



# POLICY RECOMMENDATIONS

**The regulation on public procurement of works**

Chisinau 2019

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## The regulation on public procurement of works

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# POLICY RECOMMENDATION

## ***The regulation on public procurement of works***

### Introductory note

The need to amend the Regulation on public procurement of works came up with the amendment of the primary legal framework, namely the Law on Public Procurement (no.131 / 2015). The Ministry of Finance, which ensures the regulation of state policy in the field of public procurement by elaborating and promoting the primary and secondary legal framework, has developed the draft of the Government Decision amending the Regulation on the public procurement of works for the purpose of updating the secondary regulatory framework to the new provisions of the Law 131/2015, which came into force on 26 July 2018 (with the Law no. 169 for amending the Public Procurement Law 131/2015 - PPL). The respective amendments to the Law 131/2015 entered into force on 1 October 2018.

Through the aforementioned project, the Ministry of Finance has proposed to regulate an efficient and transparent procurement mechanism, which will ensure the procurement of works, the development of the documentation for the design of the works, the construction works of any type and the installation of facilities related to them, as well as the timely intervention works for consolidating the existing constructions (modernization, restorations, alterations, transformations, expansions and capital repairs), in accordance with the needs of the contracting authorities.

However, a month later, the primary legal framework was again amended (by Law no. 319 of 30.11.2018 for the amendment of the PPL 131/2015. These amendments, by which the thresholds required for the application of the public procurement procedures were increased, entered into force on 14 December 2018.

**Higher thresholds for low value purchases**

For purchases of works – the threshold was increased from 100,000 lei to **250,000 lei**

**Higher thresholds for purchases through the Request for price Quotation (RfQ)**

For purchases of works – the threshold was increased from 1,500,000 lei to **2,000,000 lei**

## Policy Recommendation

Under these circumstances, the Regulation on the public procurement of works needs to be properly adjusted in accordance with the latest amendments to PPL 131/2015, amendments which entered into force on 14 December 2018. It is therefore recommended that the Ministry of Finance adjust the Regulation and subsequently forward it to public consultations.

Thus, there are a number of policy recommendations to be considered in the process of aligning the Regulation to the new amendments to PPL 131/2015.

### **1. Revising the terms of the Regulation and adjusting them to the primary legal framework governing the field (PPL 131/2015).**

ACTUAL PROVISION	POLICY PROPOSAL	ARGUMENTS
<b>Public procurement contract - contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities for the procurement of project documentation services.</b>	To review the two terms that has to be harmonized with the primary legal framework (PPL 131/2015).	Under the PPL 131/2015, a public contract is a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities, and which has, as its object, the acquisition of goods, the execution of works or the performance of services. Also, in the PPL 131/2015, <i>the public procurement contract</i> is the contract which has as its object: a) the execution or design and execution of works related to one of the activities listed in Annex no. 11; b) the execution or design and execution of a work other than those referred to in point a); c) carrying out a work that meets the requirements established by the contracting authority exercising a decisive influence over the type or design of the work;
<b>Entrepreneurial contract - contract for pecuniary interest, with the object to acquire the execution of public works, concluded in writing between one or more economic operators and one or more contracting authorities, thereby establishing the mutual rights, obligations and responsibility of the parties and by which the contractor undertakes to execute a certain amount of work for the beneficiary, and the beneficiary undertakes to take over and pay for the executed works.</b>		

<p><b>Hidden works - The type of works not accessible for visual evaluation by reception boards at the commissioning of the building object and which are hidden by the means of later executed worked and the items subsequently installed</b></p>	<p>To completely exclude this term altogether or complete this provision.</p> <p>The following definition is proposed for <i>hidden works</i>: works that could not be identified in the process of elaborating the estimate of the expenses/quantities of works and their necessity would occur in the process of execution of the works, which in turn, are to be contracted additionally, in accordance with the legislation in force.</p>	<p>The primary and secondary legislation on public procurement regulates the contract award procedure in the given case of the public works acquisition contract, but not the management of the contract. This to clarify the he proposal avoid various interpretations of the term <i>hidden works</i> which could lead to corruption risks.</p> <p>The proposed wording refers to types of works that are not accessible for visual evaluation by the reception commissions at the commissioning of the building object and which are hidden by the works executed later and by elements subsequently assembled.</p>
<p><b>The term <i>offer</i> is missing from among the notions defined in the Regulation</b></p>	<p>It is proposed to add to the terms of the Regulation the notion 'offer' as follows:</p> <p><b>Offer</b> - a legal act by which the economic operator manifests its willingness to engage in a public procurement contract from a legal point of view. The offer includes the financial proposal, the technical proposal, and other documents specified in the awarding documentation.</p>	<p>In order to clarify the rules of the Regulation and adjust the terms in line with the PPL 131/2015.</p>
<p><b>Adjudication of the contract</b></p>	<p>It is proposed to replace the term with <i>award of the contract</i>.</p>	<p>The terminology used does not correspond to the primary legal framework.</p>
<p><b>Financial offer</b></p>	<p>It is proposed to replace the term <i>financial offer</i> with <i>financial proposal</i>.</p>	<p>The terminology does not correspond to the primary legal framework.</p> <p>The PPL 131/2015 uses the term <i>financial proposal</i> - part of the offer that includes information on price, tariff, and other appropriate financial and commercial conditions to meet the requirements stipulated in the awarding documentation.</p>

<b>Technical offer</b>	<p>It is proposed to replace the term <i>technical offer</i> with <i>technical proposal</i>.</p>	<p>The terminology does not correspond to the primary legal framework.</p> <p>The PPL 131/2015 uses the term <i>technical proposal</i> - part of the offer elaborated on the basis of the requirements specified in the task book, as the case may be, of the descriptive documentation.</p>
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## 2. Means of communication within public procurement procedure

ACTUAL PROVISION	POLICY PROPOSAL	ARGUMENTS
<b>Point 16. The contracting authority shall indicate in the tender documentation the means of communication which it intends to use during the awarding procedure expressly stating the impediments leading to the impossibility of using the electronic means of communication under the conditions of point 17 of this Regulation.</b>	<p>It is proposed to indicate expressly in the Regulation that all communications and exchanges of information should be done through electronic means if the procedure is being carried out through SIA RSAP MTender.</p>	<p>The communication means are established by PPL 131/2015. The current provision is one which allows a high degree of discretion to the contracting authority which can impose, in the tender documentation, any other means of communication.</p>

## 3. Terms for clarifications and bids submission

ACTUAL PROVISION	POLICY PROPOSAL	ARGUMENTS
<b>Point 21. The contracting authority shall ensure in all communication, information exchange, and data storage operations, the integrity of the data and the confidentiality of the tenders and requests for participation.</b>	<p>It is proposed to exclude the provision.</p>	<p>With the carrying out of procurement procedures through SIA RSAP MTender, the submission of requests for participation is no longer necessary and relevant. The Contracting Authority does not recognize the potential participants before the time of the opening of the bids, and the confidentiality of the offers is ensured by the SIA RSAP MTender.</p>

<p><b>Point 25. The economic operator may request clarifications from the contracting authority with regard to the invitation or the contract notice. At any such request, the contracting authority shall respond in a clear, complete and unambiguous manner, as quickly as possible to any clarification requested, within a period not to exceed 3 working days after receipt of such request from the economic operator.</b></p>	<p>It is proposed to revise and adjust the provision to the provisions of the primary legal framework. It is also advisable to include the fact that the Contracting Authority will also take into account the technical functionalities of the SIA RSAP MTender system regarding the terms of the answer to the requests for clarification.</p>	<p>The article 35 of the PPL 131/2015 provides:</p> <p>(1) Any interested economic operator shall have the right to request clarifications with regard to the awarding documentation. The deadline for requesting clarifications is calculated from the date of publication of the contract notice and the awarding documentation, thus constituting:</p> <ul style="list-style-type: none"> <li>a) 9 days - if the estimated value of the public procurement contract is equal to, or higher than the thresholds stipulated in art. 2 par. (3);</li> <li>b) 6 days - if the estimated value of the public procurement contract is less than the thresholds stipulated in art. 2 par. (3);</li> <li>c) 3 days - in case of a bidding procedure.</li> </ul> <p>(2) The contracting authority has the obligation to respond clearly, completely and unambiguously as quickly as possible to any clarification requested, within a period that should not, as a rule, exceed 3 working days after receipt of such requests from the economic operator. The exception is the case of the bidding procedure when the period shall not exceed one working day. The contracting authority has the right to accept requests for clarifications on the awarding documentation after the expiry of the clarification request period if the submission of responses to these requests falls within the time limits set out in paragraph (4). In case of non-observance of the deadline</p>
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	<p>for submission of the answer to the clarifications regarding the awarding documentation, the contracting authority is obliged to extend the deadline for submitting tenders or requests for participation for the economic operators, taking into account the delay period. (2) The contracting authority has the obligation to respond clearly, completely and unambiguously as quickly as possible to any clarification requested, within a period that should not, as a rule, exceed 3 working days after receipt of such requests from the economic operator. The exception is the case of the bidding procedure when the period shall not exceed one working day. The contracting authority has the right to accept requests for clarifications on the awarding documentation after the expiry of the clarification request period if the submission of responses to these requests falls within the time limits set out in paragraph (4). In case of non-observance of the deadline for submission of the answer to the clarifications regarding the awarding documentation, the contracting authority is obliged to extend the deadline for submitting tenders or requests for participation for the economic operators, taking into account the delay period.</p>
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<p><b>Point 31. The awarding documentation is made up of the following:</b></p> <p><b>1) The European Single Procurement Document (hereinafter ESPD);</b></p> <p><b>2) The standard documentation, which includes:</b></p> <ul style="list-style-type: none"> <li><b>a) The guidelines for bidders (IPO);</b></li> <li><b>b) The Task book or other descriptive documents;</b></li> <li><b>c) The blanks and models of documents;</b></li> <li><b>d) The draft contract containing the mandatory contractual clauses.</b></li> </ul>	<p>It is proposed, following the specification on task book, to add the phrase «and the unitary resource catalog (Form 5)».</p>	<p>By including this formula, it is ensured that all economic operators intending to participate in the public procurement procedure have access to and interpret the same established indicators for norms. Thus, the technical proposal will be the same in terms of the use of consumer resources, without the need for economic operators to treat norms indicators in a different manner.</p>
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## 4. Contracting authority's answers to clarification requests

ACTUAL PROVISION	POLICY PROPOSAL	ARGUMENTS
<p><b>The contracting authority has the obligation to transmit the content of the reply to all economic operators who have obtained a copy of the tender documentation or have submitted a request for participation while taking measures not to disclose the identity of the person who requested the clarifications.</b></p>	<p>It is proposed to modify the provision by excluding the stipulated obligation of the Contracting Authority to transmit the content of the reply to all economic operators who have obtained a copy of the tender documentation, or to those who have submitted a request for participation.</p>	<p>Questions for clarification and answers to these questions are visible to any user, and the identity of the person who requested the clarification is not disclosed.</p> <p>According to the terms of use of the SIA SRAP MTender, for electronic procedures, all communications and transmissions of electronic documents must take place via SIA RSAP MTender.</p>

## 5. The provisions of the tender documentation and those of the contract notice

ACTUAL PROVISION	POLICY PROPOSAL	ARGUMENTS
<p><b>Point 52. If there is any inconsistency between the provisions of the tender documentation and the provisions of the notice of intent, the procurement procedure shall be canceled.</b></p>	<p>It is proposed to review the provision as follows: the discrepancies between the notice of intent and the content of the tender documentation are found, the contracting authority has the right to modify the awarding</p>	<p>The discrepancies between the notice of intent and the content of the tender documentation do not constitute, under PPL 131/2015, grounds for the annulment of the procedure.</p>

	<p>documentation either on its own initiative or in response to a request for clarification from an economic operator as per art. 35, extending the time limit for the submission of tenders so as to ensure that from the date of notification about the changes made and until the new deadline for submitting tenders, there remains at least 50% of the initially established period.</p>	<p>Furthermore, art. 41 of PPL 131/2015 establishes that until the expiry of the deadline for the submission of tenders, the contracting authority has the right to amend the awarding documentation.</p>
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## 6. The opening of bids in the public procurement procedure

ACTUAL PROVISION	POLICY PROPOSAL	ARGUMENTS
<p><b>Point 87. The contracting authority opens the tenders at the date, time and address indicated in the notice for participation using the SIA RSAP, except in the cases provided for in Article 33 (7) and paragraph (11) of the Law no.131 / 2015.</b></p>	<p>It is proposed to review this provision as follows:</p> <p>The deadline for submission of tenders and, where applicable, for the opening of bids, will be indicated directly in the MTender system. The opening of bids takes place on the date and time indicated in MTender without the presence of the participants in the process. Respectively, the minutes of the opening sessions are no longer necessary.</p>	<p>In the context of the SIA RSAP MTender, when the procurement procedures are preceded by an electronic auction, the date and time of the opening of tenders do not coincide with the deadline for submission of offers, and the bids are opened after the electronic auction has been completed. At the same time, the convening of a session for the opening of the bids is no longer necessary, given that this process is an electronic one.</p>
<p><b>Point 89. The bid submitted after the closing date and time for submission of tenders or at an address other than the one specified in the notice for participation shall be returned without being opened to the economic operator who submitted it.</b></p>	<p>The proposal is to exclude this provision.</p>	<p>In SIA RSAP MTender, bids cannot be submitted after the set deadline. From a technical point of view, this situation is impossible.</p>

## 7. Public Procurement through the Request for Price Quotations (hereinafter RfQ)

ACTUAL PROVISION	POLICY PROPOSAL	ARGUMENTS
<b>Point 113. If the economic operator intends to subcontract part(s) of the contract, the subcontractors will complete the ESPD with reference to the situations covered by Article 19 of the Law no.131 / 2015.</b>	<p>It is proposed to complete the provision with the following content:</p> <p>If the economic operator intends to subcontract part(s) of the contract, the ESPD form also includes the required information on subcontractors. A separate ESPD will be filled in for each (Part II, Sections A, and B - Information on Operator and Representatives, and Part III - Exclusion Grounds).</p>	The provision is harmonized with the primary legal framework (PPL 131/2015). However, the proposed addition is necessary in the context of the legal shortcomings concerning the submission of the ESPD form by the bidder and/or its subcontractor/subcontractors.
<b>To insert an additional point/subpoint (for example, at point 112<sup>1</sup>)</b>	<p>It is proposed to introduce the following provision:</p> <p>Where the economic operator demonstrates that the criteria relating to the economic and financial situation or technical and professional capacity have been met by invoking the support of a third party, the ESPD shall include information on the grounds for exclusion with respect to the supporting third party. The latter will complete a separate ESPD (Part II Sections A and B - Information on Operator and Representative, and Part III - Exclusion Grounds).</p> <p>As far as professional capacity is concerned, the tenderer/candidate has the right to use the support of other persons only when the latter will directly execute the works for which the respective professional capacity is required. In the latter case, the sponsor is at the same time subcontractor for the volume of works for which the respective professional capacity is required.</p>	<p>The provision corresponds to the primary legal framework (PPL 131/2015). However, the proposed addition is necessary in the context of the legal shortcomings concerning the submission of the ESPD form by the bidder and / or its supporting third party.</p> <p>The purpose of the proposal is to clarify the involvement mechanism and the role of the supportive third party.</p>

<p><b>Point 116. As to the similar experience, in order to qualify according to the established requirements, one of the associates shall meet the given requirement and the other associates - proportionate to the tasks assigned to each of them. For the qualification of the associated economic operators, the responsible partner (the leader of the associates) is expected to meet at least 40% of the qualification requirements for the average business figure and similar experience.</b></p>	<p>It is proposed to revise and complete the provision as follows: With regard to similar experience, in order to qualify according to established requirements, associates must demonstrate a similar experience proportionate to the tasks assigned to each of them. The contracting authority is not entitled to limit the minimum threshold of similar experience to be met by an associate or by the association's leader unless such limitation is strongly justified by the nature of the subject matter of the contract and in so far as it pursues a legitimate public interest objective and is in line with the principle of proportionality.</p>	<p>From the present norm in the proposed form, it follows that an associate has to fulfill 100% of the experience and the others - proportional to their tasks, which does not correspond to good international practices.</p>
<p><b>Point 117. The responsible partner (leader of the associates) will execute at least 40% of the value of the future procurement/business contract.</b></p>	<p>It is proposed to revise and supplement the provision as follows: When and where, under point 130 of this Regulation, the contracting authority establishes a minimum threshold of similar experience to be met by a member of the association, that ceiling must be justified and correlated with the volume and nature of the work to be performed directly by that member.</p>	<p>The proposal is correlated with point 130 (see the explanation above).</p>

## 8. Rules for participating in the public procurement procedure

ACTUAL PROVISION	POLICY PROPOSAL	ARGUMENTS
<p><b>Point 119. The individual or legal entity who participated in the preparation of the awarding documentation is entitled, as an economic operator, to be a bidder, associate or subcontractor,</b></p>	<p>It is proposed to eliminate the possibility of participation as a bidder, associate or subcontractor of the bidder or legal entity who participated in the elaboration of the awarding documentation.</p>	<p>It is a rule that generates risks of corruption and discretionary application, as it is complicated to determine the extent to which involvement in the development of bidding documentation of a</p>

<p><b>but only if its involvement in the preparation of the awarding documentation is not likely to distort the competition.</b></p>		<p>bidder distorts competition. At the same time, it is contrary to the principles governing public procurement relations, namely equal treatment, impartiality, non-discrimination with regard to all bidders and economic operators, as well as ensuring competition and combating anti-competitive practices in the field of public procurement.</p>
<p><b>Point 120. When and where it is necessary to ensure the integrity and proper conduct of the procurement procedure and there is a concern about the existence of the risk for the proper execution of the procurement procedure, the contracting authority may at any time request a part of or, any supporting documents or certificates, from candidates, bidders, or any subcontractors, consortium members or other third parties on whose capability and capacity is based for the fulfillment of criteria for qualification/selection, or for the execution of the contract.</b></p>	<p>It is proposed to revise and draft the text as follows:</p> <p>When and where it is necessary to ensure the integrity and proper conduct of the procurement procedure and there is concern about the existence of a risk to the proper conduct of the procurement procedure, the contracting authority may, as an exception to point 136 of this Regulation, at any time, request some or all of the supporting documents or certificates from candidates or tenderers and from any subcontractors, consortium members or other third parties on whose capacity and capability is based for the selection and qualification criteria.</p>	<p>The contracting authority may request at the tender evaluation stage and not at any time during the procurement procedure, a part or all of the supporting documents or certificates from candidates or tenderers or any subcontractors, consortium members and other third parties on whose capacity and capability is based for the fulfillment of selection and qualification criteria. The current rule is a discretionary one and runs counter to the principle of the functioning of the ESPD and may lead to corruption risks.</p>
<p><b>Point 121. Candidates and tenderers may be excluded from the public procurement procedure if the ESPD statement submitted under the procurement procedure does not correspond, and the candidate or tenderer does not provide the supporting evidence upon request.</b></p>	<p>It is proposed to revise and edit the text as follows:</p> <p>Candidates and tenderers may be excluded from the procurement procedure if the ESPD submitted under the procurement procedure does not comply with the declared selection and qualification criteria or is not eligible under Art. 19 of Law no. 113/2015 on public procurement or if the candidate or tenderer does not present the supporting evidence upon request.</p>	<p>This rule is ambiguous and incomplete, which can lead to different interpretations and risks of corruption.</p>

<p><b>Point 126. The offer is binding in terms of content for the entire period of validity set by the contracting authority and must be signed by the tenderer or by a person authorized by the latter.</b></p>	<p>It is proposed to revise and edit the text as follows:</p> <p>The offer is binding in terms of its content for the entire period of validity set by the contracting authority and must be signed electronically, where applicable, when participating in an awarding procedure that is conducted through SIA RSAP MTender, by the tenderer or by a person empowered by the latter in accordance with the law.</p>	<p>The present rule in its current form is incomplete, unclear, and may generate risks of corruption. To add clarity, the rule has been completed so as to comply with the provisions of the PPL 131/2015, namely Article 33, paragraph 14, point (i): the electronic signature is applied on electronic bids.</p>
<p><b>Section 127. Submission of the offer and of the ESDP is the manifestation of the bidder's willingness to sign the public procurement/business contract with the contracting authority and to carry out the work in accordance with the awarding documentation.</b></p>	<p>It is proposed to edit the provision as follows:</p> <p>The submission of the offer and the tender guarantee, as the case may be, is the manifestation of the tenderer's willingness to sign the public procurement/business contract with the contracting authority and to execute the work in accordance with the awarding documentation.</p>	<p>The present rule in its current form is incomplete and may generate corruption risks.</p> <p>Pursuant to article 65, paragraph 4, of the PPL 131/2015, the submission of the offer involves the submission of a joint technical proposal, a financial proposal, an ESDP and, where appropriate, a tender guarantee.</p>
<p><b>Point 131. The bidder has the right to include in the technical proposal the possibility to subcontract part of that contract, having the obligation to specify the part(s) of the contract to be subcontracted and the recognition data of the proposed subcontractors. The volume of work that may be subcontracted will not exceed 40 percent of the total volume</b></p>	<p>It is proposed to review the provision as follows:</p> <p>The tenderer has the right to include in the technical proposal the possibility to subcontract part of the contract, having the obligation to specify the part(s) of the contract to be subcontracted and the identification data of the proposed subcontractors.</p> <p>The contracting authority is not entitled to limit the volume of work that may be subcontracted unless that limitation is strongly justified by the nature of the subject-matter of the contract and in so far as it pursues a legitimate public interest objective and complies with the proportionality principle.</p>	<p>The contracting authority is not entitled to limit the volume of work that may be subcontracted unless that limitation is strongly justified by the nature of the subject-matter of the contract and in so far as it pursues a legitimate public interest objective and complies with the proportionality principle.</p> <p>Such a ban exceeds the powers established by the primary legal framework and limits competition and inter-state public procurement. The percentage of subcontracting may be limited in justified cases. The Court of Justice of the European Union has many such cases, considering it to be contrary to European directives, including:</p>

		<p><i>1. Borta case C-298/15, EU: C: 2017: 266.</i></p> <p><i>2. Case C-314/01, ECLI: EU: C: 2004: 159.</i></p> <p><i>3. Wrocław case C-406/14, ECLI: EU: C: 2016: 562.</i></p>
<b>Point 147. The contracting authority has the right to ask the tenderers to provide the guarantee for the tender.</b>	It is proposed to revise and complete the provision as follows: The contracting authority has the obligation to require the tenderers to provide the tender guaranteed, except for the case provided for in par. 5, art. 68 of the PPL 131/2015.	The proposal's role is to correlate the norm with the provisions of the primary legal framework. In case of purchases of works with an estimated value of more than 2,000,000 lei, according to the provisions of the PPL131/2015 (Article 68), the tender guarantee is binding.
<b>Point 150. Letters of bank guarantee are issued by a bank of the Republic of Moldova, or as the case may be, by a bank from abroad, preferably with a correspondent in the Republic of Moldova. The contracting authority is not entitled to require the release of the guarantee for the offer by a specific bank, which has been nominated expressly.</b>	It is proposed to specify and add the <i>licensed bank</i> .	The current provision is incomplete and discretionary, which can generate corruption risks.
<b>Point 157. The Working Group has the obligation to request the documentary relating to the fulfillment of the qualification criteria of the first ranked bidder following the application of the awarding criterion.</b>	It is proposed to review the provision as follows: The working group or, as the case may be, the public procurement specialist has the obligation to request the documents proving the fulfillment of the qualification and selection criteria of the first ranked bidder following the application of the awarding criterion.	The current provision is incomplete and discretionary, which can generate corruption risks.

## 9. Examination and evaluation of the offers within public procurement procedure

ACTUAL PROVISION	POLICY PROPOSAL	ARGUMENTS
<p><b>Point 158. In the process of examining, evaluating and comparing offers, the working group has the obligation:</b></p> <p><b>7) to analyze and to check each offer both in terms of the proposed technical elements and in terms of the financial aspects it involves.</b></p>	<p>It is proposed to revise the provision.</p>	<p>The rule is inconsistent with primary law and the SIA RSAP MTender concept and therefore generates discretion in its implementation as well as corruption risks. The contracting authority shall only analyze the bid with the lowest price. If it meets the qualification requirements set out in the awarding documentation, the contracting authority shall award the contract to this particular tenderer without reviewing and verifying the other bids submitted, which are not opened in the SIA RSAP MTender.</p>
<p><b>Point 166. The contracting authority will reject any bid if the tenderer who submitted it, offers (intends to offer), directly or indirectly, to any liability factor or ordinary employee (former or current) of the working group or of the contracting authority, a favor in any form, an offer of employment or any other service as a reward for certain actions, decisions or application of procurement procedures to its advantage.</b></p>	<p>It is proposed to revise the rule and to exclude the phrase (<i>intends to offer</i>).</p>	<p>Intention is not punished in any country, but only the actions, that can be actions or inactions.</p>

## 10. Cancelation of public procurement procedure

ACTUAL PROVISION	POLICY PROPOSAL	ARGUMENTS
<p><b>Point 169. The Contracting Authority shall, on its own initiative, cancel the procedure for the award of the public works contract if it takes this decision</b></p>	<p>It is proposed to revise and complete the text as follows: The contracting authority, on its own initiative and following the provisions of art. 71 of Law no.131</p>	<p>This is a necessary completion to add clarity to the Regulation.</p>

<b>before the date of the communication of the outcome of the public procurement procedure in the following cases:</b>	of 3 July 2015 shall cancel the procedure for the award of the contract for public procurement of works if it takes this decision before the date of the communication of the results of the application of the public procurement procedure in the following cases:	
<b>4a) is submitted after the closing date for submission of tenders;</b>	It is proposed to exclude the phrase: - are submitted after the closing date for submission of bids;	
<b>Point 169. 9) the first and second-placed bidders refuse to conclude the contract.</b>	It is proposed to exclude point 9).	
<b>Point 194<sup>1</sup></b>	It is proposed to edit paragraph 194 <sup>1</sup> as follows:  The decision to cancel the public procurement procedure issued by the contracting authority may be appealed at the National Agency for Solving Complaints in the manner and terms established by the PPL 131/2015.	

## 11. Communication of the outcome of the awarding procedure

ACTUAL PROVISION	POLICY PROPOSAL	ARGUMENTS
<b>Point 173. Upon the expiration of the waiting period, but not earlier than 6 days from the date of transmission of the notice on the outcome of the awarding procedure, except for the procurement contract to be concluded with the economic operator who was the sole tenderer and there are no other economic operators involved in the respective awarding procedure, or, as the case may be,</b>	It is proposed to revise the provision as follows:  Upon expiration of the waiting period set out in Art. 32 of the Law on Public Procurement, but not earlier than 6 days or 11 days, as the case may be, from the date of transmission of the communication on the outcome of the awarding procedure or, as the case may be, after the settlement of any complaints, the contracting authority will complete and	It is a necessary a completion to add clarity to the Regulation and bring it in line with the primary legal framework.

<b>in the solving of any complaints, the contracting authority completes and generates, within the SIA RSAP, the public procurement of works contract in accordance with the terms and conditions set out in the awarding documentation.</b>	generate, in SIA RSAP MTender, the public procurement contract, in accordance with the terms and conditions indicated in the awarding documentation.	
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## 12. Conclusion of the procurement contract

ACTUAL PROVISION	POLICY PROPOSAL	ARGUMENTS
<b>Point 176. In the public procurement of works, the contracting authority shall require the bidder to submit, during the conclusion of the contract, a warranty of execution in the form of a guarantee. The guarantee for the execution of the contract is given by the bidder in order to assure the contracting authority of the fulfillment of the contract in appropriate quantitative and qualitative terms and within the agreed timeframe.</b>	<p>It is proposed to review the provision as follows:</p> <p>In the cases provided by art. 68 of the Public Procurement Law, the contracting authority will require the successful bidder to submit before the conclusion of the contract a guarantee of the good of the contract. The guarantee for the execution of the contract is given by the bidder in order to assure the contracting authority of the fulfillment of the contract in appropriate quantitative and qualitative terms and within the agreed timeframe.</p>	<p>The review is required given that Article 68 (11) of PPL 131/2015 provides that the performance guarantee of the contract is not mandatory in all cases, but only above certain thresholds.</p> <p>Article 68 of PPL 131/2015 provides:</p> <p>(8) Upon the purchase of goods, works, and services, the contracting authority shall require the bidder to submit, at the signing of the contract, the guarantee of its good execution.</p> <p>Here, the «conclusion of the contract» is a post-awarding stage, where the performance guarantee of the contract is presented first, and only afterward the signing of the procurement contract takes place.</p>
<b>Point 185. The contract shall be deemed to have been concluded on the date of its signing by the parties and shall enter into force upon its registration in the manner established by this Regulation.</b>	<p>It is proposed to modify the provision as follows:</p> <p>The contract shall be deemed to have been concluded on the date of its signature by the parties and shall enter into force as of its registration in accordance with point 198 of this Regulation.</p>	Clarification is required with regard to the precise point regulating the registration of the procurement contract.

<p><b>Point 191. The contracting authority has the obligation to unilaterally cancel the contract for public procurement of works within 30 days from the occurrence of unforeseeable circumstances at the date of conclusion of the contract for public procurement of works and which lead to the modification of the contractual clauses in such a way that the fulfillment of that would be contrary to the public interest.</b></p>	<p>It is proposed to review the provision as follows: If the assumed execution becomes, due to an exceptional change of circumstances, so onerous that it would be unfair to expect the contracting authority to fulfill it, then the latter has the obligation under art. 108 (2) of the Civil Code, to submit to a judicial court a request for unilateral termination of the contract for the public procurement of works within a maximum of 30 days from the occurrence of unforeseeable circumstances in relation to the date of the conclusion of the contract and leading to the modification of the contractual clauses to such an extent that the fulfillment of the contract would be contrary to the public interest.</p>	<p>The proposal is to adjust the terminology according to the new Civil Code, which provides that such requests are examined by the court.</p>
<p><b>Point 192. The economic operator has the right to claim the appropriate payment for the part of the public works contract executed until the date of termination, as well as the recovery of other costs related to the completion of the contract, performed until the unilateral termination of the contract.</b></p>	<p>It is proposed to review the proposals as follows: In this case, the economic operator has the right to claim the appropriate payment for the part of the public procurement contract executed by the date of the termination, as well as the recovery of other costs related to its execution, carried out until the date of the unilateral termination of the contract.</p>	<p>The proposal is to adjust the terminology according to the new Civil Code, which provides that such requests are examined by the court.</p>



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★ Knowledge  
★ creating ★  
★ development  
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