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GUIDEBOOK FOR MONITORING PUBLIC PROCUREMENT: TOOL FOR CIVIL SOCIETY

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ACRONYMS

AA – Association Agreement between the European Union and the Republic of Moldova

PPA – Public Procurement Agency

CA – contracting authority

NASC – National Agency for Settlement of Claims

NIA – National Integrity Authority

PPB – Public Procurement Bulletin

EBRD – European Bank for Reconstruction and Development

NAC – National Anticorruption Center

RPQ – request price quotation

GDEYS/DGETS – General Department for Education, Youth and Sport

GPI – General Police Inspectorate

SME – small and medium-sized enterprises

SE – state enterprise

OECD – Organization for Economic Cooperation and Development

SCO – Civil Society Organizations

PP – procurement plan

GDP – gross domestic product

UNDP – United Nations Development Programme

SPPSD – Strategy of Public Procurement System Development

AIS “SRPP/”SIA “RSAP” – Automated Information System ”State Registry of Public Procurement”

SIGMA – Support for Improvement in Governance and Management in Central and Eastern European Countries

EU – European Union



INTRODUCTION

Transparent public expenditures and procurement set the tone for good governance. In the Republic of Moldova, public procurement remains a domain prone to irregularities, fraud and corruption, fact that amplifies the role of civil society in overseeing the mode of unfolding of procurement activities. Lack of transparency in procurement processes, corruption, and lack of electronic means and low level of professionalism of the involved stakeholders are the biggest issues of the public procurement system. All these produce negative effects on the development of social and economic infrastructure, provision of public services and diminish the trust of citizens and business community in state institutions.

The international experience demonstrates that civil society plays an essential role in monitoring of public procurement and ensuring transparency related to award and execution of public procurement contracts. In cases when the authorities are not guided by the principles of transparency, integrity and efficiency while carrying out the procurement procedures, or even participate in corruption schemes, the civil society organizations could use the data obtained during the monitoring process in order to mobilize citizens for the latter to request the government be more accountable. As a corollary, civil society keeps under review public resources usage and could have an important contribution to strengthening good governance and building bridges between public authorities and society at all levels.

This guidebook has been devised to assist the members of the civil society related to public procurement monitoring activities. Its logical structure allows, first of all, understanding the mechanism of performance of the procurement system (legal and institutional framework, procurement process, public data and information as well as the right of civil society to request information regarding the stakeholders that are involved in the process etc.). Secondly, the guidebook's structure allows understanding the way of selecting public procurement along with monitoring methods, and tools to identify irregularities, illegalities and fraud at each stage of the procurement process. Also, the guidebook contains recommendations for action (legal and advocacy) that could be undertaken if abuses and fraud(s) are attested. Thus, the monitoring actions could contribute to the enhancement of transparency, procurement process optimization and accountability of public authorities in front of citizens.

In order to make the information from this guidebook intelligible for all the monitors, including for those who have little experience in the given domain, the following basic terms shall be used:

Public procurement – purchasing of goods, execution of services, or provision of services for the needs of one or more contracting authorities, through award of a public procurement contract.

Contracting authority – any authority from public central or local administration, public institution or authority/autonomous institution, which manages the financial resources of the national public budget.

Public funds– financial resources from the state budget, local budgets, state social insurance budget, and compulsory medical insurance funds.

Tender documents – documentation that comprises all the information pertaining to the subject matter of the public procurement contract and the procedure of award of the given contract, including the taskbook, and, where appropriate, descriptive documentation.

Working group – group of specialists within the contracting authority carrying out public procurement procedures for the respective authority.

Bid (offer) – legal act, through which an economic agent expresses its will to be legally involved in a public procurement process. The offer comprises *a technical proposal and a financial proposal*.

Bidder (offeror) – an economic operator that submitted a bid (offer) within the public procurement tender procedure.

Economic operator – a supplier of goods, contractor and/or service provider that could be any natural person or legal entity, any public entity or association of the aforementioned persons and/or entities, which deliver goods to market, execute works, and/or provides services.

Financial proposal – a part of an offer (bid), which contains information on price, tariff as well as other financial and commercial conditions that meet the requirements through tender documentation.

Technical proposal – a constituent part of an offer/bid, elaborated on the basis of the requirements from the taskbook, or descriptive documentation, as appropriate.

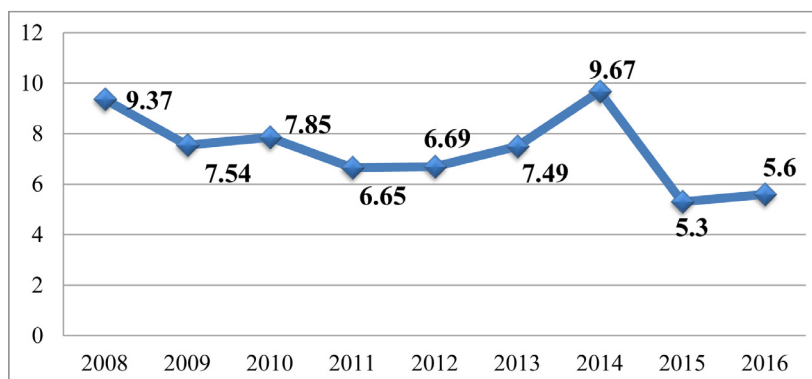
Technical specifications – an ensemble of technical indications contained particularly in the *taskbooks*, which define the requested characteristics for a certain material, product or commodity, and which allow to characterize the latter in a way that is compliant to usage purposes set by the contracting authority. Some of these characteristics include: environmental performance levels, all-purpose design, (including access for persons with disabilities), conformity assessment, performance, safety, dimensions, including procedures referring to quality assurance, terminology, symbols, tests, testing methods, packing, marking, labelling as well as the production process and manufacturing methods. Also, the aforesaid characteristics include the design standards and rules for the calculation of the works, conditions of testing, inspection and acceptance of works as well as building techniques or methods, and all the other conditions/specifications of technical nature that could be foreseen by the contracting authority by way of general or specific regulations as regards completed works and materials or their elements.

Bid rigging – carrying out via bidding or other forms of competitive tendering of anti-competitive agreements between competing enterprises with regard to prices, market sharing, sources of supply or quality of products.

PUBLIC PROCUREMENT AND ITS ROLE IN SOCIETY

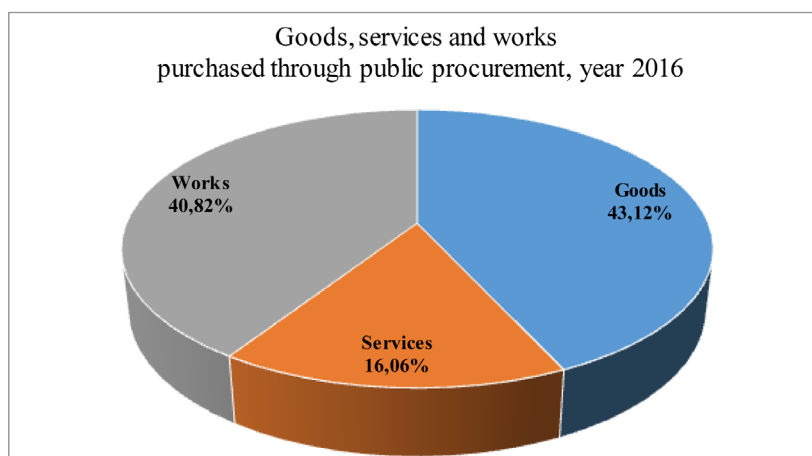
Within the meaning of public procurement law (No 131/2015), public procurement denotes purchasing of goods, execution of works or provision of services for the needs of one or more contracting authorities, through award of a public procurement contract. Contracting authority is any public authority or legal entity governed by public law and/or association of the aforesaid authorities or entities. The given procurements of goods, services and works by a public entity are made on public funds, in other words – from the financial resources of the state budget, local budgets, state social insurance budgets or compulsory medical insurance funds.

Public procurement could have a considerable impact on the national economy. In 2016, the value of goods, services and works procured from the public funds increased to 5.6% from the Republic of Moldova's GDP, reaching a figure of 7.5 billion MDL. In 2014, in comparison, 10.8 billion MDL that is the equivalent of 9.7% out of GDP circulated via public procurement system. In the European countries, this share varies between 15 and 30% out of GDP. One should mention that these figures do not include small value procurement, which in 2015 counted to 1.87 billion MDL. The volume of public procurement, related to GDP, for the period of 2008-2016 (in %) is presented in the chart below.



Source: Report on the activities carried out in 2016, Public Procurement Agency

The value of goods, services and works, procured in 2016 by circa 4300 contracting authorities amounts to:



Source: elaborated by the authors on the basis of the report on the activities carried out in 2016, Public Procurement Agency

In 2016, in the Republic of Moldova, the first Strategy for Development of Public Procurement System for the years 2016-2020 SDPPS was approved. The authorities propose to use the given Strategy to create a public procurement system, which is functional, competitive, responsible and transparent, and which generates and ensures credibility of the citizens of Moldova and of the international community in the procurement process and its role.¹ The aims of the Strategy refer to enhancing transparency during the entire procurement process cycle time, ensuring conditions for loyal competition for the bidders and reducing fraud and corruption found in the system. Transparency, of all the tools, is the one that creates space for sound competition, if used appropriately, and could considerably contribute to reducing corruption. Or data available in public procurement allow any person to oversee the entire public procurement process, starting with planning and ending with implementation of the contract and follow-up amendments. Nowadays there is a world tendency to develop open data platforms containing up-dated navigation and analysis tools that are accessible to any single citizen.

The national public procurement system is mostly decentralised which means that any public authorities and entities, at both central and local levels, are accountable for organization and carrying out of public procurement procedures using their own administrative capacities. At present, in the Republic of Moldova, there are approximately 4300 contracting authorities that operate at the central and local level. However, on the background of decreased capacities (administrative, personnel) of the contracting authorities, especially those from the local level, in SDPPS it is envisioned to reduce to 75% the number of contracting authorities that will constitute circa 1000 authorities by the year 2020.

Besides, we have two central procurement units, which procure goods, works and services for several contracting authorities, namely, for the state enterprise “State Road Administration” and the Center for Centralized Public Procurement in Health.

The state enterprise “State Road Administration” (subordinated to the Ministry of Transport and Road Infrastructure) is responsible for the development, upgrading, repairing and maintenance of national public road network as well as for efficient management of the road fund and external investments in the development of national public roads.

The Center for Centralized Public Procurement in Health, founded in October of 2016, is the central authority, responsible for organization and carrying out of public procurement of medicines, other medical products and medical devices for the needs of the health system.

Taking into account the fact that public procurement is carried out from public funds and within the context of the Association Agreement between the European Union and the Republic of Moldova; the following principles should be respected:

- **Efficient use of public funds and minimization of risks of the contracting authorities** – implementation of competitive award procedures and use of criteria reflecting the economic benefits of the offers for the purpose of obtaining an optimal price-quality ratio so that the best value for public funds is obtained.
- **Transparency** – making the general public aware of all information referring to use of award procedures by ensuring visibility to all rules, opportunities, processes, results as well as comprehensibility of documents, elaborated during unfolding of the procurement process.

¹ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=368482>

- **Ensuring competition and combatting unfair competition** – ensuring conditions for effective competition in the market, regardless of the form of organization, nationality or type of ownership of the future contractor so that any economic operator could participate in the procurement process and have equal chances to win a contract.
- **Equal, impartial and non-discriminatory treatment in relation to all the bidders and economic operators** – establishment and use of rules, requirements, and criteria that are identical for all economic operators to ensure that they have equal chances to win a public procurement contract.
- **Taking responsibility in relation to public procurement procedures** – clear assignment of tasks and responsibilities of the persons involved in the public procurement process, paying due attention to professionalism, impartiality and independence on decisions adopted during the given process.
- **Liberalization and expansion of international trade** – mutual recognition, both at the national and international levels, and acceptance of goods, services and works, legally offered on the market; mutual recognition of documents, of certificates issued by the competent authorities of the other states, and of technical specifications equivalent to those requested at the national level.
- **Proportionality** – correlation between the need of the contracting authority, the subject matter of the public procurement contract and the requirements which should be fulfilled by the bidders in order to satisfy the needs of the contracting authority.



LEGAL AND INSTITUTIONAL FRAMEWORK

Legal framework

Signing the Association Agreement between the European Union and the Republic of Moldova in 2014, the Republic of Moldova undertook a number of commitments, one of which is linked to the national public procurement system reform. Thus, our country has a commitment to make efforts in three directions:

1. *Gradual harmonization of legislation in the domain of public procurement in line with the *acquis communautaire*;*
2. *Institutional reform in the domain of public procurement;*
3. *Setting up an efficient system and process for appeals relating to award of the procurement contracts.*

In compliance with the provisions of the aforesaid Association Agreement, all public procurement contracts are awarded via transparent and impartial procedures that prevent corrupt practices. Impartiality is ensured by use of non-discriminatory description of the contract subject matter, by equal access of all the economic operators, by provision of adequate terms for submission of bids, and by transparent and objective approach.

The process of harmonization of legislation in the domain of public procurement was launched in 2014, and a new Law on public procurement came into effect on May 1, 2016. In general, the new legal framework provides for more transparency, a greater access to information regarding procurement contracts that are oriented to public procurement relations' regulation principles, and is striving for the best price-quality ratio (value for money). Also, it provides for a more active role of the civil society through participation of its representatives as members of the public procurement working group and a new system of appeal/review procedures related to procurement.

One should mention the fact that at the EU level, the public procurement regulatory framework was changed in February 2014 along with approval of a legislative package on modernizing the EU public procurement rules, which consists of three directives:

- *Directive 2014/23/UE of the European Parliament and the Council of 26 February 2014 on the award of concession contracts;*
- *Directive 2014/24/UE of the European Parliament and the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/CE;*
- *Directive 2014/25/UE of the European Parliament and the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.*

In this respect, one of the objectives proposed by the authorities for the years 2016-2020, in accordance with the Strategy for Development of Public Procurement System, is provision of an adequate level of conformity of the national legislation with the EU directives in all the sectors so that the national legislation embody best European and international practices and promote efficient public procurement. At the same time, the new rules should be clear and well known by all the users (contracting authorities and economic operators), and should not contain excessive regulations and unnecessary bureaucratic approaches.²

² Strategy for Development of Public Procurement System for the years 2016-2020 and of the Action Plan on its implementation.

In order to implement the law on public procurement, a number of regulations should be met, including government decisions and orders of the Public Procurement Agency, which could be found on the given authority's website – www.tender.gov.md.

Additionally, other legislative acts that are relevant to public procurement monitoring are mentioned:

- ❖ Law on National Anticorruption Center No.1104/2002;
- ❖ Law on Prevention and Combatting of Corruption No.90/2008;
- ❖ Law on Public Office and Status of Civil Servant No.158/2008;
- ❖ Law on the Civil Servants' Code of Conduct No.25/2008;
- ❖ The Contravention Code of the Republic of Moldova No.218/2008;
- ❖ The Law on Competitiveness No.183/2012.

Legislative vulnerabilities during the public procurement process

1. Incomplete and unclear legal provisions related to monitoring of public procurement contracts' execution by the contracting authority through elaboration of quarterly, bi-annual and annual reports, including the actions to be taken provided that the aforementioned provisions are no longer met;
2. The legislative gaps referring to exclusion of the economic operators from the public procurement/tendering process and procedures within anti-competitive agreements mimicking competitiveness and infringing the right of the other companies to loyal competition.
3. The legislative gap related to stimulation of small and medium-sized enterprises to participate in the public procurement process, for example, via incorporation of batch splitting obligation within the procurement procedure, according to certain criteria; incomplete legal provisions regarding avoidance of conflict of interest. Although it is mandatory for the members of the public procurement working group to sign the declarations of confidentiality and impartiality, the given provisions, as a matter of fact, are not respected, entailing a situation in which certain actions and sanctions are not envisioned. At the same time, these declarations are not part of the list of the documents which should be obligatory included into/kept in the procurement dossier;
4. The legislative gap related to regulation of the procurement processes of the public state/municipal enterprises and related to types of private-public partnerships (PPPs);
5. The legal framework does not stipulate for publication of procurement contracts and this issue generates difficulties in monitoring public procurement, especially during the stage of delivery of goods and execution of works.

Institutional framework

Pursuant to the provisions of the RM-EU Association Agreement, two institutions should operate in the Republic of Moldova:

- a. *An executive body accountable for economic policy at the central government level, able to guarantee a coherent policy in all areas connected with public procurement.*
- b. *An impartial and independent body, tasked with revising the decisions taken by the contracting authorities or entities during the award of contracts. In this context, "independent" means that the aforesaid body is a public authority distinct from all the contracting entities and economic operators.*

The new Law on public procurement No 131/2015, which came into effect in May 2016, provided for the establishment of a body to settle the public procurement claims/appeals. However, only in September this year, following a one year delay, the National Agency for Settlement of Claims entered into operation. Thus, starting from September 2017, any person who has or had an interest in obtaining a public procurement contract and considers that in the framework of the public procurement procedures his or her right, recognized by law, was abridged by an act/action of public authority, which inflicted or may inflict damages, the said person has the right to file a claim against such an act/action.

INSTITUTIONAL SYSTEM

(institutions with regulatory, supervisory, and control functions in the field of public procurement as well as law and justice institutions)

Ministry of Finance – a specialized central public administration authority, which sets forth and implements state policies in the realm of public procurement, and ensures a functional, efficient and transparent legal framework in the field of public procurement, as well as its harmonization with the EU Directives and international standards.

Public Procurement Agency (PPA) – administrative authority subordinated to the Ministry of Finance, which exerts oversight, ex-post control and inter-branch coordination in the domain of public procurement. In conformity with the Law No 131/2015, the basic functions of the PPA are to:

- Implement legislative acts in the field of public procurement and elaborates proposals on amending and supplementing public procurement legislation;
- Coordinate, monitor and assess the way in which the contracting authorities comply with public procurement procedures as well as award procedures related to public procurement contracts;
- Elaborate, update and maintain a list of qualified economic operators and a blacklist of economic operators;
- Elaborate and apply standard documentation for public procurement procedures;
- Assesses the performance statements/reports on public procurement procedures;
- Request a review of the public procurement procedures and outcomes;
- Manage the Automated Information System "State Registry of Public Procurement" (SIA "RSAP");
- Render methodological assistance to contracting authorities along with consultations in the field of public procurement, initiate and support training sessions for employees of the contracting authorities involved in organization and carrying out of the public procurement procedures as well as public procurement contracts awarding;
- Edit the Public Procurement Bulletin, develop and support the web page "Public Procurement in the Republic of Moldova" where announcements and information on public procurement and public procurement contracts awarding are published;
- elaborate, quarterly and annually, reports and statistical analysis on public procurement;
- request and obtain from the competent authorities information about economic operators participating at the public procurement procedures as well as any other information that is necessary to perform the duties;
- collaborate with similar international institutions and foreign agencies which operate in the public procurement domain;
- coordinate the activities related to use of technical assistance in the public procurement domain;
- perform other duties stipulated in the above-mentioned law and in other legislative and standard acts.

State Treasury – Directorate-General within the central apparatus of the Ministry of Finance, whose mission is to elaborate and implement state policies in the field of transparent public financial management. The public procurement contracts as well as the contracts entered into following the obtained price quotations are registered at one of the territorial treasuries of the Ministry of Finance in order to have legal effect.

National Agency for Settlement of Claims – autonomous public authority, accountable to Parliament, having competence to settle claims/appeals formulated during the procurement procedures, possessing a status of legal entity governed by public law, which is not accountable to any public or private authority.

Ministry of Economy – in charge of oversight in the area of concessions and private-public partnerships, while the National Council for Private-Public Partnerships is in charge of coordination, priority setting, and formulation of strategies and recommendations.

Court of Accounts – state public authority which exerts control over establishment, management and use of public financial resources and management of public goods through conducting external audit in the public sector as supreme audit institution and which is legally protected against interference from the side of law enforcement agencies or inspection bodies. Within the context of public procurement, the Court of Accounts carries out regular and performance audit of the public procurement system to see if the Public Procurement Agency is fulfilling its oversight and control-related responsibilities in the field of public procurement, and if the contracting authorities are planning, implementing, and monitoring public procurements in compliance with legal requirements and the best practices to ensure transparency and efficiency of public procurement process.

Financial Inspection – an institution subordinated to the Ministry of Finance, which has a mission to protect public financial interests of the state through the Ministry of Finance's centralized financial control, exerted transparently and in conformity with the rule of law as well as ensure the legal nature of operations and transactions related to management of the national public budget resources and public goods, and ensure compliance of the economic agents that deliver foodstuffs to public institutions and the population with effective legal provisions. The central and local public authorities as well as the institutions subordinated and/or founded by the former or latter are subject to financial inspections/controls, including on aspects related to public procurement procedures.

Competition Council – autonomous public authority, which ensures enforcement of legislation pertaining to the domain of competition, state aid and advertising. The aim of the Competition Council is to ensure compliance with legislation related to the domain of competition through anti-competitive practices, removal of anti-competitive violations, promotion and stimulation of culture of competitiveness. The Competition Council enquires into anti-competitive practices and agreements, and investigates bid rigging related to companies' procurement tenders.

National Anticorruption Center – a body specialized in preventing and combatting corruption, and corruption-related acts as well as corrupt behaviour. The functions of the National Anticorruption Center are to:

- prevent, detect, investigate and eradicate corruption and corruption-related offences/misdemeanours and infringements as well as corrupt behaviour;

- prevent and combat money laundering and the financing of terrorism, conduct anti-corruption expertise of the draft legislative acts and of the draft standard acts of the Government as well as of other legislative initiatives proposed to Parliament to ensure their compliance with the state policy on preventing and countering corruption;
- ensure unfolding of corruption risks assessment of the public authorities and institutions through training and consultations, monitoring and analysis of the data pertinent to corruption risk assessment as well as coordination of actions related to elaboration and execution of the integrity plans.

Anticorruption Prosecutor's Office – is one of those two specialized Prosecutor's Offices, which operate within the prosecution system. The Anticorruption Prosecutor's Office is specialized in countering corruption-related infringements, corruption-related acts, and has the following specific functions:

- exerts the criminal prosecution in cases within its mandate;
- carries out criminal prosecution in cases instrumented by the National Anticorruption Center;
- represents the plaintiff in the court of first instance, court of appeal and the court of final appeal (Supreme Court of Justice) in aforementioned cases.

National Authority of Integrity – is an independent public authority, which ensures integrity in relation to the exercise of a public function or function of public dignity and prevents corruption through exerting control over the property and private interests and compliance with the legal regime of the conflict of interest, incompatibilities and restrictions.

One should mention the fact that the public procurement institutional system is a dysfunctional and incoherent one, built up on the basis of independent operation of institutions dealing with issues relating to public procurement domain. There is no actual communication and cooperation among institutions on matters of common interest and this fact affects, first of all, the efficiency of the public procurement system. At the same time, this is an issue for monitors, too, as in the process of communication with institutions, requesting information and/or reporting of identified irregularities they often face situations when public institution do not assume responsibilities according to their mandate or shift their responsibility to other institutions.

CORRUPTION IN PUBLIC PROCUREMENT

Transparency International defines "**corruption**" as an "**abuse of the entrusted power for private benefit**". Very often, corruption is viewed as a phenomenon associated with abuse of public office with the aim to obtain personal benefits or benefits for the family members, relatives, friends, political party colleagues or for a company in which the person involved has certain financial or social interests. As of late, at the international level, and regardless the efforts targeted to prevent and combat corruption practices, corruption remains a concern at all public administration levels and domains, representing a reason for severe and systematic damage to public funds that are anyhow insufficient to satisfy all the necessities of a community.

A successful public procurement process implies a system of well-functioning controls, remedies, settlement of claims/resolution of appeals, prevention of conflicts of interest and corruption prevention. Corruption in public procurement may take various forms, the most widespread being bribery, bid rigging, procurement fraud as well as other corruption schemes, including collusion, embezzlement, misappropriation and extortion of public funds, pressure and coercion exerted by a head of an institution or political party, clientelism, nepotism/cronyism, etc.

Public procurement contracts are highly exposed to corruption risks. Public procurement accounts for approximately 13-20% of global GDP.³ Circa 9.5 billion USD is spent annually through the mechanism of public procurement.⁴ 57% of foreign bribery cases investigated under the OECD Anti-Bribery Convention [between 1999 and 2014, *translator's comment*] involved bribes to obtain public procurement contracts.⁵

Barometer of Public Opinion/Institute for Public Policy emphasizes that during the last 10 years corruption in the Republic of Moldova is at the top of the list of population concerns, ranking 5th and being preceded by issues related to prices, poverty, children's future, and unemployment. In fact, corruption is the first/major social problem identified by population that comes immediately after individual and family survival.

During 2012-2015, the National Anticorruption Center and the Court of Accounts identified and called to account 42 public procurement corruption cases, of which 16 cases involved central public authorities, 14 – local public authorities, 6 – enterprises, including 3 public units, 2 – citizens, and 1 – a commercial bank, the other 3 cases remaining unspecified. In those cases corruption was manifested as abuse of power or misfeasance in public office, excess of power or overriding service duties, dereliction of duty; fabrication, possession, selling or use of official documents and printers, stamps or seals; passive corruption was attested, too.

Besides the considerable amount of public funds that are circulating annually in the field of public procurement and the financial interests at stake, the corruption risks are increasing also on the background of

According to a Eurobarometer survey from 2013 more than 30% among the companies that participated in public procurement in EU stated that it was the corruption that prevented them from winning a procurement contract. And according to UN Office on Drugs and Crime, the cost of corruption and fraud amounts to 20-25% of a procurement budget.

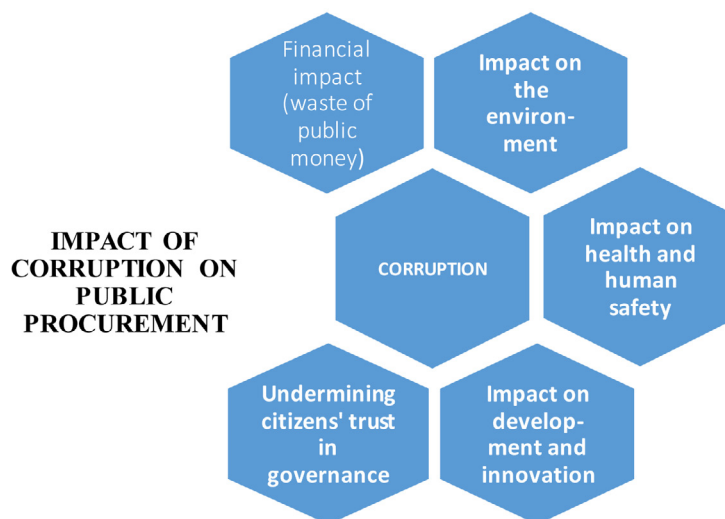
³ OCDE, Combatting corruption in the public sector (February 2013)

⁴ Caroline Spruill, "Open Contracting: Factivists fighting Procureaucrats (December 2013)

⁵ https://www.open-contracting.org/2013/12/09/open_contracting_factivists_fighting_procureaucrats/

the procurement process complexity, direct interaction between the public official/authority and the private sector, and the multitude of players involved in the process. Other factors that contribute to corruption in the field of public procurement are very much alike to those experienced in other countries and are related to low public sector wages, enhanced level of discretion in the decision-making process owing to imperfect/inconsistent and ambiguous legislation, lack of continuous training and skilling programs, and lack of political culture.

Corruption in the public procurement process means “lost” public funds from local and central budgets of the public entities, which should have been used for citizens’ and community needs as follows: provision of public services, education, culture, infrastructure development, etc. Corruption in procurement leads to distortion of business environment and of competitiveness of different markets, artificially inflates prices and prejudices the quality of the procured goods, delivered services or performed works.



PUBLIC PROCUREMENT PROCESS

The public procurement process is a complex one; it is carried out following a series of stages and sub-stages in the result of which a public authority obtains a product, service or work due to award of a public procurement contract to a certain economic operator. Meticulous understanding of each stage, starting from identification of needs and ending with delivery of goods, services or works is essential for civil society organizations and monitors in the process of overseeing the public procurement.

1	▪ Setting up of public procurement working group/groups within contracting authority
2	▪ Identification of needs of the contracting authority and market analysis
3	▪ Drafting and publishing notices of intended procurement of goods, services and works
4	▪ Adopting and publishing of annual and quarterly public procurement plans on the web page of the contracting authority
5	▪ Elaboration of award documentation and other documents applicable to the public procurement procedure
6	▪ Initiation of the procedure; drafting and publishing (if appropriate) the contract/tender notice/notice of competition or transmission of the contract notice (if appropriate)
7	▪ Revising and assessing the submitted bids/offers within the public procurement procedure
8	▪ Awarding public procurement contract to the winner/economic operator
9	▪ Publishing of the contract award notice/outcomes of the public procurement procedure
10	▪ Drafting a report on the outcomes of the public procurement procedure
11	▪ Implementation and monitoring of execution of public procurement contract
12	▪ Elaboration and publishing of quarterly, bi-annual and annual reports on monitoring public procurement contracts under implementation
13	▪ Storage and evidence of all the documents that have been elaborated and used within the framework of public procurement procedures



MONITORING OF PUBLIC PROCUREMENT BY CIVIL SOCIETY

The role of monitors

Monitoring of the mode in which public funds are used and of the public procurement procedures by the civil society implies a series of challenges. On the one hand, scarce transparency and limited access to information on public procurement are the most common barriers. On the other hand, the information that is made accessible and public, in compliance with the law, is not sufficient for the monitors to identify the corruption risks such as bid rigging, procurement fraud as well as other corruption schemes, including collusion, bribery, embezzlement/misappropriation of public funds, pressure and coercion exerted by a head of an institution or political party, clientelism, nepotism/cronyism, etc., let alone tens of thousands of procedures and public procurement contracts that are concluded by the public authorities at all levels.

The pressure from the civil society, sometimes coupled with a sound promotional campaign could encourage public authorities – even those with feeble political will – to sanction the actors involved in corrupt practices, should they be from public or private sector”

(<http://monitoring.coalitionforintegrity.org/>)

Respectively, the monitors should take into account all the enumerated aspects, and, especially, the fact that it is impossible to monitor all public procurements no matter how good the monitoring capacities are. But even so, the impact the monitoring results, findings, irregularities and identified frauds may have on the public procurement process could be considerable.

First and foremost, it has to do with raising awareness in society referring to authorities' irresponsibility for spending of public funds, with channelling public opinion on corruption cases and embezzlement of public funds as well as on informing the law enforcement bodies with a view to investigate the respective cases.

Complete eradication of corruption, evidently, will not be possible, but reduction in corruption and prevention of corruption risks are target objectives for those who monitor public procurement.

Although monitors are not auditors and do not hold relevant competencies or coercive power, or legitimate power to apply legislation, they have an important role in enhancing the public procurement efficiency.

The monitoring efforts of civil society could contribute to:

- increasing the level of transparency as well as reducing irregularities and minimizing illegalities simply because the civil society representatives are present and observe the unfolding stages of the public procurement process (planning, opening of tenders, awarding of contracts, contract implementation monitoring, etc.);
- gaining greater trust for public servants who have undertaken to plead for transparent public procurement and quality public services;
- publishing and campaigning with reference to corruption cases, irregularities, and illegalities discovered within the framework of the monitoring process that bring about social pressure against corruption in public procurement;
- identification of stakeholders (economic operators, members of the public procurement working groups within contracting authorities, etc.) who committed illegal acts and prejudiced the public

budget via inefficient public procurement practices, thus, holding them liable for their actions, and averting irregularities and frauds in the future.

- Increasing public awareness and encouraging citizens to be more actively involved in the decision making process at the central and local levels;
- Providing opportunities to civil society/citizen for active involvement in developing programs/initiatives which contribute to increased transparency;
- Building bridges with the aim to establish and maintain good cooperation among government authorities, civil society, private sector and citizens.

Selecting public procurement for monitoring

CSOs and monitors should realize that selecting procurement for monitoring is important due to the fact that it is impossible to monitor all public procurement as it is an extremely large amount of it. For example, only in 2016, in conformity with the activity report of the Public Procurement Agency for the year 2016⁶, there were concluded 20 417 contracts and additional agreements to contracts amounting to a total of 7 527 million Moldovan lei.

Monitoring can take many forms, depending on monitors' priorities and capacities. The most simple and accessible form of monitoring is observation, thus, any citizen could observe if a commodity was efficiently procured or a work was properly executed. For example, it is possible to monitor procurement of furniture for a school according to a pre-established agreement, procurement of medicines that should always be available to satisfy the needs of patients or building a stretch of road as promised by authorities. However, efficient monitoring that could bring about visible results (increased transparency, public accountability, improvement of the procurement process, reporting of acts of corruption, calling those involved to account for illegal actions etc.) implies overseeing the public procurement process from planning to contract execution, interaction with the contracting authorities as well as taking actions with an aim of achieving recovery from the identified matters of concern.

A deep analysis of the documents at each stage of the public procurement process, comparison of quality/quantity of goods, services and works with contractual provisions and use of certain tools to identify the corruption risks are some of the methods used in the process of monitoring.

Also, in the process of monitoring, it is recommended that CSOs set clear objectives and adequate procedures to be sure that the time and the allotted resources are used to the full, and the results, including the data, analytical reports and monitoring reports are credible and reliable. Therefore, in order to make the monitoring activities more efficient, the following selection criteria could be used:

- observing a certain stage of the public procurement process, which is considered less transparent;
- focusing on high value contracts;
- complexity of the procurement process;
- certain economic sectors, prone to illegalities and corruption schemes;
- sectors with the largest share of public spending and the highest amount of public procurement contracts (health, education, infrastructure, etc.);
- certain contracting authorities (for example those which undertake the largest amount of public procurement; those that lack transparency or previously committed violations attested by audits or civil society within the framework of other monitoring activities);
- goods, services and works with the largest share in the total amount of procurement at the national level (building works, maintenance and repair of roads, medicines and medical equipment, etc.);

⁶ http://tender.gov.md/sites/default/files/document/attachments/raport_anual_2016.pdf

- domain of activity and expertise capacities of the SCOs (for example, the organizations that are active in the field of education could monitor public procurement from within the educational institutions);
- according to regions or even administrative territorial units (the local authorities know better the situation at the local level and could monitor all or a part of the contracting authorities from the locality/region in which they activate: mayoralty, local councils, budget institutions, municipal enterprises, etc.);
- accessibility of information.

Participation of civil society representatives in public procurement working groups

One or several public procurement working groups are created at the level of each contracting authority depending on its needs, and on the number and complexity of the public procurement procedures. For example, some contracting authorities may have separate working groups for goods, for services or for works. A working group represents a group of specialists within the contracting authority, who initiate and carry out public procurement procedures in order to satisfy the needs of the respective contracting authority.

The activity of the working group is regulated by the Law on public procurement No 131/2015 and the Regulations relating to the activity of the public procurement working group (Government Decision No 667/2016).

The created working group will include civil servants and specialists of the contracting authorities, who have relevant experience in the domain of public procurement. However, consultants/experts could be trained to become members of the working group to carry out certain types of public procurement procedures in a specified domain.

Pursuant to the provisions of the above-mentioned Regulations, civil society representatives could also be members of the working groups. Civil society representatives are included in the working group for every procurement procedure in part/as per application to procurement. They do not have the right to vote, but have the right to express their

opinion, which is mandatorily included in the deliberation notes of the working group. In the event the civil society representative disagrees with the decision taken within the meeting, s/he is bound to express her/his own opinion in writing in the official meeting minutes, with a clear statement of the reasons related to disagreement with the decision that has been taken.

The contracting authority shall obligatory include as component members of the working group civil society representatives, provided they have submitted a written application two days prior to the deadline for submission of bids/tenders, but these representatives could not constitute more than a third of all group members.



The duties of the working group in the field of public procurement:

- ☑ to examine and specify the needs of the contracting authority with regard to goods, services and works, ensuring coordination within the limits of the provided financial resources and to elaborate the annual public procurement plans;
- ☑ to draft and submit for publishing the notices of intended procurement envisaged by the contracting authority;
- ☑ to initiate and conduct the respective procurement procedure that is envisioned by law;
- ☑ to write announcements and/or notices of invitation to tender within the framework of public procurement procedures;
- ☑ to elaborate tender documentation and other documents applicable to the public procurement procedure;
- ☑ to examine, assess and compare the bids/offers of the economic operators, submitted within the framework of public procurement procedures;
- ☑ to award public procurement contracts that are concluded between the contracting authority and the economic operators;
- ☑ to prepare the necessary documents to sanction the economic operator in case of improper fulfilment of the terms laid down in the contract;
- ☑ to elaborate the report on public procurement procedures or modify the procurement contract which is submitted for examination and registration to the Public Procurement Agency within 5 days since the moment of signing the contract or from the moment of adopting a decision to annul the procurement procedure or to enter into an additional agreement, or within 5 days from the beginning of the public procurement procedure in case not a single offer has been submitted;
- ☑ to monitor proper execution of the public procurement contracts;
- ☑ to maintain records of all documents that have been elaborated and used within the framework of public procurement procedures.

Obligations of the working group:

- ✓ to ensure efficiency of public procurement according to the needs of the contracting authority;
- ✓ to provide for large-scale participation at public procurement procedures, in order to ensure competitiveness and combat unfair competition in the field of public procurement;
- ✓ to ensure objectivity and impartiality with regard to public procurement procedures;
- ✓ to ensure transparency and publicity in relation to public procurement procedures;
- ✓ to furnish to economic operators who applied to undertake the procurement procedure information about adjustments to the tender documents;
- ✓ to make the information reflected in the tender documents available for the economic operators who are applicants;
- ✓ to ensure publication of the tender documents on the web page of the contracting authority;
- ✓ to make sure that the applications/requests to participate at the public procurement procedures are registered;
- ✓ to respond to any action of the economic operator regarding tender documents within the time-frame foreseen by legislation or specified in the documents used in the public procurement procedure;
- ✓ to make sure that communications referring to public procurement procedure are registered;
- ✓ to receive the offers/bids submitted by the economic operators relating to public procurement procedures, ensuring their registration and issuance of receipts;
- ✓ to prepare, in the presence of offerors/bidders, the written record of the opening of the tenders;
- ✓ to perform qualification assessment of the participants at the public procurement procedures in conformity with the requirements set forth in the tender documents;

- ✓ to review, assess, and compare the offers of the economic operators within the terms and conditions stipulated in the tender documents, and in compliance with the law;
- ✓ to offer to the economic operator a possibility to justify the abnormally low tender price;
- ✓ to produce the written record of the results of the evaluation of the offers/tenders submitted within the framework of the public procurement procedure;
- ✓ to make the outcomes/results of the procurement procedure void before the date of transmitting a note on the outcome of the invitation to tender/application to public procurement, in compliance with the provisions of Art.67 of the Law No131 of July 3, 2015 on public procurement;
- ✓ to request, in cases foreseen by legislation, the inclusion of economic operator in the blacklist of economic operators;
- ✓ to prepare and to keep the public procurement dossier for a period of 5 years starting with the begin since the initiation of the public procurement procedure;
- ✓ to prepare the Register/record book of applications from the civil society, the Register of requests for participation, and the Register of offers/bids submitted by the economic operators;
- ✓ to submit in maximum 5 days, upon Public Procurement Agency's request, any information on the public procurement procedures that have been initiated and unfolded by the contracting authorities as well as on execution of public procurement contracts;
- ✓ to immediately inform the law enforcement authorities about cases of fraud or corruption detected in the process of public procurement procedures;
- ✓ To attribute the CPV code for the product, service or work tendered, in conformity with the Regulations on Common Procurement Vocabulary.

As regards integrity of the members of the working group and avoidance of conflicts of interest, the legal framework provides for the **obligation of the contracting authority** to undertake all necessary actions to **avoid situations, which could lead to the emergence of conflict of interest.**

THE MEMBER OF THE WORKING GROUP HAS THE OBLIGATION TO SIGN, under his/her responsibility, a declaration of confidentiality and impartiality, committing himself/herself to unconditionally comply with the provisions of the present law, confirming, at the same time, that s/he:

- a) **is not a spouse, relative or relative-in-law up to and including the third degree, with one or more persons of the offerors' employees or to one or several founders related to the offerors;**
- b) **during the last 3 years, has not activated on the basis of an individual employment contract or another written document attesting employment relationship with one of the offerors; was not part of the board of directors or of any other management body or was not part of the offerors' administration;**
- c) **has no stocks or shares relating to subscribed/issued share capital of the offerors.**



“RED FLAGS” TOOL FOR MONITORING PUBLIC PROCUREMENT

The monitoring methodology has on its basis a tool elaborated by the Transparency International USA – Civil Society Procurement Monitoring Tool⁷. It is a monitoring instrument, broadly used worldwide, which is based on identification of “red flags” at each stage of the procurement process. The red flags represent types of signs or indicators of possible irregularities, frauds or corruption.

Additionally, it is mentioned that identification of a red flag is not necessarily indicative of the presence of an irregularity or corruption act, but rather points to at such a possibility. Sometimes, a red flag could be the result of a human or technical error without bad intention, and not a sign/indicator of corruption. That is why, it is important that monitors should be aware not only of the methods of red flags’ identification, but also of actions that they could take in order to make a profound analysis of them, including notification of the responsible supervisory/oversight and inspection bodies in the domain of public procurement, notification of the bodies responsible to investigate anti-competitive practices, conflicts of interest, corruption etc.

For monitoring activity purposes we shall distinguish 4 main stages of the public procurement process:

1. **Planning and elaboration of tender documents;**
2. **Launching of the procurement procedure;**
3. **Evaluation of tender documents and award of contracts;**
4. **Implementation and monitoring of contracts;**

1. Planning and elaboration of tender documents

Identification of needs

The procurement process begins with identification of the needs by the contracting authority, their assessment and prioritization, and continues with elaboration and publishing of the notice of intended procurement in the PPB, and of the quarterly/annual public procurement plan on the web page of the contracting authority.

- **Notice of intended procurement** – an announcement that has to be published in the PPB within 30 days from the date of approval of the contracting authority’s budget, comprising all the public procurement contracts envisaged to be awarded before the end of the budget year, whose estimated value for goods and services equals to or exceeds 400 000 Moldovan lei, and for works equals to or exceeds 1 500 000 Moldovan lei;

The information to be mandatorily included in the notice of intended procurement is stipulated in Annex 3 of the Law on public procurement 131/2015.

- **Procurement plan** – comprises all the goods, services and works for the whole budget year, which should be addressed through conclusion of one or several public procurement contracts, depending on such factor as planning. The procurement plan should be obligatorily published on the web page of the respective authority within 15 days since its approval, or in 5 days starting with the day of its amendment.

The planning stage of public procurement is important for the contracting authority: the better planning it has, the less efforts during the subsequent stages of the procurement process it will make, and the better

⁷ <http://monitoring.coalitionforintegrity.org/>

results after implementation of the contract will obtain. Here we refer to multiple amendments which appear at the stage of awarding and execution of a public procurement contract in the result of faulty planning, of waste of financial resources which entails increase in final cost of procurement. One of the principles that should be followed by the authority at the planning stage is “*value for money*”, which means that from the very beginning the costs should be evaluated for the entire lifecycle of products, services or works, taking into consideration the quality-price ratio, product warranty, assessment of maintenance costs, etc.

For adequate procurement planning it is necessary to:

- know exactly the needs relating to goods, services and works;
- have financial resources or an evidence that they have been allocated;
- estimate the public procurement contract value, and in case of simultaneous award of contracts in the form of separate lots – to estimate the cumulative value of all lots.

Elaboration of tender documents

Tender documents shall contain all the data related to the subject of the public procurement contract, and the procedure of its award, as well as the task book (for the following procedures: open tendering, restricted/limited tendering, request for price quotation and framework agreement).

THE TASKBOOK IS THE MOST IMPORTANT DOCUMENT IN THE TENDER PROCESS. It should describe the service, product or work that is supposed to be furnished, as well as the levels, standards, and resources, along with the outcomes and longed-for results.

The taskbook shall contain:

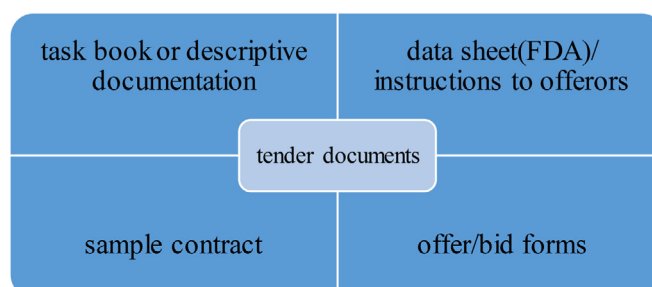
- 1. The list and quantity of goods, services and works;**
- 2. Complete technical specifications.**

In case of procurement of goods, these specifications define the levels of quality, the levels of environmental performance, the assessment of conformity/compliance, of performance, of product use, product safety, or its dimensions.

Elaboration of tender documents is the duty of public procurement working group from the level of each contracting authority. Consequently, the contracting authority has an obligation to state in the tender documents any request, criteria, rule and other data that should necessarily provide to the offerors clear, correct and explicit information on how to deal with the award procedure.

The contracting authority has the right to insert in the tender documents, in so far as they are consistent with the Community law, special conditions related to fulfilment of contract that have the purpose to create certain social impact, are connected with environmental protection and promotion of sustainable development.

Content of the tender documents



Additionally, **the tender documents** should:

- ❖ be elaborated before the notice of competition/tender notice is sent out for publishing;
- ❖ be coherent, complete, without ambiguities;
- ❖ not contain “indications” to a certain brand or model, which would favour a certain economic agent;
- ❖ have specified **criteria for award of a public contract, contractual provisions, minimum qualification requirements, tender guarantee.**










While performing tender documents’ analysis, the monitors should assess three core elements: **the taskbook with technical specifications, evaluation criteria, qualification criteria, and contractual provisions.**

Monitors should carry out an analysis of **technical specifications** according to the following criteria that should:

- be clear and of a non-discriminatory character;
- promote competition between offerors and prevent favouring a certain supplier;
- guarantee compatibility with the existent infrastructure;
- contribute to production and furnishing of more efficient goods and services;
- protect the consumers and users of products and services;
- contribute in general to improving the quality of life and safekeeping of the environment.




















It is useful to mention that in the Contravention Code (art.327¹) there are sanctions foreseen for defective procurement planning or lack of procurement planning:

”lack of procurement planning or procurement planning that violates the provision of legal/standard acts, failure to publish the invitation to tender and the notice of competition, splitting up public procurement through conclusion of separate contracts with the view to apply another procurement procedure than the one that could have been used in compliance with the legal/standard acts are subject to the application of a fine of 15 to 60 currency conventional units to a managerial position employee.”

PROCUREMENT PLANNING	
<i>Red flags</i>	<i>Recommendations for monitors</i>
<p> Defective planning of public procurement related to:</p> <ul style="list-style-type: none"> - <i>goods/products</i> –without taking into account the (average) market indicators, place of delivery of goods, complexity of commodities, purpose of procurement, term of contracts’ execution; - <i>services</i>– without taking into consideration the place where services are provided, the scope and terms referring to provision of services; - <i>works</i>– for the entire object (construction) or through cumulating several objects in lots, with appointment of a procurement winner for every object/lot in part. 	<ul style="list-style-type: none">  analysis of the market of the product, service or work, planned to be procured (market prices, the prices at which the goods were purchased by other authorities, etc.)  requesting explanations from the CA regarding the mode of procurement planning and the aspects taken into consideration;  informing the PPA;  raising awareness among general public and mass-media.
<p> “Manipulating” needs by including in the PP of goods, services or works, which do not correspond to real needs (<i>for example, procurement of a video camera by a school while it has no furniture, heating system, sanitary blocks, etc.</i>).</p>	<ul style="list-style-type: none">  requesting explanations from the CA as to if the respective procurement is needed, and if the opinion of the large public and beneficiaries was taken into account;  informing the PPA;  raising awareness among general public and mass-media.

PROCUREMENT PLANNING	
<i>Red flags</i>	<i>Recommendations for monitors</i>
<p>Overestimating the value of products, services or works for the purpose of obtaining later, at the stage of award of public procurement contracts, of some personal benefits.</p>	<ul style="list-style-type: none"> 👉 analysis of the market of the product, service or work, planned to be procured; 👉 informing the PPA; 👉 raising awareness among general public and mass-media.
<p>Non-publication of notice of intended procurement in the PPB and on the web page of the PPA within the established 30-day term since the date of the CA budget approval.</p>	<ul style="list-style-type: none"> 👉 requesting explanations from the CA; 👉 informing the PPA; 👉 raising awareness among public at large and mass-media.
<p>The PP is not in line with the budget of the authority or does not correspond with the development strategy of the authority/community.</p> <ul style="list-style-type: none"> - the PP contains useless goods, services or works, which do not correspond to the real necessities of the community (<i>these are often „bidden” in small value contracts, which have a limited transparency, and are hardly monitored</i>). 	<ul style="list-style-type: none"> 👉 requesting information from the CA regarding the real need in respective goods, services or works, with supporting arguments. 👉 requesting the CA to organise public hearings or a meeting with civil society representatives and with invited local authorities in order to discuss about the respective needs and alternatives taking into account the good governance principles; 👉 raising awareness among public at large and mass-media.
<p>Non-publication of the PP on the web page of the CA within 15 days since its approval or in 5 days since its amendment.</p>	<ul style="list-style-type: none"> 👉 requesting explanations from the CA and publishing the PP in conformity with legal provisions; 👉 informing the PPA; 👉 raising awareness among general public and mass-media.
<p>Procurement planning depending on the interests of certain individuals or groups of persons (<i>building of a stretch of road that will pass in front of a house of a politician or a community level authority, when the other roads have the same condition</i>).</p>	<ul style="list-style-type: none"> 👉 informing the inspection authorities or law enforcement bodies (PPA, CNA NIA); 👉 raising awareness among general public and mass-media.
<p>Splitting of procurement by applying of another public procurement procedure than the one that could have been used in compliance with the Law on public procurement, provided that the procurement was not split.</p>	<ul style="list-style-type: none"> 👉 requesting explanations from the CA, taking the necessary actions; 👉 informing the PPA; 👉 raising awareness among general public and mass-media.

ELABORATION OF TENDER DOCUMENTS	
<i>Red flags</i>	<i>Recommendations for monitors</i>
<p>The tender documents are not published on the web page of the CA, being inaccessible to economic operators or large public;</p>	<ul style="list-style-type: none"> 👉 requesting explanations or publishing of documents from the CA (<i>in case of inadvertent omission or error</i>); 👉 informing the PPA; 👉 raising awareness among general public and mass-media.

ELABORATION OF TENDER DOCUMENTS	
<i>Red flags</i>	<i>Recommendations for monitors</i>
<p> Technical specifications of a discriminatory nature, referring to:</p> <ul style="list-style-type: none"> - a certain commercial brand; - a certain patent; - a certain sketch; - a certain type of products, services or works; - a specific origin, manufacturer or economic operator. 	<ul style="list-style-type: none">  discussions with offerors/bidders with regard to the elaborated technical specifications and the related discriminatory aspects;  requesting the CA to modify/amend the documents, and particularly the technical specifications (<i>recommendation in case of inadvertent inclusion of discriminatory elements</i>);  informing the PPA (<i>recommendation in case of inadvertent inclusion of discriminatory elements</i>);  raising awareness among general public and mass-media.
<p> The technical specifications are complex, vague, limited or "adjusted" to a certain economic operator;</p> <ul style="list-style-type: none"> ! there are complaints from the economic operators, who consider that their right to participate in public procurement was violated; ! there is a single offeror for several procurement procedures of the monitored authority; 	<ul style="list-style-type: none">  analysis of the previously monitored procurements carried out by the CA, in order to exclude the possibility of an error or lack of the CA capacity;  consulting and expert in the field in which procurement is supposed to be conducted;  soliciting that the CA revises and modifies/amends accordingly the tender documents, and, contracts with an independent expert, if needed, to elaborate the technical specifications;  informing the PPA;  raising awareness among general public and mass-media.
<p> The documentation contains data on items that are not necessary for carrying out the planned works or includes data on goods that are not necessary in conformity with the identified goods;</p>	<ul style="list-style-type: none">  requesting the CA to justify the inclusion of the given items and to revise the documentation;  informing the PPA;  raising awareness among general public and mass-media.
<p> Information leakage from the side of members of the working group and officials to a certain economic agent that is favoured, whilst other economic operators are disregarded;</p>	<ul style="list-style-type: none">  requesting from the CA the list of economic operators that lodged complains;  informing the PPA and the NAC;  raising awareness among general public and mass-media.

2. Launching of the procurement procedure, submission of offers/bids, and opening of tenders

Launching of the procurement procedure

Upon conclusion of the planning stage, including elaboration of the tender documents, one could embark on the procurement procedure. In order to launch the procurement procedure, the contracting authority drafts the tender participation announcement.

The information that should mandatorily be included in the tender participation announcement is set forth in Annex 3 of the Law on public procurement 131/2015.

The **notice of invitation to tender** is forwarded for RPC procedure without being published in PPB and is concurrently transmitted to a largest possible number of economic operators.

The **tender participation announcement** should mandatorily be published by the contracting authority during the following procurement procedures:

- open tender;
- restricted/limited tender;
- competitive dialogue;
- negotiation of procedures;
- RPC (*procurement of goods/services for amounts (no VAT) exceeding 150.000 Moldovan lei and procurement of works for amounts exceeding 200.000 Moldovan lei*);

The **tender participation announcement** is published in:

- ❖ PPB and on the web page of the Public Procurement Agency;
- ❖ PPB, on the web page of the Public Procurement Agency and in the Official Journal of the European Union, in the event the cost of the goods and services exceeds 2.300.00 Moldovan lei, and the cost of works – 90.000.000 Moldovan lei.

- ! The qualification and selection criteria, specified in the tender participation announcement, should be the same as those foreseen in the tender documents.

IN ORDER TO ENSURE **maximal transparency, the contracting authority has the right to publish the tender participation announcement in various media sources, both national and international.**

The **tender participation announcement** will be published within a time-frame that will provide all the interested economic operators, **without any discrimination, real possibilities to participate** in the public procurement contract award procedure.

Competition of the market of public procurement is vital as it ensures the necessary conditions for efficient use of public funds and offers incentives to companies for efficient operation, innovation and development. On the other hand, the anti-competitive practices are a threat to good governance and economic development. The phenomenon of collusion results in “redeployment” of public funds to individuals and companies, and does not lead to use of funds for public interest.

At the stage of offers/bids submission, the corruption risks could appear due to secret settlements between the economic operators, which are known under the name of collusion.

Collusion is a secret side deal between two or more participants at the public procurement process, intended to limit free competition via fraudulent actions or by depriving others of their legal rights with a purpose to influence the process of selection of the procurement winner. Collusion and corruption are two distinct issues of concern within the tender process, which very often may appear together in a “relationship of symbiotic support”. If corruption, in general terms, is a vertical type agreement between an offeror and the contracting authority, then collusion is a horizontal type of agreement between the offerors.

TYPES OF COLLUSIONS ⁸

<i>offer suppression</i>	<i>offer rotation</i>	<i>market sharing</i>	<i>complementary bidding</i>
agreement through which economic operators convene to refrain from submitting offers/bids, in order to secure the victory of one winner	agreement through which economic operators convene to win the procurement contracts via offer rotation by submitting offers to all the procedures "to ensure competitiveness"	agreement through which economic operators share the procurement market according to geographic areas, contracting authorities, and convene not to submit offers/bids for other procedures than those that have been "allotted" in conformity with the agreement	agreement through which economic operators convene to submit offers/bids that are either higher than the bid of the person designated to win, or are too high to be accepted, or do not correspond to the requirements of the authority or to the requirements of the tender documents

An important aspect that the SCOs and monitors should be aware of is that **after the tender participation announcement is published and two days before the deadline to submit the offers or the day of offers' opening**, the representatives of the civil society could request in writing to be included in a working group for a respective procedure. The contracting authority has the obligation to inform the representatives of the civil society who submitted their requests as to their inclusion or non-inclusion in the composition of the working group.

At this stage, it is recommended to analyse and assess the following aspects:

- If the tender participation announcement is drafted in compliance with the legal provisions and includes all the data necessary to correctly inform the potential offerors/bidders and the general public;
- If the contracting authority ensures an adequate degree of transparency and abides by the legal provisions regarding advertising of the tender participation announcement;
- If the authority has published the given announcement on the web page;
- If the authority is receptive to the demands of the civil society representatives with regard to their inclusion in the composition of the working group and informs them about its decision in this respect;

Submission of offers/bids

The written, signed, and, if necessary, stamped offer/bid is submitted in conformity with the requirements stipulated in the tender documents. The contracting authority **obligatory provides to the economic operator a receipt in which the date and time of acceptance of the offer/bid are indicated** or otherwise confirms the receipt of the offer/bid in case it was submitted via electronic means. The offer/bid that was submitted/transmitted to another address of the contracting authority than the one indicated in the tender

THE REQUEST WILL INCLUDE:

- *Company/organization name;*
- *The name and the surname of its incumbent/representative;*
- *The copy of the document attesting the mandate/ authorization or the name and surname of the natural person;*
- *Legal, or postal, or domicile address;*
- *Contact information, including the email;*
- *Procurement procedure to which the person wish to be included as part of the working group.*

⁸ In conformity with OECD

participation announcement/notice of invitation to tender, or received by the contracting authority after the deadline for the submission of offers/bids, should not be opened, and should be returned to the economic operator who submitted it.

Opening of offers

Opening of offers takes place at the time specified in the tender documents as a deadline for offers/tenders’ submission or at the time specified as a deadline of an extended period, regardless of the number of the offerors/bidders, in a pre-established place and in conformity with the procedures stipulated in the tender documents. Opening of offers/tenders takes place in the presence of the members of the working group who have a connection with the respective tender procedure, and in the presence of the civil society representative. The offeror has no right to withdraw or modify/amend the offer upon expiry of the submission deadline, being under sanction of exclusion from the procedure of public procurement contract award.

- ! **Any person is authorized to assist at the opening of offers/tenders.**
- ! **Information that is communicated to those present at the opening of offers/tenders:**
 1. *name and contact details of each offeror whose offer is opened;*
 2. *qualification documents;*
 3. *offer price.*
- ! **Those who were absent or were not represented at the opening of offers/tenders, could obtain the above information upon request.**

IMPORTANT FOR THE MONITORS WHO PARTICIPATE AS CIVIL SOCIETY REPRESENTATIVES:

- The offers/bids will be mandatorily signed by all the members of the working group, including by the civil society representatives and the invited consultants.
- The tender-opening session is completed through drafting a **written record of the opening of the tenders/tender opening minutes.**
- **The tender opening minutes are also signed by all the members of the working group, including by the civil society representatives,** and will be submitted to the representatives of the economic operators for countersigning, upon the request of the latter.
- In case a **member of a working group disagrees with a decision** taken within the tender-opening session, s/he must express his/her **opinion separately in the minutes,** indicating the clear reasons for his/her disagreement with the given decision.

It is worth mentioning that the Contravention Code foresees sanctions for:

- **Any sort of restriction of economic operators’ access** to the procedure for the award of a public procurement contract is penalized with a fine of 15 to 60 currency conventional units, applied to a managerial position employee.
- **Failure to sign the declarations of confidentiality and impartiality by the members of the working group, failure to draft the tender opening and tender evaluation minutes within the framework of the public procurement procedures, failure to send, within the establish period, to the address of the offerors, the information on the results/outcomes of the procurement procedure** or any other information stipulated in the legal/standard acts, is penalized by a fine of 15 to 90 currency conventional units, applied to a managerial position employee.

LAUNCHING OF THE PROCUREMENT PROCEDURE, SUBMISSION AND OPENING OF OFFERS/BIDS	
<i>Red flags (actions of the contracting authority)</i>	<i>Recommendations for monitors</i>
<i>Tender participation announcement</i>	
<ul style="list-style-type: none"> ✘ All the information set forth in Annex 3 to the Law No 131/2015 is not indicated in the tender participation announcement; ✘ The contracting authority did not publish the given announcement in the PPB and on the PPA web page in conformity with the public procurement procedure; ✘ The tender participation announcement was published in a short time-frame that did not correspond to the type and complexity of the procurement. ✘ When it was necessary to modify/amend the tender participation announcement, the public authority did not publish the given modified/amended announcement in all appropriate media in which the initial announcement was published or did not extend the deadline for offers' submission so that all interested economic operators could have access to all information necessary for formulating their bids. 	<ul style="list-style-type: none"> ✔ CA notification regarding the content of the tender participation announcement and the request to ensure compliance with the law in effect; ✔ Informing PPA about violation of legislation in the field of public procurement by the CA; ✔ Raising awareness among general public and mass-media.
<i>Submission of offers/bids by economic operators</i>	
<ul style="list-style-type: none"> ✘ Breach of confidentiality provisions by the CA with regard to the received offers/bids (information leakage from members of the working group and officials to a certain economic agent); ✘ AC intentionally does not offer or tergiversates submission of the taskbook to certain economic operators; ✘ The contact details provided to request the taskbook are inaccurate (telephone numbers, inaccessible email addresses); 	<ul style="list-style-type: none"> ✔ Soliciting explanations from the CA regarding access of the economic operators to the workbook; ✔ Informing PPA with regard to violations committed by the de CA; ✔ Raising awareness among general public and mass-media.
<i>Participation of civil society in public procurement working groups</i>	
<ul style="list-style-type: none"> ✘ You submitted a request for inclusion in a public procurement working group in compliance with legal procedures and you received an ungrounded refusal from the side of the contracting authority; ✘ You were accepted as a member of a working group, but were not informed about the date, time, and place of opening of the offers/tenders; ✘ You participated as a member of a working group at a public procurement procedure, but were not informed about the date, time, and place of tender evaluation session; 	<ul style="list-style-type: none"> ✔ Informing PPA regarding violation by the CA of the right of the civil society to participate in the working group; ✔ Requesting information relating to the reasons of the refuse received from the CA; ✔ Raising awareness among general public and mass-media.
<i>Tender-opening session</i>	
<ul style="list-style-type: none"> ✘ The members of the working group do not sign the declarations of confidentiality and impartiality; ✘ The date/time of the tender-opening session is postponed; ✘ The working group receives offers/bids after the time established for the opening of the offers/bids; 	<ul style="list-style-type: none"> ✔ Informing the CA, the chairman/secretary of the working group regarding the committed violation; ✔ Informing the PPA; ✔ Informing the NIA;

LAUNCHING OF THE PROCUREMENT PROCEDURE, SUBMISSION AND OPENING OF OFFERS/BIDS	
<i>Red flags (actions of the contracting authority)</i>	<i>Recommendations for monitors</i>
<ul style="list-style-type: none"> Ⓜ One or several offerors/bidders withdraw unexpectedly their offers/bids exactly before their opening so that the tender could be won by a certain offeror/bidder; Ⓜ The members of the working group do not sign each offer received within the framework of the public procurement procedure; Ⓜ The name and contact details of each offeror/bidder, the qualification documents and the price per each offer are not communicated during the tender opening session; Ⓜ A member of the working group has a conflict of interest with one of the offerors/bidders (pursuant to the provisions of art. 74 of the Law 131/2015), but did not solicit his/her withdrawal from the working group and replacement; 	<ul style="list-style-type: none"> 👉 Raising awareness among general public and mass-media.

DETECTION OF ANTI-COMPETITIVE PRACTICES	
<i>Red flags (actions of the economic agents)</i>	<i>Recommendations for monitors</i>
<i>Indicators which may suggest a certain type of competitive practice</i>	
<ul style="list-style-type: none"> Ⓜ Certain companies win tenders in some specific regions of the country – it is a sign of market-sharing according to geographic criteria; Ⓜ The same offeror/bidder often has the cheapest tender; Ⓜ A certain company wins the tenders of a contracting authority for a certain domain; Ⓜ Unexpected withdrawal of offers/bids or intentional non-transmission of additional information solicited by the contracting authority, resulting in exclusion from the procedure; Ⓜ The winning offeror/bidder is constantly sub-contracting offerors/bidder that did not win; Ⓜ Two or more companies which submitted their offers are founded/instituted and/or managed by the same natural persons (<i>the information about the founders and managers behind each offeror/bidder could be verified in the State Register of Legal Entities for a fee</i>)⁹; <i>Alternative sources: www.companii.md; www.idno.md; www.bizzer.md.</i> Ⓜ Two or several offerors/bidders have the same legal address; Ⓜ There is a very big difference in price between the cheapest offer/bid and the rest of the submitted offers/bids; Ⓜ The price differences between the offerors are very low, but when each single entry is analysed, it becomes clear that there is a fixed difference in prices between entries from offer 1 and entries from offer 2 (for example, a difference of 10 lei or 1%); 	<ul style="list-style-type: none"> 👉 Consulting the economic operators that participated at the CA monitored public procurement and could provide more detailed information; 👉 Informing the CA with regard to the possible anti-competitive practices which may exist for to analyse the situation and make a decision on the subject of continuation or annulment of the procedure; 👉 Informing the Competition Council; 👉 Raising awareness among general public and mass-media.

⁹ <http://webinfo.cis.gov.md/company-search>

DETECTION OF ANTI-COMPETITIVE PRACTICES	
<i>Red flags (actions of the economic agents)</i>	<i>Recommendations for monitors</i>
<ul style="list-style-type: none"> ✎ Certain offerors/bidders participate at many tenders; some contracting authorities participate in the same tenders, or, vice versa, do not participate one against another; ✎ One or several offers/bids are below market price/ are abnormally low, giving the “designated” person the possibility to win the tender. 	
<i>Indicators specific to offers and documents submitted by the economic operators</i>	
<ul style="list-style-type: none"> ✎ Identical spelling mistakes, clerical errors, the same format/ font used; ✎ The offers contain contact details i.e. the telephone number, the address that identify another offeror/bidder ; ✎ The offers contain identical arithmetical errors, identical cost estimations for certain types of products; 	<ul style="list-style-type: none"> 👉 Informing the CA with regard to the possible anti-competitive practices which may exist for to analyse the situation and make a decision on the subject of continuation or annulment of the procedure; 👉 Informing the Competition Council; 👉 Raising awareness among general public and mass-media.

3. Evaluation of tender documents and award of contracts

When offers are opened, the working group has to review and evaluate the offers/bids in compliance with the terms and conditions as well as requirements established in the tender documents. The review and evaluation of the offers/bids are carried out without participation of the offerors/bidders or any other persons who are not members of the working group. **The civil society representative, as a member of a working group, will be informed by the contracting authority about the date, time and place of the tender evaluation session.**

The working group will examine the offers on a confidential basis and will not disclose information regarding the review, evaluation and comparison of the offers/bids to the offerors/bidders or to the persons who are not officially involved in the above procedures, or in determination of the winning bid.

At the stage of evaluation of offers/bids, one may solicit explanations and clarifications in connection with the offers/bids, reconfirm certain elements of the offer/tender or of the commitments undertaken within it; in this case, the authority will grant a reasonable term for the answers to be provided. The additional information submitted by the offerors/bidders should not lead to offers' modifications/amendments, which could distort competition or create an additional advantage in relation to the other offerors/bidders.

In some situations that are foreseen by the legal framework, **the contracting authority has an obligation to exclude offerors/bidders from the procedure on the award of a public contract.** Respectively, the monitors should follow closely the mode and the situations in which the contracting authority rules out, with or without any reason, some offerors/bidders from the award procedure.

SITUATIONS REQUIRING EXCLUSION OF AN OFFEROR/BIDDER:

- During the last 5 years, s/he **was convicted, by a final judgement of a court decision,** for participation at the activities of a criminal organization or group **for corruption, for fraud and/or money laundering;**

- During the last 3 years, s/he **was convicted, by a final judgement of a court decision**, for an offence concerning his/her **professional ethics or for committing professional misconduct**;
- **S/he undergoes a process of insolvency** as a result of a court decision;
- S/he is included in the **blacklist list of economic operators**¹⁰;
- S/he submitted **two or more individual/joint bids**;
- S/he submitted **an individual/joint bid**, but is also a **subcontractor under another offer**;
- The candidate, offeror/bidder, associate, or subcontractor **is involved in the process of verification/evaluation of applications/offers**;
- The candidate, offeror/bidder, associate, or subcontractor has participated in the process of preparation of tender documents, in case when his/her involvement could **distort competition**;
- S/he did not meet his/her **obligations with regard to taxes, duties and social security contributions** in conformity with legal provision;
- S/he submitted **false information** or failed to submit the information requested by the contracting authority for to demonstrate that the qualification and selection criteria have been met;
- The offer **is not in line with the requirements** set in the tender documents;
- The offeror/bidder did not accept to correct an **arithmetical error**;
- The financial offer **does not have a fixed price**;
- The offer is **abnormally low**, pursuant art.66 of the Law No 131/2015;
- The offer contains proposals referring to the contractual clauses that are obviously **disadvantageous for the contracting authority**;
- **Failure to submit within the established term the clarifications requested** by the working group; or the submitted explanations are not conclusive, or are not supported by the requested supporting documents.
- The clarifications submitted by the offeror/bidder **altered the content of the offer/bid**;
- It has been discovered that **acts of corruption** have been committed in relation hereto.

When determining the winning offer/bid, the contracting authority evaluates and compares the received offers/bids using the procedure and criteria set forth in the tender documents. No unforeseen criteria will be used in tender documents.

In case when the criteria for award of a public procurement contract is *“the most advantageous offer/bid from the technical and economic standpoints/the best value for money”*, but the working group attributed the same score for two or several offers/bids, **the lowest price offer/bid will be selected.**

The winning offer could not be modified/amended. The unit prices from the offer/bid are fixed and could not be changed during the whole period of contract execution.

Once the decision of the working group regarding the selection of a winning offer/bid is made, the contracting authority has the **obligation to inform all the economic operators** involved in the tender award procedure about the **decisions referring to the outcomes of the selection**

procedure, relating to the results of the procedure of the award of the public contract, or, where appropriate, relating to the annulment of the tender award procedure and potential future initiation of a new procedure, in written form and as soon as possible, but **no later than 3 working days since articulation of such decisions.** At the same time, the contracting authority shall notify the offerors/bidders whose **offers/bids were rejected, providing substantive reasons that underpinned their negative decision.**

¹⁰ The blacklist of economic operators is published and update on the PPA official web page – <http://tender.gov.md/ro/lista-de-interdictie>

The terms for signing the agreement and for contract execution as well as a sample contract are included in the tender documents. All the offerors/bidders are informed about the conditions for the conclusion of a contract at the time of application. At the time when the contract is concluded, the contracting authority has no right to modify/amend the elements of the winning offer/bid or to impose new requirements to the winner.

Annulment of the procurement procedure

Prior to the date of communication of the results of the tender procedure, **the contracting authority may, from its own initiative, to annul the tender procedure.**

CASES OF ANULLMENT OF THE PUBLIC PROCUREMENT PROCEDURE:

- A satisfactory level of competitiveness was not ensured and the number of offerors/bidders is smaller than the envisaged minimum number of offerors/bidders for the respective procedure;
- None of the offerors/bidders met the qualification requirements stipulated in the tender documents;
- In case of public procurement for works, the total value of each offer is:
 - at least 15% greater than the estimated value of works;
 - lower at least by 15% than the estimated value of works, provided that the offerors/bidders did not manage to deliver relevant justifications;
- Only inappropriate offers/bids were submitted:
 - the offers/bids were proffered after the established deadline for submission of the offers/bids;
 - the offers/bids were not elaborated and submitted in conformity with the requirements contained in the tender documents;
 - the offers/bids contained, as financial proposal, prices that did not reflect free competition and could not be duly justified;
 - the offers/bids included proposals referring to contractual clauses that were obviously disadvantageous for the contracting authority;
 - the offers/bids exceed by 30% the procurement estimated value, calculated in conformity with the present law [on public procurement No 131/2015];
 - the offers/bids had a value that exceeded the threshold set in the aforementioned law for the public procurement procedure;
 - the offers/bids included in the financial proposal a value that exceeded the value of the funds allocated for carrying out the public procurement procedure;
- An act of corruption was detected and confirmed by a final judgement of a court;
- The submitted offers could not be compared due to an inconsistent approach addressing technical and/or financial solutions;
- Presence of serious deviations in relation to legal provisions affect the procedure of public contract awarding or make it impossible to conclude a contract (non-compliance with the principles/rules regarding transparency and communication; errors or omissions are found during the review, or evaluation and/or conclusion of the tender award procedure).

Once the public procurement contract is signed, the contracting authority should **report on its performance. The report on public procurement procedure and the report on annulment of the public procurement procedure** are drafted by the contracting authority and are submitted to the PPA within **5 days since the day of conclusion of the contract** or since the day of issuance of the decision of annulment of the public procurement procedure.

THE REPORT ON PUBLIC PROCUREMENT PROCEDURE is a public document.

The access of individuals to the respective information could be limited, pursuant to the provisions of the Law No 171-XIII/1994 on commercial secrets or of the Law No 245-XVI/2008 on state secret, only to the extent that this information includes, in particular, technical or commercial secrets, or contains confidential aspects related to the offers/bids.










The PPA processes the information from the submitted reports and places the information regarding the awarded contracts on the web page.

Contract award announcement

The PPA is required to publish in the PPB and on its web page the contract award announcement not later than within 30 days since the day when the contracting authority informs about the conclusion of the procurement procedure and awarding of the procurement contract.

The contract award announcement **shall mandatorily include all the information** in conformity with Annex 3 to the Law No 131/2015, as follows:

- ✓ The date of award of a public procurement contract;
- ✓ Award criteria;
- ✓ The number of offers/bids received;
- ✓ The name and address of the winner of the tender;
- ✓ The price or the range of prices actually paid;
- ✓ The value of the highest and of the lowest bids/tenders;
- ✓ If appropriate, the value of the contract and its part that will be subcontracted;
- ✓ The date when the tender participation announcement was published;

EVALUATION OF OFFERS AND AWARD OF THE PUBLIC PROCUREMENT CONTRACT	
<i>Red flags</i>	<i>Recommendations for monitors</i>
<p> Situation related to a conflict of interest between the members of the working group for public procurement and one of the offerors/bidders, for instance:</p> <ul style="list-style-type: none"> - <i>offerors/bidders who have as a founder a member of the working group, his/her family member or a relative;</i> - <i>kinship relations between the offerors and the members of the working group.</i> 	<ul style="list-style-type: none">  Verifying the potential conflicts of interest that may exist (verification of data from the State Register of Legal Entities; from the declaration of wealth and personal interests, etc.)  informing the chairman of the working group for public procurement within the CA;  Informing NIA, NAC;  Raising awareness among general public and mass-media.
<p> Ungrounded disqualification of an offeror/some offerors (<i>for example, unreasonable disqualification of the lowest bid, especially when the award criteria states “the lowest possible price”; disqualification of the majority of the offerors/bidders, so that at the end remain 1-2 offerors/bidders.</i>)</p>	<ul style="list-style-type: none">  Requesting explanations from the CA and the chairman of the working group;  Informing the PPA;  Raising awareness among general public and mass-media.

EVALUATION OF OFFERS AND AWARD OF THE PUBLIC PROCUREMENT CONTRACT	
<i>Red flags</i>	<i>Recommendations for monitors</i>
<p>☞ Acceptance of improper offers (which have not been elaborated and submitted in compliance with the requirements specified in the tender documents; which contain in the financial proposal prices that do not correlate with free competition; which contain prices that exceed by 30% the procurement estimated value, etc.) or of offerors/bidders that are/were involved in acts of corruption.</p>	<ul style="list-style-type: none"> ☞ Requesting explanations from the CA and the chairman of the working group; ☞ Informing the NAC; ☞ Informing the PPA; ☞ Raising awareness among general public and mass-media.
<p>☞ In the process of evaluation there are deviations from the evaluation criteria established in the tender documents.</p>	<ul style="list-style-type: none"> ☞ Requesting explanations from the CA and the chairman of the working group; ☞ Informing the PPA; ☞ Raising awareness among general public and mass-media.
<p>☞ Unfounded annulment of the public procurement procedure: (<i>could happen in order to favour a certain offeror/bidder during the repeated procurement procedure</i>)</p>	<ul style="list-style-type: none"> ☞ Requesting explanations from the CA; ☞ Informing the PPA; ☞ Raising awareness among general public and mass-media.
<p>☞ The contracting authority signs the procurement contract under conditions when:</p> <ul style="list-style-type: none"> - the offeror did not lodge a performance guarantee; - the submitted performance guarantee is valid for a period shorter than the period of contract execution. 	<ul style="list-style-type: none"> ☞ Requesting explanations from the CA; ☞ Informing the PPA; ☞ Raising awareness among general public and mass-media.
<p>☞ The CA signs the procurement contract with the winner of the tender without taking into account the withdrawal period/waiting time-limit to be obeyed/considered before conclusion of a public procurement contract (see art. 31 of the Law No 131/2015) so that the competitors have enough time to file a claim with NASC;</p>	<ul style="list-style-type: none"> ☞ Requesting explanations from the CA; ☞ Informing the PPA; ☞ Raising awareness among general public and mass-media.
<p>☞ The CA does not provide access to the report on the unfolded public procurement procedure, which is a public document in conformity with the legal provisions.</p>	<ul style="list-style-type: none"> ☞ Requesting explanations from the CA; ☞ Informing the PPA; ☞ Raising awareness among general public and mass-media.
<p>☞ The CA does not properly inform the rejected offerors/bidders about the grounds that underpinned the decision of rejection.</p>	<ul style="list-style-type: none"> ☞ Requesting explanations from the CA; ☞ Informing the PPA; ☞ Raising awareness among general public and mass-media.
<p>☞ The PPA does not publish the award announcement in the PPB and on its web page within the established terms (30 days since the CA has taken a decision), or publishes the award announcement omitting some data, e.g. the number of received offers, the price or the prices paid, etc.)</p>	<ul style="list-style-type: none"> ☞ Requesting explanations from the CA; ☞ Informing the PPA; ☞ Raising awareness among general public and mass-media.

EVALUATION OF OFFERS AND AWARD OF THE PUBLIC PROCUREMENT CONTRACT	
<i>Red flags</i>	<i>Recommendations for monitors</i>
<p>☞ The winning company is the one that has previously won the majority or even all the procurement bids of the respective CA for similar goods, services or works;</p> <p>☞ The subcontractor/subcontractors of the winning company is/are the same in all/in the majority of the contracts that have previously been won by the said company.</p>	<ul style="list-style-type: none"> ☞ Analysing the CA’s procurements and contracts from the last year(s) ; ☞ Analysing the activity of the winning company and of its previous procurement contracts; ☞ Requesting explanations from the CA; ☞ Informing the NAC; ☞ Informing the PPA; ☞ Raising awareness among general public and mass-media.
<p>☞ The results/decisions of the public procurement procedure have been challenged/contested by one or several contestants.</p>	<ul style="list-style-type: none"> ☞ Following the agenda of the public sessions dealing with examination of claims/appeals (NASC web page) and participating at the public sessions dealing with examination of a claim/appeal referring to a particular case; ☞ Consulting the opinion of the economic operators that contested the results of the public procurement procedure; ☞ Raising awareness among general public and mass-media.
<p>☞ In the process of award of a public procurement contract the CA does not request that the economic operators be included in the blacklist (in case an offeror/bidder submitted false documents, the offerors rigged the bids during the tender procedure or did not meet their obligations in relation to some previous contracts).</p>	<ul style="list-style-type: none"> ☞ Analysing the offers/bids and documents submitted within the procurement procedure (checking the licenced and unlicensed activities with the State Register of Legal Entities, verifying previous experience related to procurement contracts’ implementation, etc.); ☞ Requesting explanations from the CA; ☞ Informing the PPA; ☞ Raising awareness among general public and mass-media.

4. Implementation and monitoring of contracts

This is the last stage of the public procurement process that deals with implementation of the public procurement contract, modification/amendment of contracts through additional agreements as well as monitoring of the contract performance. The contractors **should**, in good faith, **fulfil their obligations** assumed from the point of view of **quantity, quality, established timeframe and budget**.

Particularly, the implementation stage is the least transparent one, due to legislative loopholes and insufficient monitoring capacities of the contracting authorities. According to a report on monitoring public procurement¹¹, the stage of execution/implementation of the procurement contract is considered to be the least transparent by circa 38% of respondents/survey participants. At the same time, in conformity with the last audit report of the Court of Accounts of Moldova on performance of the public procurement system¹², **none of the 12 contracting authorities subject to auditing implemented efficient and consistent procedures for monitoring public procurement process**.

¹¹ Monitoring report on public procurement: weaknesses identified and policy recommendations <http://viitorul.org/ro/library-books/129>

¹² Report on performance audit of the public procurement system, approved by Court of Accounts decision No 37 of October 1, 2015

Upon the entry into force on May 1, 2016 of a new Law on public procurement No 131/2015, the legal framework was supplemented¹³, thus, another obligation of the working group is to **monitor proper execution of public procurement contracts**. Besides, at this stage, it is within obligation of the working group to keep the public procurement dossier for 5 years since initiation of the procurement procedure.

Some issues that could intervene at the stage of implementation of a public procurement contract are:

- delays/refuses related to delivery of goods/services or completion of the works;
- Increase in prices owing to the contractors;
- Noncompliance with the quality standards;
- Partial or complete noncompliance with the requirements of the taskbook and the contractual provisions;
- Deviation from the objectives set in the contract;
- Emergence of unpredictable situations that impede successful conclusion of the public procurement contract etc.

Actions necessary to be taken by the CA to settle the issues of concern:

- Advancing of claims to the contractor, specifying the obligations that have not been met;
- Application of penalties in conformity with the contract;
- Retention of the performance guarantee;
- Termination of the public procurement contract;
- Inclusion of the economic operator in the blacklist;
- Informing the competent legal authorities.

The contracting authority is the entity responsible for proper and consistent monitoring of public procurement contracts, and, respectively, for actions to be taken in conformity with the legislation in force in cases of improper execution of the public procurement contracts.

THE WORKING GROUP WILL ENSURE MONITORING of the public procurement contracts' execution, producing quarterly, bi-annual and annual reports. The respective reports will mandatorily include information regarding the stage relating to execution of contractual, the reasons for non-execution, the filed claims/appeals and the applied sanctions/penalties, notes on the quality of execution of a contract etc., will be placed on the web page of the contracting authority, or, if not possible – on the official web page of the central authority to which it is subordinated, or on the web pages of the second-level local public administration authorities.

In addition, monitoring of public procurement contracts is conducted by the PPA as well which, starting with the year 2017, exerts ex-post control, in compliance with a Methodology, approved by the Decree No 17 of 30.03.2017 regarding approval of Methodology on ex-post control. In conformity with the aforementioned methodology, the ex-post control is exerted via random selection, the risk indicators or intimations being referred to the PPA. The given control implies revision of the procurement dossiers, of the control reports, of the offences and sanctions applied in the field of public procurement (pursuant to art. 327¹ of the Contravention Code).

¹³ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=365130>

Additional agreements

The working group within the framework of the CA may reduce or increase the quantity of goods and/or services that have initially been contracted, in duly justified cases, without changing the unit price or the other terms and conditions of the offer/bid and of the tender documents. The CA may additionally procure goods, provided that the initially fixed price is respected, the requirements with regard to the quality of goods/services as well as the other pre-established in the initial contract requirements are taken into account, and provided that the value of additionally contracted goods does not exceed 15 % of the value of initially contracted goods/services.

Examples of situations when the **contractual clauses** could be modified/amended:

- It is necessary to change the name of the parties to the contract or the respective identification data;
- There is an emergent necessity to extend the duration of the contract;
- There is an emergent necessity to reduce/increase the quantity of goods, or to exclude, in duly justified cases, some works/services, which, respectively, leads to a decrease/increase of a contract value.

For monitors, it is important to follow if modification/amendment of the contract terms and conditions takes place in conformity with the legal provisions and if **additional agreements are not used as an instrument for unjustified increase in the initial contract price.**

The other aspects the monitors should keep an eye on are the quantity and quality of the goods delivered or works performed, via verification of delivery and their *de facto* execution in compliance with the terms and conditions foreseen in the contract.

IMPLEMENTATION AND MONITORING OF CONTRACTS	
<i>Red flags</i>	<i>Recommendations for monitors</i>
<p>🚩 The information regarding the signed procurement contract is not published as required on the official PPA web page.</p>	<p>👍 Informing the PPA; 👍 Raising awareness among general public and mass-media.</p>
<p>🚩 The contractor requests an increase in the contract value shortly after the contract has been signed (<i>most probably, it was his intention when he initially proposed a much lower price as compared to competitors' offers</i>).</p>	<p>👍 Informing the CA to remain vigilant and alert to the reasons presented with regard to price increases; 👍 Informing the PPA; 👍 Raising awareness among general public and mass-media.</p>
<p>🚩 The CA admits violations as to quantity/quality of delivered goods or executed works, representing a deviation from contract provisions; 🚩 The CA admits breach of terms and conditions in relation to delivery of goods and execution of services.</p>	<p>👍 Consulting an expert from the domain pertinent to the goods procured and works executed in order to analyse the situation; 👍 Requesting explanations from the CA; 👍 Informing the PPA; 👍 Raising awareness among general public and mass-media.</p>
<p>🚩 The CA does not solicit from the PPA the inclusion of contractors in the blacklist for:</p> <ul style="list-style-type: none"> - <i>non-compliance with contractual obligations;</i> - <i>delivery of goods, provision of services or execution of works that differ from those foreseen in the contract;</i> - <i>delivery of goods, services and works of a lower quality than the one stipulated in the contract and the documents regarding the unfolding of the public procurement procedure.</i> 	<p>👍 Requesting explanations from the head of the CA; 👍 Informing the PPA; 👍 Raising awareness among general public and mass-media.</p>

IMPLEMENTATION AND MONITORING OF CONTRACTS	
<i>Red flags</i>	<i>Recommendations for monitors</i>
<p>✘ The CA does not apply sanctions, in conformity with the contract terms and conditions, to the economic operator who did not fulfil his/her obligations under a contract or fulfilled them improperly.</p>	<ul style="list-style-type: none"> ✔ Requesting explanations from the CA; ✔ Informing the PPA and the inspection authorities/regulatory bodies; ✔ Raising awareness among general public and mass-media.
<p>✘ The CA accepts an increase in contract value or extension of the contract execution timeframe without a sound justification;</p> <p>✘ The increase in the contract value exceeds the legal limit of 15% out of the initial value of the contract.</p>	<ul style="list-style-type: none"> ✔ Requesting explanations from the CA; ✔ Informing the PPA; ✔ Raising awareness among general public and mass-media.
<p>✘ The CA requests an increase in contract value for to avoid organization and carrying out of a new procurement procedure thus barring equal access of all economic operators to the procurement procedures.</p>	<ul style="list-style-type: none"> ✔ Requesting explanations from the CA; ✔ Informing the PPA; ✔ Raising awareness among general public and mass-media.
<p>✘ The working group does not provide for monitoring of procurement contracts' execution and does not produce quarterly, bi-annual and annual reports.</p>	<ul style="list-style-type: none"> ✔ Requesting explanations from the CA, chairman of the working group ; ✔ Informing the PPA; ✔ Raising awareness among general public and mass-media.
<p>✘ The monitoring reports are not published on the official web page of the CA, or, if the above is not possible, on the web page of the public authority to which it is subordinated;</p> <p>✘ The monitoring reports are rather "for show" and do not contain information regarding the stage of execution of contractual obligations, the reasons for non-execution of the contract, the claims/appeals filed and the sanctions applied, the notes relevant to the quality of the contract execution, etc.</p>	<ul style="list-style-type: none"> ✔ Requesting that the CA publishes its reports; ✔ Informing the PPA; ✔ Raising awareness among general public and mass-media.
<p>✘ The CA does not ensure that the public procurement dossier is prepared and kept/maintained during 5 years since the initiation of the public procurement procedure;</p>	<ul style="list-style-type: none"> ✔ Requesting explanations from the CA; ✔ Informing the PPA; ✔ Raising awareness among general public and mass-media.



ACCESS TO INFORMATION IN ORDER TO MONITOR PUBLIC PROCUREMENT

The access to public information is a right of each citizen, but this right is frequently violated. Given the fact that public procurement implies use of public resources, the information about the above should be open for public use and accessible to any citizen, both to those who contribute to public budgets, and to those who benefit from the public goods and services. Through publishing information related to the public procurement procedures, the public authorities may demonstrate openness and accountability to citizens that should be part of the decision-making process.

Access to information and open data are vital for the public procurement monitoring process. However, one of the biggest challenges faced by civil society, monitors and journalists from the Republic of Moldova is in particular open access to data and information about procurements carried out by public authorities. Despite the fact that the legal framework was supplemented and improved in this respect, and the alternative media sources were developed, the data on public procurement are still incomplete, dispersed, and do not provide a clear picture about the entire cycle of procurement, starting with planning phase, and ending with the phase of delivery of goods or execution of works.

Although having official web pages, some authorities do not ensure transparency of information, which in compliance with legal provisions should be published, and civil society does not have too much leverage to that effect. The reasons that preclude the authorities from ensuring transparency of procurement and publication of data regarding the procedure and the public procurement contracts in due time may vary, and are not limited to lack of political will, capacities, and human resources. As a corollary, in order to access the information on public procurement, civil society should file requests to the public authority, take official actions and obey other bureaucratic procedures, which consume time and resources. However, there are alternative data sources and instruments that might be used for monitoring activities and information input.

TOOLS/INSTRUMENTS AND DATA SOURCES FOR CIVIL SOCIETY IN THE PROCESS OF MONITORING OF PUBLIC PROCUREMENT CONTRACTS

- Official/written requests and official actions in compliance with legal procedures and the Law on access to information No 982/2000;
- Participation at the meetings/sessions, public hearings carried out by public authorities;
- Obtaining information through:
 - photo/video in places where projects/construction works with major deviations from standards are executed; photo/video of unfinished infrastructure objects that conflicts with the provisions of the contract, and use of the above information to put pressure on authorities;
 - conducting surveys/public opinion polls, use of assessment forms, conducting interviews to assess citizens' perception with regard to the delivered goods, performed construction works and public services rendered by the central or local public authorities, in general;

- market analysis, comparing prices of products that are similar to those procured via a contract that is monitored, in order to identify the discrepancies and possible irregularities or frauds;
 - consulting the experts in the domain of public procurement for to voice out the opinion on the quality of the delivered goods, materials, works, etc. The findings/conclusions and the identified irregularities could be incorporated in a document that might be sent to the inspection authorities/regulatory bodies; these irregularities may be made public via partnerships with local/national mass-media for to put pressure on public authorities and public officials;
- use of international statistic data and assessments:
 - studies/indices/evaluations performed by international organizations which assess, for example, the level of corruption relating to countries, specific sectors, authorities' openness and other parameters (Corruption Perceptions Index, Benchmarking Public Procurement Index, Open Government Index, Human Development Index, Global Competitiveness Report, etc.);
 - reports evaluating national public procurement systems, the corruption risks in public procurement, carried out by the World Bank, the EBRD, the UNDP, etc. (the "Country Procurement Assessment Report" prepared by the World Bank, the last report to assess the public procurement system in the Republic of Moldova was prepared in 2010¹⁴; the Public Procurement Sector Assessments, performed by the EBRD, the last assessment was prepared in 2010¹⁵);
 - audit reports of the Court of Accounts (performance, regularity) relating to the public procurement system (the last performance audit report was produced in 2015¹⁶) and aimed at analysing constant irregularities and deviations, monitoring of the audited entities' procurements, etc.
 - reports, statements, decisions and investigations of the inspection authorities/regulatory bodies, supervisory bodies, bodies under the national law (PPA, NAC, Anticorruption Prosecutor's Office);
 - signing of co-operation agreements/partnerships with certain authorities, local or central public entities which demonstrate openness and transparency in conducting public procurement procedures and which could serve as real examples of good practice;
 - reports, case studies, analytical reports and investigations carried out by civil society organizations, mass-media, investigative journalists/reporters;
 - the web pages of the contracting authorities.

The international practice shows that implementation and use of electronic procurement systems has a major impact on the transparency of the entire public procurement process. The positive effects of such practices are felt both by the public authorities, as the administrative burden is alleviated, and by civil society, through the possibility to access the procurement via a single system.

As for electronic procurement, the Republic of Moldova is lagging far behind the states from the region, including its neighbours Romania and the Ukraine, where operate up-dated e-procurement systems, which showed off their efficiency and efficacy including through reduction of corruption in procurement. In September 2012, an automated information system for public procurement called "State Registry of Public

¹⁴ <http://documents.worldbank.org/curated/en/281621468287738752/Moldova-Country-Procurement-Assessment-Report-CPAR>

¹⁵ <http://www.ebrd.com/what-we-do/sectors/legal-reform/public-procurement/sector-assessments.html>

¹⁶ <http://ccrm.md/hotariri-si-rapoarte-1-95?idh=767>

Procurement” was launched (SIA RSAP/AIS SRPP), and a list of 34 central public authorities to conduct procurement via SIA RSAP/AIS SRPP was approved.

Currently, 311 CAs carry out procurement procedures through SIA RSAP/AIS SRPP. As reported by PPA, in the first semester/in the first half of the year 2017, the 311 CAs have initiated and unfolded 2150 procurement procedures, in the result of which 5150 of legal acts with a total value of 2.3 million lei were performed. **It should be noted that 62.4% of the total amount of public procurement is carried out through SIA RSAP/AIS SRPP.**

Nevertheless, the functionalities of SIA RSAP/AIS SRPP are quite limited; only 2 procurement procedures could be conducted: public bidding/tender and request for price quotation. Moreover, the access to data and data analysis by the SIA RSAP/AIS SRPP monitors is a difficult thing due to the fact that it is impossible to apply filters; the name of the contracting authority and of the economic operators is registered with errors, double registration of some contracting authorities may occur, or improper registration of additional agreements may take place.

In the SIA RSAP/AIS SRPP (www.etender.gov.md) the monitors may find the following data on public tenders as well as the RPSs of the respective 311 CAs:

- notices of intended procurement;
- tender participation announcement;
- invitation to tender/to submit offers/bids;
- dates of the awarded contracts (type, the contract number, the date of conclusion of the contract, the subject-matter of the procurement and the contract value);
- tender documents;
- list of qualified economic operators;
- blacklist of economic operators.

Additionally, the PPA provides publicity with respect to public procurement procedures through its web page – www.tender.gov.md as well as via editing and publishing the PPB two times per week.

On the www.tender.gov.md web page the following data is published:

- notices of intended procurement;
- information regarding the awarded contracts (type, the contract number, the number of participants, the date of conclusion of the contract, the subject-matter of the procurement the amount of the contract);
- the list of documents under examination;
- the list of qualified economic operators;
- the blacklist of economic operators;
- the list of frequently asked question and the respective answers;
- the list of the most common mistakes, committed by the contracting authorities;
- the analytical reports;
- samples of tender documents, samples of requested forms.

In the PPB the following is published:

- notices of intended procurement;
- tender participation announcements and announcements relating to their modification/amendment
(it should be mentioned that the format of the announcement of participation was adjusted to the EU

format, respectively, it contains a comprehensive list of goods, services or works that are solicited as well as the qualification requirements that should be met by the economic operators);

- information on the awarded contracts;
- draft legal/standard acts, new legal/standard acts from the given field.

It should be noted that the **weighted average of the procurement carried out with publication in the PPB constitutes 86.5%.**

In 2016, the Ministry of Finance, with the support of the EBRD, has launched a process of development and implementation of a new electronic public procurement system, in compliance with the following principles: open source, open data, and open contracting standards. Therefore, it is suggested to ensure transition to full electronic communication in the matter of public procurement. At present, the MTender system¹⁷ has launched a pilot project on small value procurement (for contracts concerning good and services of up to 80.000 lei, and for contracts regarding works – up to 100.000 lei).

The principle underlying the MTender system is “everyone sees everything”. Thus, upon completion of the procurement procedure, the system reflects all the data pertaining to the award documentation (including the taskbooks): offers, prices, offerors’ questions, the clarifications of the contracting authority, decisions and contracts. If this system is implemented as envisioned, it will be an important step forward for the opening of data on public procurement, because it will cover the entire cycle of a procurement, from the planning phase (publishing the procurement plans) to the contract execution phase (publishing of contracts), and will ensure interoperability with other platforms and governmental services. Making the stage of contract execution more transparent is a welcome process that will facilitate access to data and will contribute to identification of fraud and irregularities, which very often appear during the stage of delivery of goods and execution of works.

In order to monitor the complaints/claims filed by the economic operators within the public procurement procedures and the related NASC decisions, the monitors could use the following data sources and instruments:

- the NASC web page¹⁸, where the complaints/claims under examination as well as the NASC decisions on the complaints/claims are published;
- participation in the public sessions dealing with complaints/claims review, organized by NASC (information regarding the date and time of sessions is published on the NASC web page 3 day prior to the day on which they will take place).

Another common source of information in the Republic of Moldova for implementation of open contracting in the public procurement sector is the open contracting portal <http://opencontracting.date.gov.md/>. Thus, in 2015, the PPA together with the Center for Electronic Governance and owing to the support of the open contracting team from the World Bank created the Open Contracting Portal¹⁹. The scope of the concept of open contracting is to publish and largely use open data, accessible in real-time in terms of the whole public contracting process, along with involvement of citizens and the private sector in identification and settlement of matters of concern. Implementation of open contracting standards in public procurement involves a range of benefits, both for the immediate participants at the procurement process – the contracting authorities and economic operators, and the civil society, every single citizen. Therefore, the public authorities have an opportunity to obtain more value for public funds from procurement budgets.

¹⁷ <https://mtender.gov.md/>

¹⁸ <http://ansc.md/>

¹⁹ <http://opencontracting.date.gov.md/>

The Open Contracting Portal provides data and information on the public procurement procedures; on the goods, services and works procured by the authorities; on procurement contracts; on the amount of procurement of a contracting authority or the value of the procurement contracts concluded between the companies and the state; contact information referring to the contracting authorities and the economic operators. Owing to the fact that the Open Contracting Portal is integrated with the State Register of Legal Entities and the National Courts Portal, civil society has access to information about founders/companies' administrators who have concluded contracts with the state, and about convictions and litigations, in which they are or were involved. At the same time, the portal provides filters and the possibility to download information for further analysis.

Another data platform on procurement, launched in 2016 and developed by a group of young people with the support of the UNDP Moldova, is the portal OpenMoney²⁰. It is a project with a goal to publish information about the final beneficiaries of the procurement contracts and the relations between them and the civil servants/officers/members of the public procurement working group within contracting authorities. Information about the economic operators, participating at the public procurement procedures, could be found in the State Register of Legal Entities against payment. Additional data sources about the activity of economic operators are:

- <http://companii.md/ro/>;
- <http://idno.md/>;
- <http://www.bizzer.md/>

These data platforms provide access to information about companies such as: IDNO/state identification number, status, legal form, registration date, legal address, founders, directors, licensed and unlicensed types of activity.

Besides, there are other sources of data and information, useful for the monitoring process:

- The audit reports of the Court of Accounts, available on <http://ccrm.md/>;
- Investigations, reports, NAC analytical reports, available on <http://cna.md/>;
- Investigations, decisions of the Competition Council regarding anti-competitive practices, bid rigging in public procurement, available on <https://competition.md/>;
- Analytical reports, monitoring reports, studies/surveys done by SCOs and the reports of the investigative journalists.

²⁰ <http://openmoney.md/>



IRREGULARITIES, FRAUD AND ILLEGALITIES IN THE PUBLIC PROCUREMENT SYSTEM

The PPA is responsible for the **ex-post control in the domain of public procurement**, and its objectives reside in identification of possible non-conformities, errors or deviations from the legislation pertaining to the public procurement field, evaluation of the contracting authorities' capacities as well as advancement of recommendations of compliance. The ex-post control procedure consists in verification of all the documents related to the procurement procedure (tender participation announcement, tender documents, qualification documents submitted by the offerors/bidders, unbiased evaluation of the tenders based on the minutes/reports prepared by the working groups, etc.), as well as to correctness in preparing of documents that formed the basis for initiation of the procurement procedure, such: notice of intended procurement, procurement plans, the decision to create the working group, enduring transparency, etc. Since the beginning of this year, the PPA exerted ex-post control over **50 procurement procedures**, the dossiers being chosen based on the identified risk factors. As a corollary, the controls revealed several deviations and violations.

The most commonly encountered of all the public procurement procedure infringements by the CA are:

Exceeding thresholds, indicating requirements that deviate from legislation, failure to meet the deadlines as concerns the terms of offers' submission, the withdrawal period/waiting time limit, the notice on the procurement procedure results/outcomes, submission of reports; exceeding by over 30% of the estimate value of the procurement, ungrounded rejection of the offers, signing of contracts with offerors that do not correspond to the established requirements, etc.

It is worth noting that the most commonly encountered infringement is non-obeyance of the withdrawal period/waiting time limit. Out of the total number of those 50 public procurement procedures solicited, 33 refer to non-obeyance of the withdrawal period/waiting time limit that is 66%.

Other cases of irregularities, fraud and illegalities detected in the result of control and audit activities as well as in the result of monitoring activities, carried out by civil society are presented hereinbelow.

*Deficient and incomplete tender documents that affect adequate assessment of the bids*²¹

The General Directorate for Education, Youth and Sports (DGETS/GDEYS) of the City Hall/Mayor's Office of Chisinau Municipality along with its subordinated institutions, organize annual tenders on procurement of repair services for technological and refrigeration equipment and on procurement of damage repair services, for which the tender documents contain irregularities, and in the taskbook all the contracted services with their detailed description are missing. In case of a tender for damage repair services, the audit found that not all the services and used materials were included in the taskbook.

For example, in case of the Directorate for Education of Riscani city sector, the audit referring to assessment of the offers for a tender regarding procurement of repair services for technological and refrigeration equipment found out that the contracting authority did not draw up an exhaustive list of all services to ensure their

²¹ Audit report on the performance of public procurement system, approved by the Court of Accounts' Decision No 37 of October 1, 2015

efficient evaluation. Therefore, the technical specifications of the tender documents attested prices for whole compartments/categories such as electric stove, centrifuge, etc. (9 categories in all), without indicating the specific types of the requested services.

At the DGETS/GDEYS, the audit revealed that there was no budget breakdown drawn up for the purpose of including all the types of the required services. Thus, in connection with repair services that had to be contracted for technological equipment from the subordinated educational institutions, in the taskbook there was found a request for price quote for a selective budget for 21 categories of works that included 162 entries/items and that constituted just a small part of all types of services from the given domain. 2 economic operators tendered offers/bids for the procurement procedure in the amount of 80.1 million lei, and, respectively, 79.4 million lei, both offerors/bidders being qualified for participating in the tendering procedures. The findings of the audit as regards evaluation of offers/bids denote that they were not submitted in compliance with the requirements from the taskbook. Thus, the offer of the economic operators contained the total prices for each category, without any specification referring to prices for each category in part as it was solicited in the tender documents. Although in conformity with the legal provisions the tender should have been cancelled and another procedure announced, the procurement contracts were signed. Under these circumstances the audit mentions, that since each category includes many entries/items for works, it is impossible to calculate the price for every single item; therefore, this fact excludes the possibility to monitor the price of services that have been provided and is indicative of a risk of inefficient use of public resources.

Improper evaluation of the offers/bids by the working group²²

At the General Police Inspectorate (GPI) the audit identified 2 cases in which an economic operator that did not comply with all the qualification requirements stipulated in the tender documents was announced as a winner without the working group stating those deviations. Thus, in case of those 2 public tenders, in conformity with the invitation to bid, it was required that the economic operator had a three-year experience in delivering or manufacturing the solicited goods. According to the audit report, the offeror who won the bid had less than 2 years' experience, the company being founded on 19.02.2013.

As concerns the public tender organized for building of a fence on the perimeter of the GPI headquarters, the economic operator that proposed the lowest price of 215.6 thousand lei was excluded from the contest, one of the reasons being non-inclusion in the offer of expenses relating to installation on the fence of the GPI symbol (lion), although the tender documents did not include such a specification. In the result of evaluation of the offers/bids, the winner of the tender became an economic operator whose offer was of 344.9 thousand lei that is 129.3 thousand lei (60%) more than the lowest price that was announced. Audit carried out on the spot with regard to executed works has *de facto* shown that the institution's symbols were not installed (works were not executed). The value of the non-executed works could not be estimated, because the budget breakdown does not specify separate items (costs per item) for installation of the GPI symbol. According to auditor's opinion, the sum of 129.3 thousand lei accounts for inefficient expenses.

The working group for public procurement did not ensure receipt of performance guarantees²³

The audit reported on cases when the performance guarantee was submitted for a period that was shorter than the timeframe set for execution of contracts. Thus, on the example of the Ministry of Education (MoE), in order to ensure contract execution for procurement of 2 cars for the needs of the Schools Inspectorate, the

²² Audit report on the performance of public procurement system, approved by the Court of Accounts' Decision No 37 of October 1, 2015

²³ Audit report on the performance of public procurement system, approved by the Court of Accounts' Decision No 37 of October 1, 2015

economic operator lodged a performance guarantee in the form of a bank guarantee valid until 16.11.2014 while the delivery was supposed to be carried out before 12.12.2014; in other words, the performance guarantee was to expire 27 day before the end of the delivery period. *De facto* delivery of cars was performed on 22.12.2014 with a 9-day delay against contract provisions and 35 days after the expiry of the performance guarantee. It is also mentioned that the vehicles were procured for the Schools Inspectorate that was, in fact, instituted only in June 2015. One of these cars is used for the needs of the MoE, and the other is kept in the Motor Pool of the State Chancellery, the sum for car parking and car wash services amounting to 750 lei per month which denotes inefficient use of budgetary resources.

Violation of free competition principles through bid rigging²⁴ used by economic operators at the public procurement procedures

Case 1. Intimation/notice to the Competition Council

On 17.02.2017, the „Set-Service” JSC filed a leniency notice²⁵ to the Competition Council with regard to the fact that „Set-Service” JSC and „Nufăr-Cia” LLC, participated at the procedure for the procurement of works via RPC, publication No 16/03382 of 12.12.2016, using rigged bids for the purpose of sharing the lots within the respective procedure. The procurement procedure via RPC No 16/03382 of 12.12.2016 for procurement of repair works relating to technological equipment according to the needs of the educational institutions was organized by the General Directorate for Education, Youth and Sports (DGETS/GDEYS) from Ciocana city sector.

The anti-competitive agreement, concluded between those 2 companies and designed to rig the bids within the public procurement procedures, was materialized through sharing of tendered lots during the respective procurement. Consequently, the 2 companies convened to tender bids for both lots; „Set-Service” JSC intentionally tendered for the lot No2 the highest price bid for the purpose to make „Nufăr-Cia” LLC win the respective lot, and the latter did exactly the same thing for the lot No1. Those 2 companies assumed that they will compete between themselves within the respective procedure owing to the fact that the given procedure was announced in December, and the majority of companies that carry out similar works do not participate in procurement procedures at this time of the year.

It should be noted that at the given RPC of December 12, 2016 three companies – „Set-Service” JSC, „Nufăr-Cia” LLC and „Nord Universal” LLC – participated both for the lot No1 and for the lot No2. The lowest price bid for the lot No1 was proposed by „Set-Service” JSC, and lowest price bid for the lot No2 – by „Nufăr-Cia” LLC. In the result of evaluation of offers/bids for those 2 lots, the contracting authority announced „Set-Service” JSC as the winner of the lowest price offer for the lot No1, and „Nufăr-Cia” LLC as the winner of the lot No2. Therefore, submission of offers/bids after due coordination of actions regarding partitioning of the lots was a good deal for both parties.

The investigation of the case by the Competition Council established that the 2 companies involved in the procurement procedure shared the marked to secure a winning lot within RPC, with no real competition between the participants at the procurement procedure. The Competition Council decided that the bid rigging and the lots’ partitioning/sharing carried out by those 2 companies represent an anti-competitive horizontal agreement in the form of a tough cartel, pursuant to Competition Law (No 183/2012). Thus, the company „Nufăr-Cia” LLC was fined 9,238.38 lei, and the company „Set-Service” JSC, which submitted the notice of leniency, was granted “A” type immunity from fine.

²⁴ Decision of the Competition Council Plenum No DA - 25 of 21.06.2017 – www.competition.md

²⁵ Leniency is a reward granted by the Competition Council for cooperation of enterprises and associations of enterprises with the Competition Council provided that these enterprises are or were part of an anti-competitive agreement.

Case 2. Intimation/notice to the Competition Council

The Competition Council, through decision No 40 of 24.08.2017, stated a violation of the art. 5 entry (3) letter d) by the trading company „Ecosem Grup” LLC, TC „Irinda Prim” LLC, and TC „Litarcom” LLC through bid rigging at the tender No 14/01840 of 23.09.2014, organized and carried out by the state enterprise „State Road Administration”.²⁶

The enterprises TC „Litarcom” LLC, TC „Ecosem Grup” S.R.L. and TC „Irinda Prim” LLC entered into an anti-competitive horizontal agreement in the form of a tough cartel within procedure No 14/01840 of 23.09.2014 regarding procurement of repair works for a public road with coating made of asphalt concrete L 284.2, access road to Doltu village, and were fined as follows: „Ecosem Grup” LLC – 5,032.16 lei, „Irinda Prim” LLC – 917,749.97 lei, and „Litarcom” LLC – 1,099.429.01 lei.

Case 3. Investigative journalism²⁷

Three companies, managed by the same person, are favoured by the authorities from Rezina district/Moldova in the matter of public procurement. Every second contract concluded in the field of repair and construction works during September 2013 – April 2015, was awarded to one of those three companies, where as administrator and founder is Mr. Liviu Jitari: Litarcom, AVI Bors and Capillati.

On a basis of three contracts with Litarcom LLC, the district authorities of Rezina allotted 2.46 million lei for repair/refurbishment of rooms rented by the Town Hall/Mayor's Office. Another 1.14 million lei were allotted for raising the monument and arranging the square around the central marketplace, projects entrusted to Litarcom LLC and Capillati LLC. The third project, which received circa 13 million lei up to present, deals with construction of a sports complex, its total cost amounting to 74 million lei, in conformity with the last data made publicly known by the district administration. According to the data of the State Chamber of Registration, the owner of the Litarcom LLC and AVI Bors LLC is Mr. Liviu Jitari. Together with Adrian Covas, Mr. Liviu Jitari is a founder at Capillati LLC, both founders having equal shares in the company.

An AutoGreder purchased by the Town Hall of Colonita village for 1.71 million lei has operated just a single month²⁸

At the end of the year 2016, the Town Hall of the Colonita village procured an autogreder for a sum of 1,710.000 lei. It is the most expensive autogreder out of those procured before through the public procurement procedure. According to information from the PPA, in 2014, the Town Hall of Carpineni village from Hancești procured an autogreder for 1,231.130 lei, and in April 2017 the Town Hall of Cocieri village procured an autogreder for 170.000 lei.

The technical specifications for the autogreder that are included in the taskbook as well contain precise technical parameters: front blade: width, mm 2450 and a scarifier: width, mm 2000. It is worth mentioning that on the announcement sites such equipment was offered for much lower prices. The offer that was solicited by www.colonita.eu from a specialized company for an autogreder with front blade and a scarifier indicated the price of 74 200 \$ – cca. 1 503 800 lei (VAT included).

²⁶ Decision of the Competition Council Plenum No DA - 40 din 24.08.2017

²⁷ <https://anticoruptie.md/ro/investigatii/achizitii-publice/firme-si-afaceri-secrete-la-rezina>

²⁸ <http://colonita.eu/proiecte-proprii/monitorizarea-banilor-publici/autogreider-cumparat-cu-200-000-lei-mai-scump-un-alt-mis-mas-al-pri-mariei-la-achizitiile-publice.html>

Another corruption risks identified by the monitors are referring to:

- The company „VALENSCOR-DESIGN” LLC which had the lowest bid did not previously deliver though public procurement procedure a truck of such type;
- Only in 5 days after signing the contract of public procurement, and Additional Agreement on timeframe extension was concluded; the contract was signed on 14.12.2016, and the Additional Agreement was signed on 19.12.2016;
- The proposed autogreder model/make was PY165, but the delivered one was PY180.

*The contracting authorities do not ensure compliance of goods, services and works with the contractual provisions*²⁹

The audit performed by DGETS/GDEYS showed deviations referring to execution of 2 public procurement contracts on the basis of which the following was contracted: manufacturing of 12 doors for the interior for the gymnasium No 102 from Braila village, Ialoveni district, amounting to 66.0 thousand lei, with a provision to install of the doors before 31.12.2014. On the spot auditing as of 23.02.2015, denote that there were delivered and installed just 11 doors in January 2015, although in conformity with the original documents the doors were delivered and paid for in December 2014. At the same time, it was discovered that one door was missing; it was delivered and installed in March 2015.

Similarly, audit inspections on compliance with contractual clauses at the Public Medical-Sanitary Institution/ Republican Center of Medical Diagnostic found deviations related to procurement of medical diagnostic equipment. Thus, when comparing the data specified in the minutes and related to acceptance of works with the offer, the price increases for certain types of works on space adjustments were revealed in case of 42 items and additional financial resources in the amount of 147.5 thousand MDL were paid.

*The contacting authorities do not apply penalties for non-delivery of goods, services and works in compliance with the terms and conditions set forth in the contract*³⁰

The audit verifications showed that 7 out of 12 contracting authorities subject to the audit detected cases of delayed delivery of goods, execution of works or provision of services, without taking further actions in order to deliver the goods in due time and calculate the penalties in conformity with the contractual provisions. Thus, the Ministry of Education stated that in 5 out of 25 procedures of verified procurement, the overrun of the delivery period constituted 9-30 days.

The audit verifications at the Ministry of Defence, related to execution of some procurement contracts, revealed that 2 economic operators attested delayed delivery of goods. Although the Ministry of Defence advanced to the said operators reminder notifications with regard to the given issue, indicating the outstanding/overdue debt and the computation of interests/calculation of penalty interests to be paid, the audit found that no penalties were *de facto* collected for delayed delivery of goods, motivating that such a non-collection of penalties was due to debts towards the economic agents even though there were no registered debts with regards to one of these economic agents.

Within the General Directorate for Education, Youth and Sports (DGETS/GDEYS), in 4 out of 25 cases, the period of goods' delivery, foreseen in the contact, had a 28-83 days overrun, but DGETS/GDEYS, as a result of situation e-monitoring, did not take actions with regard to timely delivery and did not calculate

²⁹ The audit report on the performance of the public procurement system, approved by the Decision of the Court of Accounts No 37 of October 1, 2015

³⁰ The audit report on the performance of the public procurement system, approved by the Decision of the Court of Accounts No 37 of October 1, 2015

the penalties per each day of delay, in conformity with the contractual provisions. At the same time, the audit mentions that in some contracts DGETS/GDEYS did not even specify the goods' delivery deadlines.

*Favouring an economic operator and mimicking the competition*³¹

Three persons, one of which was the Chief of the National Probation Inspectorate (NIP) as well as representatives of two economic agents were held in for questioning by the prosecutors and NAC officers on charges of malfeasance in office. Those three persons were suspected in coordinated participation in bid rigging, which led to procurement of electronic monitoring equipment to supervise persons under judicial oversight. According to the dossier, in 2015, the NIP organized a tender that resulted in a contract with the firm "E..." for procurement of 20 units of electronic monitoring devices (including with licences for 12 months) at a price of 23,352 lei per unit. In approximately half a year, the NIP additionally procured from the same company maintenance services (license) for the procured equipment worth 38,500 lei to monitor 7 individuals under probation during 30 days. Despite the fact that the procured electronic monitoring equipment proved to be inefficient, the electronic bracelets being used only for 7 persons, the NIP organized in 2016 a new tender to procure 115 units of electronic monitoring equipment. Therefore, the NIP signed another contract in the amount of 3,146.850 lei.

In the result of investigations carried out within the given case it was establish that the public tenders, through which the above-mentioned equipment was procured, were mimicked in favour of an economic agent. According to intelligence data, it is known that the interim Chief of NIP and the director of the winning company have a long-lasting friendly relationship; thus, in order to mimic a legal approach to tender, they organized a fake participation at the said tender of another company from the business circle of the winning economic agent that was finally rejected by the commission.

At the same time, it was discovered during the prosecution that the market price of those 135 units of electronic monitoring equipment procured during those two tenders is just 264,330 lei, and not 3,613.890 lei, as paid by the NIP. Being questioned by investigators, the representative of the company "HK Moral Win International Electronics Limited" which delivered the electronic bracelets claimed that the price per unit of electronic monitoring equipment destined for judicial oversight (identity bracelet with an integrated monitoring sensor) is of 85 USD, with a software license for 12 months (monitoring platform) at a cost of 5 USD per unit.

Thus, through their allegedly illegal actions, those three persons committed a misfeasance in office, through which NIP has suffered damage exceeding 3,000.000 lei – an offence/felony punishable by a fine of 1350-2350 currency conventional units or a jail from 2 to 6 years, in both cases including a prohibition to exercise specific duties or to carry out certain types of activities for a period of 5-10 years. Prosecution was carried out by the Anticorruption Prosecutor's Office.

*Restriction of the right of civil society to participate in the working groups for public procurement within public authorities*³²

On August 14 of the current year, an IDIS "Viitorul" representative contacted the Public Procurement Department within the Capital Constructions Direction of the Chisinau Town Hall/Mayor's Office in order to solicit information regarding submission of a request to participate in the working group on public procurement for the public tender No 17/02.700 (please see details on <http://etender.gov.md/>

³¹ www.cna.md

³² <http://viitorul.org/ro/content/note-poz%C8%9Bii%E2%80%8B>

[proceduricard?pid=21113469](#)). The question that was address to the Public Procurement Department/Section was to indicate the place where one should submit a request/application with the pertaining annexes, which had already been elaborated in compliance with legal provisions. A representative from the Public Procurement Department/Section told that the indication is to forward the request/application along with the attached documents/annexes via email.

The IDIS "Viitorul" representatives have sent to the Public Procurement Department/Section at the Chisinau Town Hall/Mayor's Office the request/application along with all the necessary documents foreseen by the legislation, i.e. item 6 of the Regulations on the activity of the procurement working group, adopted by the Government Decision No 667 of 27.05.2016. Therefore, the following documents were attached to the given request/application: the mandate/power of attorney empowering the IDIS "Viitorul" representative, and the extract from the State Registry of non-profit organizations. After a long waiting period, during which the officials within the aforementioned public authority did not make an attempt to contact us neither via email, nor via telephone, we finally were contacted on August 18 that was 2 working days before the opening of the offers, planned for August 22.

The attempts of IDIS "Viitorul" representatives to find out about the fate of the submitted request/application to the Public Procurement Department/Section or to find an officer in charge within the aforesaid Section were of no effect. Thus, we could not obtain a single reference with regard to our request/application neither on Friday, nor on Monday, and, in general, we were not informed about the status of our legal participation at the offers' opening procedure within the given tender. Surprisingly, we got an answer to our emails only after the offers' opening procedure, and, namely, on August 23 when we were informed that "*on the 17th of August 2017, to the IDIS "Viitorul" address, via post mail, there was sent a letter under the No 04-07/696, regarding proper completion of documents necessary to be submitted in order to include your representative in the working group*".

It means that the public authority ask us to send a request/application via email for to respond to our request via a registered letter (!) that we received only on August 30 (!). However, the bureaucratic paradoxes of Chisinau Municipality are not limited to delays and opacity in procedures. Besides the fact that we obtained an answer after the offers' opening, the Public Procurement Department/Section informed us that is was not possible to include an IDIS "Viitorul" representative in the working group on the grounds that "*the submitted documents are not properly completed and the requirements under entry 5 of the Government Decision No 667 are not met, and, respectively, the legal provisions are not met, either. For this purpose it is necessary to submit the original document and, accordingly, the authenticated copy of all the documents*".

The answer of the Capital Constructions Direction is a nonsense from the legal standpoint. There is no such provision in the mentioned Government Decision. Entry 5 of the Government Decision No 667 to which the public authority is referring to stipulates that "the contracting authority will mandatorily include in the compenence of the working group representatives of the civil society provided that there was submitted a written request two days before the closing date for the submission of offers/tenders, though the aforesaid representatives could not constitute more than a third of the total composition of the working group. "*The civil society representatives, included in the working group, have an advisory capacity or a right to a separate opinion, which could be expressed in a deliberative document of the respective working group*". In other words, the answer that communicates the refuse the aforementioned public authority to accept the IDIS "Viitorul" representative in the working group with the purpose to monitor the public procurement process, the public authority invokes and argument that is not found in legislation.



REFERENCE LIST

Legislative and standard acts

1. Law No 112 of 02.07.2014 on ratification of the Association Agreement between the Republic of Moldova on the one hand, and the European Union and the European Atomic Energy Community and their Member States on the other hand;
2. Law No 131 din 03.07.2015 on public procurement;
3. Government Decision No 667 of May 27, 2016 on approval of the Regulations on the activity of the working groups for public procurement;
4. Government Decision No 1332 of 14.12.2016 on approval of of the 2016-2020 Public Procurement Development Strategy and the Action Plan on its Implementation;
5. Government Decision No 1418 of 28.12.2016 approval of the Regulations on procedure for creation of the List of the prohibited economic operators;
6. Government Decision No 1419 of 28.12.2016 on approval of the Regulations on procedure for planning of agreements on public procurements;
7. Government Decision No 9 of 17.01.2008 on on the approval of the Regulations for filling in and keeping the public procurements dossier;
8. Contravention Code of the Republic of Moldova No 218 din 24.10.2008;
9. Law No 982 of 11.05.2000 on access to information;
10. Law No 171-XIII of 6 July, 1994 on commercial secret;
11. Law No 245-XVI of 27 November 2008 on state secrets;
12. Law No 16-XVI of 15 February 2008 on conflict of interest;
13. Competition Law No 183 din 11.07.2012;
14. Parliament Decision No 271 din 15.12.2016 on the establishment, organization and operation of the National Agency for Complaints Settlement;

Analytic papers, reports, studies/surveys

15. Report on the activity of the Public Procurement Agency for the first semester of the year 2017 – www.tender.gov.md;
16. Report on the activity of the Public Procurement Agency for 2016 in the domain of public procurement – www.tender.gov.md;
17. Report on performance audit of the public procurement system, approved by Court of Accounts decision No 37 of October1, 2015 – www.ccrm.md;
18. Transparency International USA – Civil Society Procurement Monitoring Tool - <http://monitoring.coalitionforintegrity.org/>;
19. Monitoring report on public procurement: weaknesses identified and policy recommendations, IDIS "Viitorul" - <http://viitorul.org/ro/library-books/129>;
20. OECD, Fighting Corruption in the Public Sector (February 2013);
21. Caroline Spruill, "Open Contracting: Factivists fighting Procureaucrats (December 2013);
22. https://www.opencontracting.org/2013/12/09/open_contracting_factivists_fighting_procureaucrats/