



POLICY RECOMMENATIONS

Regulation on approving the list of contracting entities and the minimum transparency requirements for conducting procurement

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Policy recommendations

Regulation on approving the list of contracting entities and the minimum transparency requirements for conducting procurement

In 2015, the Republic of Moldova adhered to the Public Procurement Agreement, concluded at Marrakech on 15 April 1994, and to the Public Procurement Agreement as amended by its Protocol of Amendment, signed at Geneva on 30 March 2012, and which will be implemented under the terms of WTO's Public Procurement Committee decision no. GPA/ 131 of 16 September 2015, including the A and B Annexes to that decision, and the Additional Decision GPA/131/Add. I of 17 February 2016¹. In these circumstances, our country has undertaken more commitments within international framework-organizations, recognizing:

- **the integrity and the predictability of the public procurement system** are an integral part of the **efficient and effective management of public resources**, of the performance of the parties' economies and of the functioning of the multilateral trading system;
- the need for an **effective multilateral framework for public procurement** with a view towards ensuring its **liberalization and extension**, and **improving the international trade framework**;
- the importance of implementing **transparency measures in the sphere of public procurement**, of conducting public procurement procedures in a **transparent and impartial manner, and of avoiding conflicts of interest and corruption practices** in accordance with international instruments, such as the United Nations Convention Against Corruption;
- the importance of **employing electronic means** for the procurements envisaged in the above-mentioned Agreement;
- the necessity to take into considerations the **development, financial and commercial needs of the developing countries**.
- public **procurement measures should not be prepared, adopted or applied in such a way as to provide protection to domestic suppliers** of goods or services or to discriminate between foreign suppliers of goods or services;
- below, we, therefore, propose a list of **contracting entities that will be bound to follow the procurement rules** in line with their commitments as well as with the mandatory transparency criteria of the public procurement process.

¹ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=365458>

1. Contracting entities to be subject to the Regulation:

1. Presidency of the Republic of Moldova;
2. Apparatus of the Parliament of the Republic of Moldova;
3. Apparatus of the Government of the Republic of Moldova;
4. Ministry of Foreign Affairs and European Integration of the Republic of Moldova;
5. Ministry of Internal Affairs of the Republic of Moldova;
6. Ministry of Agriculture, Regional Development and Environment;
7. Ministry of Defense of the Republic of Moldova;
8. Ministry of Finance of the Republic of Moldova;
9. Ministry of Education, Culture and Research;
10. Ministry of Justice of the Republic of Moldova;
11. Ministry of Health, Labor and Social Protection of the Republic of Moldova;
12. Ministry of Economy and Infrastructure;
13. State Chancellery;
14. The National Bank of Moldova;
15. Court of Accounts;
16. Supreme Court of Justice;
17. Constitutional Court;
18. General Prosecutor's Office;
19. National Commission of the Financial Market;
20. Competition Council;
21. Public Property Agency;
22. Agency for Consumer Protection and Market Surveillance;
23. Energy Efficiency Agency;
24. Electronic Governance Agency;
25. Public Services Agency;
26. Project Implementation Unit
27. National Anti-Doping Agency;
28. Information Technology and Cyber Security Service;
29. Public Procurement Agency;
30. National Agency for Solving Complaints;
31. State Tax Service;
32. Customs Service;
33. National Regulatory Agency for Electronic Communications and Information Technology of the Republic of Moldova;
34. National Agency for Energy Regulation;
35. State Agency for Intellectual Property;
36. The Investment Agency;
37. Medicines and Medical Devices Agency;
38. Technical Supervision Agency;
39. Agricultural Intervention and Payment Agency;
40. National Agency for Food Safety;
41. State Ecological Inspectorate;
42. State Hydrometeorological Service;
43. Agency of Geology and Mineral Resources;
44. The National Agency for Regulation of Nuclear and Radiological Activities;
45. The Agency for Environment and Natural Resources;
46. National Insurance Company in Medicine;
47. The National House of Social Insurance;

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| 48. State Protection and Guard Service; | 57. Information and Security Service; |
| 49. National Agency for Employment; | 58. Tourism Agency; |
| 50. the State Labor Inspectorate; | 59. Civil Aviation Authority of the Republic of Moldova; |
| 51. The Interethnic Relations Agency; | 60. Judicial Courts; |
| 52. National Bureau of Statistics; | 61. Courts of Appeal; |
| 53. Border Police; | 62. Prosecutor's Office; |
| 54. Material Reserves Agency; | 63. Military courts; |
| 55. National Anticorruption Center; | 64. Prisons; |
| 56. National Integrity Authority; | 65. Police Inspectorates |

II. Public local entites

Local authorities, as defined in the local public administration Law no. 436-XVI of December 28, 2006. Additionally, the local public authorities, as defined in the aforementioned law, include their subordinated bodies and organizations, which are under the supervision and control of these authorities.

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| 1. Chişinău Municipality; | 9. Criuleni; | 21. Ocniţa; |
| 2. Bălţi Municipality; | 10. Donduşeni; | 22. Orhei; |
| Second-level local authorities (district councils): | 11. Drochia; | 23. Rezina; |
| 1. Anenii Noi; | 12. Dubăsari; | 24. Rîşcani; |
| 2. Basarabeasca; | 13. Edineţ; | 25. Sîngerei; |
| 3. Briceni; | 14. Făleşti; | 26. Soroca; |
| 4. Cahul; | 15. Floreşti; | 27. Străşeni; |
| 5. Cantemir; | 16. Glodeni; | 28. Şoldăneşti; |
| 6. Călăraşi; | 17. Hânceşti; | 29. Ştefan Vodă; |
| 7. Căuşeni; | 18. Ialoveni; | 30. Taraclia; |
| 8. Cimişlia; | 19. Leova; | 31. Teleneşti; |
| | 20. Nisporeni; | 32. Ungheni. |

III. The public authorities of the Autonomous Territorial Unit of Gagauzia, according to the provisions of the Law of the Republic of Moldova on the special status of Gagauzia (Gagauz-Yeri) no. 344-XIII of 23 December 1994.

IV. All legal entities (authorities, institutions and foundations) of public law and not of an industrial or commercial character, the acquisitions of which are covered by the Public Procurement Law No.96-XVI of 13 April 2007:

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| 1. Academy of Sciences; | 11. Public educational institutions; |
| 2. The National Library; | 12. Public universities; |
| 3. The Academy of Public Administration; | 13. Museums; |
| 4. Special Telecommunications Center; | 14. Public libraries; |
| 5. Chamber of Commerce and Industry of the Republic of Moldova; | 15. Theaters, opera, philharmonic, houses and public centers for culture; |
| 6. National Olympic and Sports Committee of the Republic of Moldova; | 16. Public journals; |
| 7. Official Gazette; | 17. Public publishers; |
| 8. National Audiovisual Public Broadcasting Company TeleRadio-Moldova; | 18. Public schools, cultural inspectorates and cults; |
| 9. Post of Moldova; | 19. Federations and sports clubs; |
| 10. Centers and institutions of research; | 20. Hospitals, sanatoriums, clinics, medical units, forensic institutes, ambulance stations; |

Also, all legal entities, which have been deemed by the Government of the Republic of Moldova, in accordance with Article 13 (4) of the Public Procurement Act no. 131 of July 3, 2015, as contracting authorities and which have, as one of their activities, any of the following sectors:

1. Production, transporting and distribution of the drinking water:

- 1.1. All public entities producing, transporting and distributing drinking water to the fixed network for providing services to the public.

2. Production, transport and distribution of electricity and / or heat (heating and hot water):

- 2.1. Termoelectrica S.A.
2.2. All other public entities producing and distributing heat (heat and hot water) to the fixed network for the provision of public services.

3. Ports or other terminal facilities:

- 3.1. The port of Giurgiulești.

4. Airport facilities:

- 4.1 Chişinău Airport;
- 4.2 Bălţi Airport;
- 4.3. Cahul Airport;
- 4.4. Mărculeşti Airport.

5. Urban transport:

- 5.1. Public entities providing passenger transport services

6. Railway transport.

We recommend the inclusion in the regulation of clear rules stipulating that the contracting entities list also includes state-owned enterprises, municipal enterprises, legal entities (LLC, JSC) where the state and the territorial administrative units hold shares. At present, the provisions of Article 13 of the Public Procurement Law no. 113/2015 are misinterpreted by the above-mentioned subjects in the sense that they are not contracting authorities. Consequently, the above-nominated companies do not carry out public procurement procedures under public procurement law in accordance with the following principles:

- a) efficient use of public money and minimizing the risks for contracting authorities;
- b) the transparency of public procurement;
- c) ensuring competition and combating anti-competitive practices in the field of public procurement;
- d) protecting the environment and promoting sustainable development through public procurement;
- e) maintaining public order, good morals and public safety, protecting health, protecting the lives of people, flora and fauna;
- f) liberalization and expansion of international trade;
- g) the free movement of goods, the freedom of establishment and of the the provision of services;
- h) equal treatment, impartiality, non-discrimination with regard to all bidders and economic operators;
- i) proportionality;
- j) mutual recognition;
- k) assuming responsibility in public procurement procedures.

As a rule, acquisitions made by the above-mentioned entities are carried out on the basis of internal regulations regarding the procedure for the procurement of goods, works, and services, approved by the governing bodies (the board of directors). Exceptions are the license holders in the sectors of electricity, thermoenergetic, natural gas and the operators providing public water supply and sewerage services, which are governed by the Regulation approved by the ANRE Board of Directors' Decision no.24 / 2017 of 26.01.2017.

Obligatory transparency requirements for the above-mentioned entities

1. **The above-mentioned entities should conduct procurement through the SIA RSAP (MTender) Electronic Procurement System** which ensures a high level of transparency throughout the whole procurement cycle;
2. **The publication of information on planned purchases (the procurement plan and the notice of intent)**, including:
 - Data on the contracting entity (name, the state identification number, address, telephone number, e-mail and internet address, as well as contact details of the person in charge of the procurement procedure);
 - A brief description of the purchase object;
 - Estimated purchase value;
 - Information on batch splitting, if applicable;
 - Other relevant documents, if applicable.
3. **For every procurement procedure, the contracting entity will post a detailed notice for participation** which will include the following information:
 - Data on the contracting entity (name, IDNO, address, telephone number, e-mail and internet address, as well as contact details of the person in charge of the procurement procedure);
 - The Internet address from which the free, direct, full and cost-free access to the awarding documentation can be obtained;
 - CPV codes; if the contract is divided into batches, this information must be provided for each of them;
 - Description of the acquisition: nature and extent of the works, nature and quantity or value of the goods, nature, and extent of the services. If the contract is divided into batches, this information must be provided for each of these batches.
 - The estimated value of the contract(s), if the contract is divided into batches, this information must be provided for each of them.
 - Schedule for delivery of goods, execution of works or provision of services and, if possible, the duration of the contract.
 - The list and the short description of eligibility criteria for economic operators that may lead to their removal (the introduction of the Single European Procurement Document as an eligibility document) and the selection criteria, the minimum level of necessary requirements;

- The type of procurement procedure and, where applicable, the motivation to use an accelerated procedure;
- If the contract is divided into batches, it should be stated whether it is possible to submit bids for a single batch, for multiple batches, or for all batches. Any limitations on the number of batches attributable to the same bidder should be also indicated.
- Criteria used for awarding the contract/contracts;
- The deadline for receiving offers;
- Any other relevant information.

4. *The contracting entity shall publish information on the award of the public procurement contract*, including:

- The name, IDN, address, telephone number, fax number, e-mail address and the internet address of the contracting entity.
- Type of contracting authority and its main field of activity.
- CPV codes.
- Description of the procurement: nature and extent of the works, nature and quantity or value of the goods, nature, and extent of the services. If the contract is divided into batches, this information must be provided for each batch.
- Type of the awarding procedure; in the case of a negotiated procedure without prior publication of a contract notice, the justification for this choice.
- Date of the conclusion of the contract;
- The number of bids received, including from other countries.
- For each award, the name, address, telephone number, fax number, e-mail and internet address of the winning bidder (s), including:
 - a) the mention whether the successful tenderer is from among the category of small and medium businesses;
 - b) whether the contract was awarded to an association of economic operators (mixed company, consortium, or others).
- The value of the winning bid(s), or the value of the highest bid and lowest bid taken into account for the awarding of the contract, or contracts.
- Name and address of the appeal body and, where appropriate, of the mediation body. Exact information on the deadlines for appeals procedures or, where applicable, the name, address, telephone number, fax number and e-mail address of the office from which this information can be obtained.
- Date of publication of the participation notice.
- Date of submission for publication of the awarding notice.
- The contract published in full;
- Any other relevant information.

5. The official web pages of public authorities at central and local level must be effective tools for open access of data on public procurement procedures and contracts. Pursuant to the provisions of point 15, sub-paragraph 20¹ of the Government Decision no.188 of 3 April 2012 with regard to the official websites of the public administration authorities on the Internet, on these pages public procurement data will be published containing information on the annual procurement plan, the notice of intent, the results **and other public interest information relevant to the field of public procurement.**

Other public procurement information that is recommended to be made available to the public:

- a) the contracts concluded between the tenderer and the nominated contractor/subcontractor as specified in the bid or at a later time, in order to become acquainted with their activities and with the values to which amount the contracts they have executed in the past (according to art.75 paragraphs 12 and 13 of the Law no.131 / 2015).
- b) amendments to the public procurement contracts (according to art. 76 of the Law no.131 / 2015).
- c) tax invoices for public contracts (examples of best international practices).
- d) quarterly, half-yearly, and annual monitoring reports on the execution of public procurement contracts (according to point 34 of the Regulation on the work of the public procurement working group, approved by Government Decision no.667 of May 27, 2016, they will be placed on the website of the contracting authority. If such a page is not available, then the mentioned data should be posted on the official website of the superior central authority or on that of the local second level local public administration).

Finally, we reiterate the need for state-owned enterprises, municipal enterprises, and legal entities (LLC, JSC) where the state and the territorial administrative units hold shares, to use the SIA RSAP (MTender) electronic public procurement system. It is also recommended that they publish on their web pages (alternatively on the founders' web pages) information on announced and completed public procurement procedures (see the 2nd of this document).

In conclusion, we would like to point out that the recommendations in this document have the potential to contribute in an essential manner to the increase in the transparency, efficiency, and effectiveness of the purchases conducted by entities using public resources. The implementation of electronic procurement, in this case, the use of the SIA RSAP electronic procurement system (MTender), will bring a number of benefits to the entities mentioned, including:

- **Large-scale participation of economic operators** in the launched procurement procedures, which in its turn will ensure an increased degree of competition;
- Streamlining spendings and fortifying the budgets by achieving savings as a result of increased transparency and competition;
- **Reducing the administrative burden and making administrative resources (human, financial, etc.) more efficient** by carrying out the entire procurement process in an electronic format, and phasing out paper purchases that consume officials' time, as well as administrative and budgetary resources.

