</td>
<td>30</td>
<td>25.5</td>
</tr>
<tr>
<td>Construction period (months)</td>
<td>48</td>
<td>42</td>
</tr>
<tr>
<td>Return (*)</td>
<td>20.70%</td>
<td>15.96%</td>
</tr>
<tr>
<td>Sub-concession rights to the grantor</td>
<td>2%</td>
<td>10%</td>
</tr>
</tbody>
</table>

(*) Operative costs/charge revenues average ratio, with reference to concession period

**Second phase bid – Concessionaire Selection**

<table>
<thead>
<tr>
<th>Elements of proposal evaluation</th>
<th>Basis values of tender (1st phase)</th>
<th>Values resulted from tender 2nd phase (negotiation) – last auction reaising</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Light vehicles</td>
<td>BREBEMI</td>
</tr>
<tr>
<td></td>
<td>0.0657812</td>
<td>points</td>
</tr>
<tr>
<td></td>
<td>0.05865</td>
<td>0.0615338</td>
</tr>
<tr>
<td></td>
<td>0.10428</td>
<td>0.1094091</td>
</tr>
<tr>
<td></td>
<td>0.1169642</td>
<td>18.00</td>
</tr>
<tr>
<td>Concession period (years)</td>
<td>25.5</td>
<td>21.96</td>
</tr>
<tr>
<td>Construction period (months)</td>
<td>42</td>
<td>37.97</td>
</tr>
<tr>
<td>Return (*)</td>
<td>15.96%</td>
<td>0.03</td>
</tr>
<tr>
<td>Sub-concession rights to the grantor</td>
<td>10%</td>
<td>28%</td>
</tr>
</tbody>
</table>

(*) Operative costs/charge revenues average ratio, with reference to concession period
The two tables show the bid consequences:

**Clients/Community**

- lower tariffs

- better performances, but some problems, particularly on the structures whereas quality becomes aesthetics (generally the beauty costs) and on some environmental interventions: the so-called design quality, a rather qualitative parameter, is objectively fragile in evaluation procedures that include more robust quantitative parameters.

**Grantor**

- the concession period is shorter

- the revenues derived by sub-concession rights increase (in this case there is not a contribution reduction, because absent in the promoter PF scheme)

**Concessionaire**

- the management of the procedures as approval, local agreement or the way to acquire, for example the land, is feasible in a weak condition: the timing function is a bid and financial constraint.

- There is the positive need to increase the efficiency of the building and operative procedures.

- The bid, as it seems from the results, should have already optimize the productivity. The applied convention with the grantor includes a price-cap mechanism. The characteristics of this price-cap underestimate, that this highway is completely new (to integrally build, without links with an existent network, a real PF, separated from other facts) with a recent high standard design. The present price-cap award the subjects that have a low service level (see for example the history of the restructuring of Milan – Turin highway or the Rome – Teramo to be re-assigned after the loss of the previous concession, won with a very low tariff, though aware of the scarce quality at that time and the forecast of toll rapid increase) and not the subject that starts with high levels, or that wins a bid building inclusive. In case of a new highway, with design qualitative standards, at least initially included in the bid procedures, it is not clear the mechanism of a tariff incentive to reach higher standard: it seems enough to fix maintenance technical parameters and to control adequately that activities are carried out.
SPECIFIC PROBLEMS

Project modifications after the bid

The assignment on the basis of the preliminary project must take into account all the adproptive procedures and the modifications in environment sector (EIA) or related to the agreement (territorial requests).

It is important to point out that the law admits the possibility to revise the concession, also through the prorogation of the concession period. All the variations to the assumptions and to the basis conditions, derived from the grantor administration decisions or from new rules or laws that modify the pricing mechanism or the management procedures, if affecting the economical-financial equilibrium, require the revision of concession conditions.

The hypothesis of the concession revisions is admitted also in case of modifications in favour of the concessionaire, this aims at avoiding extra profit situations (not applicable in this case).

Furthermore the new formulation of the law (art. 2 comma 3) indicates that grantors can extend the works assigned under concession exclusively according to the UE directive 93/37. That directive, although related to the works assigned by contract and not by concession, indicates for example that it is possible to assign, with negotiation the complementary work extensions not included in the initial project, but become necessary to complete the works, directly to the works builder.

1. When the works cannot be technically or economically separated from the main contract without heavy disadvantages for the awarding administrations;

2. When the works, although separable from the initial contract, are strictly necessary to its completion.

The cumulated amount for the complementary works must not exceed the 50% of the amount of the principal contract.

Apart from the formal aspect it would be interesting to monitor the differences of the project, of the amount, changes of tariffs or of concession period between the values defined through the bid procedures and those effectively realized.

Grantor and Planning Institution role

The national choices about concessions that impact on restricted areas have some difficulties of dialog at the local level (Region, Provinces and Municipalities). The preliminary phases management is complicated: the promoter does not play a definite role until its formalization is completed; the dialog between Grantor Institution
(ANAS) and the principal Planning Institution (Region) does not develop on the strategic planning aspects, but it is possible only on the single and definite project.

**Local Planning and Pricing**

Local ordinances and directives, after bid procedures, can invalidate some results obtained through the bid: changes of the route layout, environmental modifications, different structures are often tending to make worse the economical – financial framework.

The single PF work vice versa could not optimize a network scenario, whose management should be opportunely unitary.

The lack of public resources, when this type of interventions impact on the economical balance of the concessionaire, prevents substantially a widening of this aspect.

Even local requests for a free or discounted use of the infrastructure granted to the residents in the Municipalities crossed by the highway, or for new accesses to the highway, etc., enter with difficulty in a PF scheme, if not part of a complete planning. In that case the Public Institution has to consider hypotheses of direct contribution, in case it wants to maintain the governance on the traffic and territory.