



MEASURES FOR DEFINITION OF MODEL TENDER NOTICES TO
BE COMPLIED WITH BY MOTORWAY CONCESSIONAIRES FOR
THE AWARD OF FUEL AND LUBRICANT, CNG AND LNG
DISTRIBUTION SERVICES AND OF COMMERCIAL AND
CATERING SERVICES

ART

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INTRODUCTION

Pursuant to article 37 (2) (g), of decree-law no 201/2011, the regulatory measures set out herein are related to the definition of model tender notices to be complied with by motorway concessionaires for the award of the new sub-concessions for fuel and lubricant distribution services and commercial and catering services, pursuant to article 11 (5-ter) of law no 498/1992, as well as to the distribution services of compressed natural gas (hereinafter: CNG) and liquified natural gas (hereinafter: LNG), pursuant to article 18 (5) of legislative decree no 257/2016.

The regulatory measures below are also provided with reference to the nature of services of general economic interest to which the motorway network concessions and the services rendered by the motorway concessionaires are subject, in order to favour, *inter alia*, the full and optimal use of the infrastructure by the users.

Chapter 1 DEFINITIONS, PURPOSE AND SCOPE

Measure 1. Definitions

For the purpose of these regulatory measures, the following definitions shall apply:

- 1.1 **Authority** (hereinafter also: **ART**): the Transport Regulation Authority.
- 1.2 **Highway Code** (hereinafter also: **HC**): New Highway Code, referred to in Legislative Decree No 285 of 30 April 1992.
- 1.3 **Highway Code Rules** (hereinafter also: **HC Rules**): rules implementing and enforcing the new Highway Code, referred to in Presidential Decree No 495 of 16 December 1992.
- 1.4 **'A'-type road** (hereinafter, also: **Motorway**): pursuant to article 2 (3) of the HC, a suburban or urban road with independent or separate carriageways with uncrossable central reservations, each one with at least two traffic lanes, left paved roadside, if any, and emergency lane or right paved roadside, with no cross at grade or private accesses, fenced and equipped with user assistance systems along the entire route, reserved for traffic of certain categories of motor vehicles and marked by special start and end signs. It must be equipped with appropriate service and parking areas, both with access through acceleration and deceleration lanes.
- 1.5 **Service facilities**: pursuant to article 24 (4) of the HC, *service areas*, with associated facilities for refuelling and refreshment, *parking areas*, areas and buildings for road maintenance or however intended by the owner of the road to be permanently and exclusively at the service of the road and its users.
- 1.6 **Area concerned**: for the purpose of these regulatory measures, area concerned shall mean each service facility where fuel and lubricant, CNG and LNG services or commercial and catering activities are provided.
- 1.7 **Grantor of the concession**: public or private entity granting the motorway concessionaire the administrative powers pertaining to the construction and/or management of a motorway infrastructure, in accordance with the procedures and terms governed by the existing legislation and the concession agreement.
- 1.8 **Motorway concessionaire** (hereinafter also: **MC**): entity, either public or private, in charge of the construction and/or management of the motorway infrastructure under concession, in accordance with the procedures and terms governed by the existing legislation and the concession agreement.
- 1.9 **Concession agreement**: contract, including the relevant annexes, governing the concession relationship between the grantor of the concession and the concessionaire, relating to the construction and/or management of a motorway infrastructure.
- 1.10 **Sub-concessionaire** (hereinafter also: **SC**): economic operator that, following the tendering procedure, has been awarded the service or activity to be carried out in the areas concerned.
- 1.11 **Sub-concession agreement**: contract between the concessionaire and the sub-concessionaire, following the public tendering procedure, which defines terms and procedures for the provision of the services and the performance of the activities covered by the public tendering procedure.

- 1.12 **Fuel distribution in "served" mode:** distribution mode in which fuel is dispensed by petrol station workers and paid to them.
- 1.13 **Fuel distribution in "self-service postpaid" mode:** distribution mode in which fuel is dispensed by users and paid to the cashier.
- 1.14 **Fuel distribution in "prepaid self-service" mode:** distribution mode in which fuel is dispensed by users, following payment through automatic collection devices, in the absence of operators.
- 1.15 **Commercial and catering activities in "restaurant" mode:** activity aimed at supplying motorway users with food and beverages, pursuant to article 5 (1) (a) of law no 287/1991.
- 1.16 **Commercial and catering activities in "bar" mode:** activity aimed at supplying motorway users with food and beverages, pursuant to article 5 (1) (b) of law no 287/1991.
- 1.17 **Commercial and catering activities in "market" mode:** activities aimed at providing motorway users with the following:
- a) sale of food products, including typical local products, fresh takeaway products, preserved and in any case separate and packaged products that do not require handling and/or preparation on site;
 - b) sale of non-food products: products for health and wellness, household items, travel items, clothing and accessories, audiovisual products, electronic items, gifts, stationery, toys, souvenirs and typical local handicraft products, etc;
 - c) sale of complementary products and services such as: newspapers, magazines, tobacco, national lotteries, including instant, so-called scratch cards, phone cards/top up cards, etc.
- 1.18 **"Under shelter" activities:** activities referred to in article 28 (8) of decree-law no 98/2011.
- 1.19 **Code:** the Code of Public Contracts approved by Legislative Decree No 50 of 18 April 2016.
- 1.20 **Elementary section:** motorway network segment between one entry and/or exit point and the next.
- 1.21 **Award of service:** award, by tendering procedure, of distribution services of fuels and lubricants, CNG, LNG, commercial and/or catering activities.
- 1.22 **Award report** (hereinafter: **AR**): report drawn up by the MC which forms an integral part of the documentation governing the awarding procedure, aimed at ensuring adequate conditions of transparency and assessment of the compliance of the choices made with the measures set out in this document.
- 1.23 **PRM:** persons with disabilities or reduced mobility.

Measure 2. Purpose and scope

- 2.1 Pursuant to article 37 (2) (g) of legislative decree no 201/2011, the regulatory measures set out herein refer to the definition of model tender notices to be complied with by motorway concessionaires for the award of new sub-concessions referred to under Measure 2.2.
- 2.2 Subject to the regulatory measures outlined in this document is the award by motorway concessionaires of the following:
- a) distribution services of fuels and lubricants and commercial and catering activities in the relevant areas of the motorway networks, pursuant to article 11 (5-ter) of law no 498/1992;
 - b) CNG and LNG distribution services, pursuant to article 18 (5) of legislative decree no 257/2016.

Chapter 2 STAGE OF AWARD OF SUB-CONCESSIONS

Measure 3. Functional classification of the areas concerned

- 3.1 For the purpose of the award of concessions for the services and activities referred to in Measure 2.2, the MC is required to classify the areas concerned falling under its responsibility in relation to the annual traffic levels achieved on average, on the sections directly pertaining to such areas, in the five years preceding the year in which the awarding procedures are carried out, as well as to the fuel supplied and the turnover of all the services provided and all the activities performed, net of the turnover pertaining to fuel distribution activities, accommodation activities and electric charging services, achieved on average in the same period in such areas.
- 3.2 For this purpose, the areas concerned are divided into the following classes:
- a) class 1: areas located on elementary sections with a traffic volume exceeding 8,200,000 vehicles/year in the specific direction of travel on the served carriageway, with turnover exceeding € 5,800,000 per year and fuel supply exceeding 2,200,000 litres per year;
 - b) class 2: areas that do not meet the criteria of a) above and c) below;
 - c) class 3: areas located on elementary sections with a traffic volume of less than 2,000,000 vehicles/year in the specific direction of travel on the served carriageway, or with turnover of less than € 800,000 per year or fuel supply of less than 1,100,000 litres per year.
- 3.3 With reference to the areas concerned, the modes of provision and the types of award of the services and activities carried out therein shall be determined according to the class of the area concerned as defined under Measure **Errore. L'origine riferimento non è stata trovata.**
- 3.4 In order to ensure adequate coverage of the minimum service levels for motorway users, subject to the approval of the grantor of the concession, the MC may reclassify under class 2 some of the areas concerned which, on the basis of the criteria set out in Measures **Errore. L'origine riferimento non è stata trovata.** and **Errore. L'origine riferimento non è stata trovata.**, would fall under class 3.

Measure 4. Award of services and activities carried out in the areas concerned

- 4.1 In the areas concerned falling under class 1, the MC shall provide for a number of awards for each area concerned, so that there are
- (a) at least one ("oil") SC carrying out fuel distribution services, sale of lubricants and other motor vehicle ancillary products, as well as vehicle assistance services and, if provided, CNG and LNG distribution services; the award also includes "under shelter" activities, subject to the provisions of paragraph 4.5;
 - (b) at least two different ("non oil") SCs carrying out commercial and catering activities; the awards include the management of collective sanitary facilities, possibly in common. If, in the procedure, tenders are submitted by a smaller number of entities than the number of the planned SC, the MC may apply for a derogation pursuant to paragraph 4.6, in order to provide for one "non oil" award only.
- Upon initial application, the obligation under (b) shall apply as of the expiry of any sub-concession in force, subject to adequate reorganisation of the areas by the MC.
- 4.2 In the areas concerned falling under class 2, the MC shall provide for a number of awards for each area concerned, so that there are
- (a) at least one ("oil") SC carrying out fuel distribution services, sale of lubricants and other motor vehicle ancillary products, as well as vehicle assistance services and, if provided, CNG and LNG distribution services; the award also includes "under shelter" activities, subject to the provisions of paragraph 4.5;
 - (b) at least two different ("non oil") SCs carrying out commercial and catering activities; the award includes the management of collective sanitary facilities.

The MC may apply for a derogation pursuant to paragraph 4.6, in order to provide for:

- i. a unitary ("oil + non oil") award including the services referred to under (a) and (b) above;

- ii. a bundled unitary award ("oil + non oil") including the services referred to in (a) and (b) above for several areas concerned.

4.3 In the areas concerned falling under class 3, the MC shall provide for a unitary award ("oil + "non oil") including fuel distribution services, sale of lubricants and other motor vehicle ancillary products, vehicle assistance services (and, as the case may be, CNG and LNG distribution services), commercial and catering activities and management of collective sanitary facilities.

The CA may apply for a derogation in accordance with paragraph 4.6, in order to provide for a bundled unitary award ("oil + non oil") covering several areas concerned.

4.4 In the case of "oil" awards, the exercise of "under shelter" activities is always allowed, in compliance with the same modalities of performance indicated under letter e) of Measures 11.1, 11.2 and 11.3 for commercial and catering activities, in relation to the modalities of supply.

4.5 In the event of separate "oil" and "non oil" concessions in the same area, the MC shall take this circumstance into account in the planning of the tenders, in order to ensure transparency, equity and non-discrimination among sub-concessionaires operating in competition in the same area. In this regard, in particular, the MC shall:

- i. ensure the necessary transparency, already in the preparation of the "catering" tendering procedures, regarding the "under shelter" activities under the "oil" concession;
- ii. set out, in the "oil" tenders, criteria for evaluating the technical offer that also relate to the "under shelter" activity, also providing for the transfer of the ensuing commitments to any transferee operator;
- iii. identify the compensation mechanisms to be introduced, in favour of the "catering" SC(s), in the event that the "under shelter" activity commences at a later stage;
- iv. provide, in the fixed component of the consideration referred to in Measure 12.4 (a), for forms of contribution, to be borne by the "oil" SC(s) and the SC(s) of charging services for electric vehicles, aimed at covering any common costs relating to services awarded to the "catering" SC(s).

4.6 The derogations referred to in Measures 4.1 (b), 4.2 and 4.3 shall be authorized by the grantor, having obtained the Authority's comments in the context of the evaluation of the AR under Measure 8. For this purpose, the MC shall submit an appropriate application in the AR containing adequate and documented justification regarding the sustainability of the sub-concession operations; in this case, the terms referred to in Measure 8.2 are doubled and, after the expiration of the term referred to in the second sentence of the same Measure, the request for a derogation may in any case be submitted to the grantor.

Measure 5. Necessary goods for the performance of services and activities under sub-concession

5.1 Necessary goods for the performance of the awarded services are those instrumental goods for which the following conditions are cumulatively met: a) non-shareability; b) non-substitutability; c) non-duplicability at socially sustainable cost.

5.2 For the purpose of launching the award procedures provided for under these measures, the MC shall identify the list of necessary goods, in accordance with principles of reasonableness and proportionality, so as to ensure maximum contestability of the awarded services.

5.3 The MC shall ensure that the necessary goods are fully available to the SC from the time the service is awarded, according to the following procedures:

- a) by making available to the new SC, in accordance with pre-established procedures, any necessary goods directly owned by the MC;
- b) for the goods owned by the MC and arising from investments of the incumbent SC which, upon expiry of the relevant sub-concession, have not exhausted their useful life, the MC guarantees the takeover by the new SC throughout the term of the new contract, ensuring that the incumbent SC receives by the new SC the compensation determined pursuant to article 178 (7) of legislative decree no 50/2016;
- c) for necessary goods owned by third parties, the MC shall ensure availability to the new SC throughout the term of the new contract, including on the basis of a fee identified on the basis of the market value of such goods, as determined by the owner through sworn expert estimates.

- 5.4 In the tender documentation, the MC shall:
- i. publish the list of the necessary goods referred to in Measure 5.2 and the manner in which they are made available to the new SC;
 - ii. identify in advance the goods, deriving from investments to be charged to the new SC in the context of the award procedure, which are regarded as necessary at the expiry of the concession, for the purpose of the new award, to be included in the simulated economic financial plan referred to in Measure 6.3; the latter shall also comprehend, for those goods, a prior estimate of the takeover value at the expiry of the sub-concession, to be determined in accordance with article 178 (7) of legislative decree no 50/2016 in connection with appropriate assessments to be adequately justified in the Award Report referred to in Measure Misura 8, with reference to useful life and depreciation criteria of the goods concerned in the period of the award.
- 5.5 Instrumental goods owned by the incumbent SC which do not cumulatively meet the characteristics set out in Measure 5.1 are commercial goods, which are therefore not necessary for the performance of the awarded services and activities. Following the award procedure, these goods may be subject of side agreements between the incumbent SC and the new SC, should the latter be interested in their purchase.

Measure 6. Contract period

- 6.1 The MC shall assess the infrastructure level of the areas concerned, and any need for the SC to carry out investments of significant economic value.
- 6.2 The sub-concession period shall be determined by the MC for each award between 5 and 12 years, on the basis of the assessments referred to in Measure Misura 6 and taking into account the provisions under Measure 5 concerning the necessary goods, in order to ensure that the SC is able to appropriately recover the investments provided for therein, on the basis of criteria of proportionality and reasonableness, together with an appropriate return on the capital invested. For investments made by the incumbent sub-concessionaire, which are not amortised upon expiry of the concession, article 178 (7) of legislative decree no 50/2016 shall apply.
- 6.3 In order, *inter alia*, to justify its choices for the contract period, the MC shall attach to the Report of Award a simulated economic financial plan, aimed at verifying in advance whether the sustainability of these choices, taking into account, *inter alia*, the provisions of Measures 14.4 and 14.5.
- 6.4 The MC shall provide for the explicit prohibition for the SC to enter into contracts for the award of the management of the activity to third parties ending after the expiry of the sub-concession.

Measure 7. Economic value of sub-concession

- 7.1 The tender documentation shall indicate the methodology of calculation of the estimated value of the award based on objective and transparent criteria.
- 7.2 The estimated value of the award is determined net of taxes (VAT and excise duties) and of any public contributions in compliance with the provisions of the Code and is calculated on the basis of the turnover that are assumed to be produced by the services and activities under subconcession for the contract period.

Measure 8. Report of Award and minimum content of sub-concession agreements

- 8.1 The MC shall identify the subconcessions to be awarded and the award procedures in accordance with the criteria set out in this Chapter, drawing up the relevant Award Report (hereinafter AR), that shall be adequately justified.
- 8.2 The AR shall be transmitted to the Authority for the purpose of its supervision at least 60 days in advance of the initiation of the related award procedure. The Authority may provide remarks within the following 45 days, unless the procedure is suspended up to a maximum of 60 days. Upon expiry of this term, the MC may continue with the further activities for the initiation of the award procedure.
- 8.3 Following the public tendering procedure for the choice of the SC, prior to the commencement of the awarded services and activities, the MC and the SC shall conclude a sub-concession agreement, in accordance with the minimum content set out in Annex 1 pertaining to the type of service or activity to be awarded. The draft

agreement shall be annexed to the tender documentation governing the award procedure, as an integral and substantial part thereof.

Measure 9. Participation conditions and requirements

- 9.1 The MC shall define in the tender documentation the conditions for participation of the undertakings concerned, by ensuring, where applicable, compliance with the relevant legal provisions on technical and operational suitability, economic and financial capacity and integrity.
- 9.2 In order to ensure maximum participation of the operators concerned in the tender procedures, the participation requirements shall be defined in accordance with the following general principles:
 - a) relevance and proportionality with respect to the subject of the tender;
 - b) non-discrimination, by ensuring equal treatment in case of level playing field, to protect all potential tender participants.
- 9.3 The MC shall define an appropriate quantification and harmonisation of the above-mentioned requirements, with particular reference to those relating to economic and financial capacity and technical and operational suitability, in order to:
 - a) avoid oversize of the technical and economic parameters, such as to cause substantial impediment to the participation of potentially concerned parties;
 - b) balance the allocation of specific requirements for the undertakings concerned, in relation to the subjective characteristics of the parties (individual or multi-individual operator), without prejudice to the prohibition of discriminating against an economic operator in relation to the location in a given territory.
- 9.4 In the context of the RoA, the MC specifies the reasons supporting the inclusion of any participation requirement, to clearly show the reasonableness of its estimates and the proportionality with regard to the tender specificities, as well as the absence of discriminatory effects to the detriment of potential participants.

Measure 10. Risk allocation

- 10.1 The MC shall identify the types of risk related to the awarded services and activities and defines a matrix for the allocation of such risks to each of the contractual parties (MC and SC). The matrix, together with the supporting reasons, is annexed to the RoA.
- 10.2 In any event, the operational risk, as defined in article 3 (1) (zz) of the Code, related to the management of the services and activities referred to under Measure 2.2, is borne by the SC.
- 10.3 With respect to the nature and intensity of the different types of risk identified, as well as the relevant allocation to each of the contractual parties, the MC shall specify, in the documentation governing the award procedure, and describe in the risk matrix, any measures to mitigate the allocated risks, including as to the allocation of any deviations in the final traffic volumes as compared to the parameters indicated by the MC in the tendering procedure.
- 10.4 The risk matrix, as drawn up by the MC in accordance with the relevant measures adopted by ANAC¹ in this area, forms an integral part of the documentation governing the award procedure and of the associated sub-concession agreement. The matrix shall provide the references to the parts of the agreement governing the contractual obligations related to the identified risks.

¹ Italian Anti-corruption Authority (TN)

Measure 11. Modalities to be applied for the performance of the activities and services in the context of award procedures

11.1 In the areas concerned falling under class 1:

- a) the fuel distribution services shall be offered every day of the year, 24 hours a day, providing for a number of dispensing pumps which is appropriate to the level of traffic on the served carriageway and ensuring, in any case, both the "served" and "self-service postpaid" modes;
- b) services for the sale of lubricants and other motor vehicle accessories shall be offered every day of the year, at least from 6 a.m. to 10 p.m.;
- c) vehicle assistance services shall be offered every day of the year, at least from 6 a.m. to 10 p.m., ensuring at least routine and minor maintenance and repair work of motor vehicles that are not included in the self-repair activity, as well as the 24-hour availability of a tyre inflation station and a water supply point;
- d) CNG and LNG distribution services shall be offered every day of the year, 24 hours a day, on the basis of the "plan for delivery of electric, CNG and LNG charging services" referred to in article 18 (5) of legislative decree no 257/2016;
- e) commercial and catering activities shall be offered every day of the year, ensuring that a number of operators are in place and providing for the following:
 - i. in the case of "bar" mode, opening to the public 24 hours a day, also based on shift working, in the time slot between 10:00 p.m. and 6:00 a.m., of the operators in the area concerned, including those referred to in Measure 4.4. The identification of shifts shall be carried out in a transparent and non-discriminatory manner;
 - ii. in the case of "restaurant" mode, opening to the public at least from 12 p.m. to 3 p.m. and from 6 p.m. to 10 p.m.;
 - iii. in the case of "market" mode, opening to the public 24 hours a day, also based on shift working, in the time slot between 10 p.m. and 6 a.m., of the staff workers operating in the area concerned, including those referred to in Measure 4.4. The identification of shifts must be carried out in a transparent and non-discriminatory manner;
- f) collective sanitary facilities shall be offered every day of the year, 24 hours a day, and include toilets for adults and children, showers, and baby-changing tables; sanitary facilities for the disabled shall be guaranteed.

11.2 In the areas concerned under class 2:

- a) the fuel distribution services shall be offered every day of the year, 24 hours a day, providing for a number of dispensing pumps which is appropriate to the level of traffic on the served carriageway and ensuring, in any case, both the "served" and "self-service postpaid" modes;
- b) services for the sale of lubricants and other motor vehicle accessories shall be offered every day of the year, at least from 6 a.m. to 10 p.m.;
- c) vehicle assistance services shall be offered every day of the year, at least from 6 a.m. to 10 p.m., ensuring at least routine and minor maintenance and repair work on motor vehicles that are not included in the self-repair activity, as well as the 24-hour availability of a tyre inflation station and a water supply point;
- d) CNG and LNG distribution services shall be offered every day of the year, 24 hours a day, on the basis of the "plan for delivery of electric, CNG and LNG charging services" referred to in article 18 (5) of legislative decree no 257/2016;
- e) commercial and catering activities shall be offered every day of the year, providing for the following:
 - i. in the case of "bar" mode, opening to the public 24 hours a day, also based on shift working, in the time slot between 10:00 p.m. and 6:00 a.m., of the staff operating in the area concerned, including those referred to in Measure 4.4. The identification of shifts shall be carried out in a transparent and non-discriminatory manner;
 - ii. in the case of "restaurant" mode, opening to the public at least from 12 p.m. to 3 p.m. and from 6 p.m. to 10 p.m.;
 - iii. in the case of "market" mode, opening to the public 24 hours a day, also based on shift working, in the time slot between 10 p.m. and 6 a.m., of the workers operating in the area concerned, including those

referred to in Measure 4.4. The identification of shifts must be carried out in a transparent and non-discriminatory manner;

- f) collective sanitary facilities shall be offered every day of the year, 24 hours a day, and include toilets for adults and children, showers, and baby changing tables; sanitary facilities for the disabled shall be guaranteed.

11.3 In the areas concerned under class 3:

- (a) the fuel distribution services shall be offered every day of the year, 24 hours a day, providing: (i) at least from 6 a.m. to 10 p.m. the fuel delivery both in "*served*" and "*self-service postpaid*" modes; (ii) from 10 p.m. to 6 a.m., the fuel delivery in "*self-service prepaid*" mode, provided that adequate supervision is ensured in the manner laid down in the applicable regulations;
- (b) services for the sale of lubricants and other motor vehicle accessories shall be offered every day of the year, at least from 6 a.m. to 10 p.m.;
- (c) vehicle assistance services shall be offered every day of the year, at least from 6 a.m. to 10 p.m., ensuring at least routine and minor maintenance and repair work on motor vehicles that are not included in the self-repair activity, as well as the 24-hour availability of a tyre inflation station and a water supply point;
- (d) CNG and LNG distribution services shall be offered every day of the year, on the basis of the "*plan for delivery of electric, CNG and LNG charging services*" referred to in article 18 (5) of legislative decree no 257/2016, at least from 6 a.m. to 10 p.m.;
- (e) commercial and catering activities shall be offered every day of the year, providing for the following:
 - i. in the case of "*bar*" mode, opening to the public at least from 6 a.m. to 10 p.m., ensuring the 24-hour supply of food and beverages to the public by means of vending machines in areas exclusively dedicated to this activity;
 - ii. in the case of "*restaurant*" mode, where provided by the MC, opening to the public at least from 12 p.m. to 3 p.m. and from 6 p.m. to 10 p.m.;
 - iii. in the case of "*market*" mode, where provided by the MC, opening to the public at least from 6 a.m. to 10 p.m.;
- (f) collective sanitary facilities shall be offered every day of the year, 24 hours a day, and include toilets for adults and children, and baby changing tables; sanitary facilities for the disabled shall be guaranteed.

Measure 12. Determination of fees

- 12.1 The fee to be paid by the SC to the MC is the charge for access and occupation of the part of the state-owned motorway which is covered by the award, from which the SC derives economic benefits.
- 12.2 For this purpose, the MC, as concession holder of the management of the motorway State property under its responsibility, is required to set the level of the fee to be paid by each SC, by taking into account the risk allocation referred to in 0, in accordance with the principles of transparency, equity, non-discrimination, reasonableness and proportionality, while ensuring the cost containment for motorway users.
- 12.3 To this end, the level of the fee is related to:
 - a) a share of the relevant and efficient annual costs — that are not recovered by the MC through the toll paid by the motorway users or through public contributions, if any — which are actually incurred for the construction and operational management of the infrastructure of general and common interest pertaining to the part of the public motorway covered by the award, the management of which is not directly awarded to the SC on an exclusive basis;
 - b) the benefit obtained by the SC for the commercial exploitation of the access to the motorway infrastructure and to the allocated State property, taking into account, in connection with the investments necessary for the performance of the SC's activities, any public funding for which the MC and the SC are required to provide adequate reporting to the Authority;
 - c) the acknowledgement to the SC of an adequate cost coverage of the services under Measure 11.

12.4 The fee — which includes the concession fee that shall be paid by the MC, too, to the grantor of the concession pursuant to article 1 (1020) of Law No 296 of 27 December 2006 and to the provisions of the concession agreement — consists of the following components:

- a) a fixed annual component, which is determined *ex ante* by the MC, corresponding to the relevant share of the annual costs referred to in Measure 12.3 (a).

For the purpose of determining this share, the MC is required to:

- i. quantify the above annual costs as a whole, on the basis of:
 - depreciation and return on capital relating to the constructed infrastructure;
 - planned activities, as identified in the concession relationship, including with reference to past operational management, taking into account similar activities and their prices of reference identified in the territory where the area is located;
- ii. having deducted the share at its own expense, allocate these costs among the SCs operating in the same part of the motorway state property covered by the award, on the basis of transparent, equitable and non-discriminatory criteria.

This component is set by the MC itself and cannot be subject to best-value bid by tender participants.

The annual costs concerning the administrative, accounting and operational management of the award, as well as those relating to the performance of the tendering procedures, except for those that are explicitly regulated by relevant legislation, are entirely borne by the MC;

- b) an annual variable component, which is related to the benefit referred to in Measure 12.3 (b), expressed in EUR per unit of volume or weight delivered or in percentage shares of the SC's turnover.

This component is set as tender price at 0 by the MC itself, cannot provide for minimum guaranteed quantities and is subject to best-value bid by tender participants.

For the definition of this component, the MC shall also establish *ex ante*: (i) the threshold values of the supply/turnover volumes, incrementally with respect to those reasonably estimated by the same MC, which shall correspond to progressive reductions in the EUR per unit of volume or weight or percentage share offered by the participant; (ii) the measure of such progressive reductions.

- c) a negative annual fixed component, established *ex ante* by the MC, consisting of the adequate coverage referred to in Measure 12.3 (c).

For this purpose, the MC, in relation to the cost coverage of the services under Measure 11, shall take into account:

1. the costs of personnel which is strictly necessary to ensure the management of activities for the night time slot (10 p.m. – 6 p.m.);
2. the costs of raw materials, subsidiary materials, consumables and goods, for personnel, for services, which are strictly related to the 24-hour operation and maintenance of collective sanitary facilities.

This component is set by the MC itself and cannot be subject to best-value bid by tender participants.

12.5 The fee, as determined in the tendering procedure and covered by the sub-concession agreement, is subject to annual update, applicable from the 1st of January of each year of the award starting from the second, in an amount equal to the annual variation in the consumer price index for blue and white-collar worker households (ISTAT FOI), net of tobacco, as published in the month of September of the previous year. This annual update excludes the variable components of the fee, if expressed in percentage shares of the SC's turnover.

12.6 In the context of the RoA, the MC shall specify the level of the fees to be established as tender price, as well as the reasons supporting their determination, to clearly show the reasonableness of its estimates and the proportionality with regard to the tender specificities, as well as the absence of any discriminatory effects to the detriment of potential participants.

12.7 If the procedures for awarding the services and activities to be carried out in the areas concerned as referred to under Measure 4 and Measure 12 do not result in the identification of a concessionaire, the MC shall provide the Authority with adequate and documented justification - on the basis of a new simulated economic financial plan, to be taken as a basis for the following competitive tendering procedures – as to the need of identifying the

essential services to be guaranteed through the acknowledgement of the coverage of the costs which are strictly functional to the service and of an adequate remuneration for the service operator.

- 12.8 Within the scope of its remit in this field, the Authority shall ensure that the level of the fees established by the MC in the tender notices is in line with the criteria set out in 0 and adequately complies with:
- a) pursuit of the public interest related to the enhancement of the motorway infrastructure;
 - b) incentive of competition;
 - c) respect for the principles of transparency, equity, non-discrimination, reasonableness and proportionality;
 - d) cost containment for users, businesses and consumers.

Measure 13. Tender evaluation criteria

- 13.1 In order to award the contract on the basis of the most economically advantageous tender, the MC shall set out in the tender documentation:
- a) the awarding criteria, that are linked to the identified objectives of effectiveness and efficiency, by differentiating technical and qualitative parameters from exclusively economic parameters, which may not affect more than 30% of the score, pursuant to article 95 (10-a) of the Code of Contracts;
 - b) the procedures of assessment of these criteria, together with the relevant weighting and scoring systems.
- 13.2 The MC shall lay down the awarding criteria in compliance with general transparency principles governing the award procedure, proportionality and cost-effectiveness in respect to the services to be awarded, equal treatment and non-discrimination to the benefit of all potentially concerned operators, environmental protection and energy efficiency, so as to ensure:
- a) that the stage of assessment of the technical offer is clearly separated from that of the evaluation of the economic offer of each tender participant, including by ensuring that the scope of assessment of the technical offer is not affected by exclusively economic parameters;
 - b) that, in the weighting, the criteria of the technical offer prevail, in accordance with the principles laid down in article 11 (5b) (b) of Law No 498/1992.
- 13.3 The awarding criteria shall be adopted by the MC in accordance with the relevant ANAC Guidelines.
- 13.4 The MC shall lay down in the tender documentation the procedures for assessment of the individual criteria (and sub-criteria, if any) on the basis of adequate justifications, by establishing, where possible, algorithms for the calculation of the scores that will be adopted by the tender evaluation committee.
- 13.5 In the determination of the scoring methods for each of the criteria adopted, the MC shall favour the adoption of criteria that are based on quantitative or tabular methods and shall comply with the following principles:
- a) the entire score scale should be used to the maximum extent possible in order to enhance the differences between the commitments made by tender participants;
 - b) the differences in score obtained by tender participants must be representative of the commitments made. Hence, two candidates making different commitments cannot receive the same score under the same sub-criterion;
 - c) in order not to distort the commitment made by each candidate, the methodology must not provide for automatic zero scoring for the lowest tender, unless this deviates from the tender terms and conditions;
 - d) it is preferable to avoid evaluation systems involving the awarding of scores to clusters of offers through the pre-determination of threshold values. Such systems lead to unjustified score differences when two tenders are close to each other but do not belong to the same cluster, or to insufficient score difference when tenders are significantly different but belong to the same cluster.
- 13.6 In the determination of the assessment criteria of the technical offer, the MC shall take into account at least the following objectives of efficiency and effectiveness of the award:
- a) technical design of the area, in terms of layout, functionality and accessibility;
 - b) strategy of the supply, including in terms of number of brands made available and continuity of the services offered;
 - c) mix of publicly available products and services;

- d) variety and quality of the products offered, and quality and accessibility of the services and activities;
- e) variety and quality of the products offered in the basket under Measure 14.5;
- f) efficiency of management;
- g) environmental sustainability.

13.7 Among the criteria for the assessment of the economic offer of the awards, the MC shall consider, with a weighting at least equal to half of the weighting given to the variable component of the fee for fuel, CNG or LNG distribution, and at least equal to one third of the weighting given to the variable component of the fee for commercial and catering activities, the criteria based on price limitation referred to in Measures 14.4 and 14.5, respectively.

13.8 In order to discourage excessive best-value tenders, for the assessment criterion of the economic tender, the MC shall provide for the application of non-linear formulas of the following type:

$$V_i = \left(\frac{R_i}{R_{max}} \right)^\alpha$$

where:

V_i score given to the i-th competitor;

R_i best value offered by the i-th competitor, assessed in absolute terms with reference to the entire contract period, based on the volumes of supply/turnover estimated *ex ante* by the MC according to criteria of reasonableness;

R_{max} maximum best value among the offers made by competitors, assessed in absolute terms with reference to the entire contract period, on the basis of the volumes of supply/turnover estimated *ex ante* by the MC according to criteria of reasonableness;

α coefficient greater than 0 and less than or equal to 0.3;

13.9 The MC verifies whether there is a reasonable balance between the criteria relating to the variable component of the fee and those relating to price limitation, so that none of the tender participants is led to concentrate its bid on one of the two sets of criteria as being more advantageous in terms of scoring.

13.10 In the tender documentation the MC shall provide for the following:

- a) publication of the criteria adopted to define the simulated economic financial plan referred to in Measure 6.3;
- b) that participants in the procedure include their economic financial plan in the tenders, together with a report, in order to prove its sustainability compared to the plan simulated by the MC, and for the purpose of verification of any inconsistencies.

13.11 The MC shall verify that the conduct of the tender evaluation committee complies with the procedures and evaluation criteria as previously identified.

13.12 In the context of the RoA, the MC shall specify the awarding criteria it intends to adopt, and the reasons supporting their definition, to clearly show the reasonableness of its estimates and the proportionality with regard to the tender specificities, as well as the absence of discriminatory effects to the detriment of potential participants.

13.13 The Authority shall ensure that the awarding criteria adopted by the MC are in line with the criteria set out in 0 and adequately comply with:

- a) pursuit of the public interest related to the enhancement of motorway infrastructure;
- b) incentive of competition;
- c) respect for the principles of transparency, equity, non-discrimination, reasonableness and proportionality;
- d) cost containment for users, businesses and consumers.

Measure 14. Limitation and transparency of prices to the public

- 14.1 The limitation of the prices offered to the public for the awarded goods and services is a primary objective of the MC.
- 14.2 With regard to the limitation of prices offered to the public for fuels and catering services, in the areas concerned where only one award is provided in the RoA for such cases, the MC provides in the tender documentation for the following:
- a) definition of specific commitments to be borne by the participants, which are assigned appropriate scores during the assessment of the tenders, taking into account the specific criteria set forth in Measure 13.7;
 - b) application of price monitoring and control systems over the term of the award, and application of specific penalties, which may also include the termination of the contract, in case of non-compliance with the commitments undertaken during the tendering procedure in accordance with the provisions of subparagraph a).
- 14.3 Without prejudice to the provisions under Measure 4.1 for the areas concerned under class 1, for the purpose of the application of the provisions of this Measure in the areas falling under class 2 and class 3, if the "under shelter" activities qualify as a second "catering" award, they shall be considered as such, for regulatory purposes, if they are carried out in the same area concerned and under separate sub-concession, only for the supply of goods and services matching with those indicated in Measure 14.5 below. With reference to the case referred to in the preceding sentence, if the supply of such goods and services in the context of the "under shelter" activity is commenced after the "catering" award, the application of the aforesaid Measure 14.5 shall cease for the same goods and services.
- 14.4 For the different types of fuel, the MC puts out to tender the maximum percentage mark-up offered by the participants, calculated starting from the basic unit price² obtained by adding the relevant international reference price and excise duty, taking into account all other costs that contribute to pump pricing. The amount resulting from the application of the mark-up offered by the successful tenderer on the aforementioned basic unit price constitutes, in the period of validity of the sub-concession, the maximum pump price, as periodically calculated and updated in accordance with the provisions of these measures, which may be charged by the SC during the concession for the distribution of each type of fuel, in the "self-service prepaid" mode or in the "served" mode only for the types of fuel for which self-service distribution is not provided. The dynamics resulting from the charged prices and the estimated sales quantities shall be analytically justified in the economic and financial plan referred to in Measure 13.10 (b). This justification shall analytically indicate the cost items to be borne by the motorway SC for the performance of the service, taking into account that the adequate cost coverage of the services referred to in Measure 11 is already provided for in Measure 12.3 (c), and that the above-mentioned maximum percentage mark-up offered by the participants already includes the reasonable profit margin. The SC shall update the maximum price as determined above on a monthly basis.
- 14.5 With reference to a basket, predetermined by the MC itself, of catering consumer goods and services in the area in question, the MC establishes a price list as a tender basis, making reference to the average monthly listing of such goods and services for the territory where the area is located, as resulting from the latest publication available on the institutional website of the Ministry of Economic Development (MISE). Considering the goods and services that make up the aforementioned list, each participant shall draw up its bid, in terms of upward/downward percentage. The amount resulting from the application of the upward/downward percentage offered by the successful tenderer, with respect to the price list used as a tender basis, constitutes, in the period of validity of the subconcession, the maximum price, as periodically calculated and updated in accordance with these measures, that may be charged by the SC during the validity of the award for the supply of the goods and services included in the basket; the dynamics resulting from the offered price list and the estimated sales quantities shall be justified in detail in the economic and financial plan referred to in Measure 13.10 (b). This justification shall analytically indicate the cost items to be borne by the motorway SC for the performance of the service, taking into account that: i) the adequate cost coverage of the services referred to in Measure 11 is

² e.g. *Platts CIF Med* for refined petroleum products listed therein, etc.

already provided for in Measure 12.3 (c); ii) the amount resulting from the application of the upward/downward percentage to the above-mentioned average monthly listing available on MISE's website includes only the costs borne by the SC, other than those referred to in letter i) above, and the reasonable profit margin of the goods in the basket. The maximum price determined in the tendering procedure and covered by the sub-concession agreement is subject to annual updating, applicable from the 1st of January of each year of the award starting from the second, in an amount equal to the annual variation in the consumer price index for blue and white-collar worker households (ISTAT FOI), net of tobacco, as published in the month of September of the previous year. The pre-determined basket shall include goods and services which are clearly identified and attributable, if offered in the area concerned, at least to categories of services similar to "espresso coffee at the bar", "cappuccino at the bar", "sandwich at the bar", "meal at the pizzeria" and "meal at the fast-food restaurant" and at least to categories of goods similar to "mineral water", "sparkling drink" and "fruit juice", as in the Price and Tariff Observatory (consumer goods and services category) of the Ministry of Economic Development. The MC defines in the tender documents the quantitative and qualitative characteristics of the goods and services constituting the basket.

- 14.6 The participant's commitments in relation to the following may also be covered by a technical offer in relation to:
- a) price difference for different modes of delivery and payment;
 - b) existing agreements of maximum price to the public, promotional initiatives and loyalty programmes.
- 14.7 The MC shall ensure monitoring for the entire contract period, at least on a monthly basis, so that the price charged by the SC or by entities selected by the SC for the distribution of each type of fuel in the "self-service prepaid" mode, or in the "served" mode for the only types of fuel for which self-service is not provided, does not exceed the maximum price covered by the tendered commitment by the SC, and at least every six months so that the price charged by the SC for the distribution of each catering good and service included in the predetermined basket does not exceed the maximum price covered by the commitment tendered by the SC. Analytical evidence of price monitoring for the entire period shall be submitted to the Authority every six months for the exercise of its supervisory powers.
- 14.8 In both the tender documentation and sub-concession contracts, the MC shall include provisions aimed at ensuring the publication by the SC, with reference to both fuel distribution and catering activities, of the prices of all sold products and services, both on site (in a position clearly visible to users) and on the internet in real time and open data format, so that they are also accessible through individual portable devices. For goods and services subject to price limitation under this Measure 14, the publication shall also be ensured with reference to the maximum prices to be charged following the award.

Measure 15. Assessment of quality of services

- 15.1 The MC shall specify in the documentation governing the awarding procedure:
- a) the quality objectives to be pursued by the SC in the award period. These quality objectives shall identify minimum obligations and/or performance to ensure that the essential requirements of motorway users are met in relation to the awarded services and activities;
 - b) the related sanctioning system to be applied to the SC in case of failure to achieve the quality objectives, in accordance with the principles of reasonableness and proportionality;
 - c) the indicators and related target values identified by the MC for assessment of the performance of the SC and achievement of the quality objectives, in the context of the thematic areas defined in Measure 15.2.
- 15.2 The quality assessment system shall provide for the identification by the MC of at least one indicator for each of the following thematic areas of electric charging services, where relevant for each award:
- a) for fuel distribution services:
 - i. availability of refuelling points with respect to the average traffic flows on the route served;
 - ii. availability of stations with respect to total refuelling points;
 - iii. accessibility and assistance for PRM;
 - iv. level of congestion of refuelling points;

- v. level of user satisfaction with regard to available refuelling points, accessibility for PRM and availability of innovative technologies;
 - vi. use of Intelligent Transport Systems (ITS) to share information about the availability of refuelling points and their prices.
- b) for services other than those referred to under (a):
- i. availability, in relation to user clusters, of all the following: catering services; sanitary facilities; showers (where provided);
 - ii. level and frequency of cleaning of sanitary facilities and catering areas;
 - iii. illumination of all areas inside the rest areas and toilets;
 - iv. availability of monitors inside the catering areas for autonomous vehicle surveillance;
 - v. availability of automatic systems for all the following: opening of doors in the catering areas, including sanitary facilities; automatic water control for hand-wash sinks, automatic soap and towel dispensing, automatic flush toilets;
 - vi. level of user satisfaction with respect to all the following: variety, quality and information provided on the catering services offered; availability of sanitary facilities, showers (where provided); accessibility and assistance for PRM to all areas inside the contracted facilities; cleanliness of sanitary facilities and catering areas; illumination of all areas inside the catering areas and sanitary facilities.
- 15.3 In compliance with the aims and specificities of these measures and with the sanctioning system adopted for this purpose, the MC shall establish in the sub-concession agreement the monitoring and reporting obligations to be borne by the SC and the procedures for assessment and verification of the performance under its responsibility, in accordance with criteria that ensure effectiveness and efficiency of the solutions adopted, maximum transparency and accessibility of data and results by the stakeholders involved, together with their regular publication and sharing.
- 15.4 The monitoring of the performance by the SC may be carried out either automatically or through manual collection with periodic data reporting to the MC. In the event of automatic monitoring, the SC shall take any necessary steps to allow the MC access to the information systems for retrieval of the necessary data and verification of the indicators adopted. As part of the monitoring activities, the SC shall provide for customer feedback systems to collect and analyse any complaints and suggestions for improvement, including by accounting for any measures adopted.
- 15.5 The MC shall carry out the verification activities, also through random checks, at least every month. The choice of the items to be checked may be supplemented by considering the information arising either from alerts and/or complaints, and from customer satisfaction surveys. The controls include, in any case, those necessary to verify the accessibility conditions of services for PRM.
- 15.6 The qualitative and quantitative levels of the services defined in the sub-concession agreement are subject to periodic assessment, which is carried out at intervals of no more than five years, if consistent with the contract period.
- 15.7 In the context of the RoA, the MC shall specify the rules adopted for quality assessment and related sanctioning system, together with the reasons supporting their definition, to clearly show the reasonableness of its estimates and the proportionality with regard to the tender specificities, as well as the absence of discriminatory effects to the detriment of potential participants
- 15.8 The Authority shall ensure that the rules adopted by the MC for quality assessment and related sanctioning system comply with the criteria set out in O.
- 15.9 During the award procedures, and in the ensuing documents, the MC shall include a special provision containing the mobile reference to the regulation that may be adopted by the Authority in the exercise of its powers, with including the definition of the minimum content of the specific rights, including compensation, that may be claimed by users against the SCs (or the entities identified by them for the provision of the awarded services to final customers, as the case may be), pursuant to article 37 (2) (e) of Legislative Decree No 201/2011.

Chapter 3. STAGE OF IMPLEMENTATION OF SUB-CONCESSIONS

Measure 16. Monitoring of sub-concession and sanctioning system

- 16.1 The MC shall establish in the sub-concession agreement an adequate monitoring system of the service with reference to the economic, technical, management and qualitative performance under the contract, by specifying responsibilities, procedures, instruments and timing for data collection, reporting and transmission, any other useful information and documents.
- 16.2 For this purpose, the MC shall lay down in the contract, for each group of services:
- a) type of data, information and documents (reports/final statements) to be made available by the SC in relation to the indicators under the sub-concession agreement, as well as associated penalties in case of non-compliance;
 - b) procedures for the performance of the verification activities within its remit;
 - c) any obligations of the SC concerning the performance of regular surveys on expected and perceived quality of the service (customer satisfaction surveys), by ensuring the involvement of users and consumer associations, in compliance with the rules governing the service quality assessment.
- 16.3 The MC shall regulate the contents referred to under Measure 16.2, including to ensure that the SC forwards in due time the information within its remit, that is preparatory to the launch of a new award procedure. In this respect, the MC shall define in the sub-concession agreement the applicable penalties in case of non-compliance by the SC.
- 16.4 The data, information and documents referred in 0 shall be made available by the SC to the MC in editable electronic format, unless otherwise provided for in the sub-concession agreement.
- 16.5 The aforementioned data, information and documents are held by the MC; in order to ensure maximum transparency in the contract management, they are published on the MC's website, in particular with reference to:
- a) existing sub-concession agreement;
 - b) existing service charters;
 - c) outcome of customer satisfaction surveys;
 - d) main economic, technical, management and qualitative indicators under the sub-concession agreement.
- 16.6 The sub-concession agreement shall define a grading sanctioning system that is applicable to the SC in case of infringement of the contractual rules, in accordance with the principles of proportionality and seriousness of the applicable penalty, which may give rise, in case of repeated and particularly serious infringements, to the termination of the contractual relationship.
- 16.7 The MC shall provide in the sub-concession agreement specific obligations to be borne by the SC with regard to the transmission to the MC of the quantitative elements that are necessary for the assessment of the management sustainability and shall provide for the related transmission to the Authority on an annual basis. This information shall include at least the final data on the implementation of the economic and financial plan attached to the tender in the context of the awarding procedure.
- 16.8 Without prejudice to the requirements set out in the previous paragraphs, the monitoring system shall also be defined on the basis of the relevant information provided by ANAC.

Measure 17. Prohibition of extension/renewal of the sub-concession agreement

- 17.1 The tender documentation may not contain clauses providing for automatic renewal or extension of the sub-concession agreement.
- 17.2 The period of the existing sub-concession agreement may be amended, where provided for in the tender documentatin, only for the time that is strictly necessary for the conclusion of the procedures for the identification of the new concessionaire pursuant to article 106 (11) of the Code.
- 17.3 In the cases referred to in Measure 17.2, the SC is nevertheless required to perform its contractual obligations at the same prices, under the same terms and conditions as set out in the existing sub-concession agreement.

- 17.4 Upon expiry of the sub-concession agreement, the SC is obliged to continue the operation of the service or of the activities under the same conditions as provided for under the existing agreement, until the management is transferred to the economic operator that has been awarded the concession on the basis of the tendering procedure.
- 17.5 For the purpose of awarding the new sub-concession, the MC shall undertake to initiate the procedures well in advance, in any case not less than 18 months before the end of the sub-concession, in order to ensure a seamless management of the service and activities in the areas concerned.
- 17.6 In the event of early expiry of the sub-concession, for any reason, the MC shall endeavour to promptly initiate the necessary award procedure, in any case no later than 90 days of the expiry date.

Measure 18. Force majeure, withdrawal and termination of sub-concession agreement

- 18.1 The tender documentation, together with its annexes, provides for a non-exhaustive list of cases in which the contracting parties cannot be held liable for non-compliance or delayed compliance with the obligations agreed upon, if the non-compliance is caused by serious events of force majeure, which in no way depend on the will of the parties or, in any case, by events that are not subject to the control of the parties. In the event of a severe and substantiated change in the economic and financial equilibrium of the sub-concession, due to events of force majeure, to be indicated in the contract as an illustrative, but not exhaustive, example, the agreement may be renegotiated.
- 18.2 Force majeure includes, but is not limited to, the following: general strikes, natural disasters, wars, embargoes, sabotage, riots, prohibitions and/or impediments laid down by laws and/or regulations that entered into force after the conclusion of the sub-concession agreement, acts involving the exercise of powers conferred by public law, expropriation and seizure of property, judicial, regulatory and administrative acts for events that are not attributable to the party concerned by such acts. Financial and economic shocks and changes in the macroeconomic scenario are not regarded as force majeure.
- 18.3 The tender documentation, together with its annexes, regulates the cases of withdrawal from the contract, and of the termination of the contract pursuant to art. 1456 of the Civil Code.
- 18.4 Without prejudice to the provisions of the legislation in force, the MC may withdraw from the sub-concession agreement with immediate effect, even before the commencement of the service, if the SC is placed in liquidation or is subject to winding up by the Court or to other insolvency proceedings or is in a state of suspension of the commercial activity. Any other cases of withdrawal by the MC to be indicated in the tender documentation shall remain unaffected.
- 18.5 If the events referred to in Measure 18.4 relate to the MC, the SC may exercise the same rights of withdrawal.

Without prejudice to force majeure, in the event of a significant and substantiated decrease in revenues and provided that at least 5 years have elapsed from the conclusion of the sub-concession agreement, the SC may withdraw from the contract provided that it has paid the fees due.