



POLICY ANALYSIS

**HOW DOES THE EUROPEAN SINGLE
PROCUREMENT DOCUMENT FACILITATE THE
PUBLIC PROCUREMENT PROCESS?**

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Chisinau 2019

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Introduction

The European Single Procurement Document (henceforth - ESPD)

It is an instrument instituted at the EU level by the EC regulation no. 7/2016, that facilitates the participation of economic operators in public procurement procedures and reduces administrative burdens for authorities.

Under national legislation (Law 131/2015), it must be used both by contracting authorities and by the economic operators participating in the awarding procedures (depending on their status in the procedure - candidate, bidder, third party supporter, subcontractor). Thus, Art. 65 (4) of the Law 131/2015 stipulates that the submission of the bid entails **the submission, in a common set of documents, of a technical proposal, a financial proposal, of the ESPD and, where appropriate, of a bid guarantee.**

At the same time, according to art. 20 (1) of the abovementioned law, at the time of submission of tender participation request, **the contracting authority will accept the ESPD, which consists of an up-to-date statement as a preliminary proof, instead of the certificates issued by the public authorities or by third parties** in confirmation that the economic operator fulfills the following conditions:

- a) it is not in any of the situations of exclusion mentioned in art. 19;
- b) meets the capacity criteria as requested by the contracting authority;
- c) if applicable, that it meets the selection criteria set by the contracting authority in accordance with the provisions of this law.

In order to implement these rules, the Minister of Finance issued Order no. 177 of 09.10.2018, approving the standard ESPD form.

Before ESPD was introduced in the public procurement system

Economic operators were required to submit, by the closing date for submission of bids and as an integral part of their offer, a plethora of documents so as to demonstrate compliance with the qualification and selection criteria set by the contracting authority in the tender awarding documentation.

After ESPD was introduced in the public procurement system

Economic operators have the possibility to demonstrate compliance with the qualification and selection requirements set by the contracting authority through the affidavit which is the ESPD. Accordingly, with the mandatory introduction of the ESPD, only the bidder whose offer is under examination (the most advantageous one according to the awarding criterion established by the authority for the procurement procedure in question) is obliged to transmit, at the request of the contracting authority and within the time limit set, some or all of the documents confirming its compliance with the qualification and selection criteria.

What is the European Single Procurement Document?

Figura 1. *ESPD characteristics*



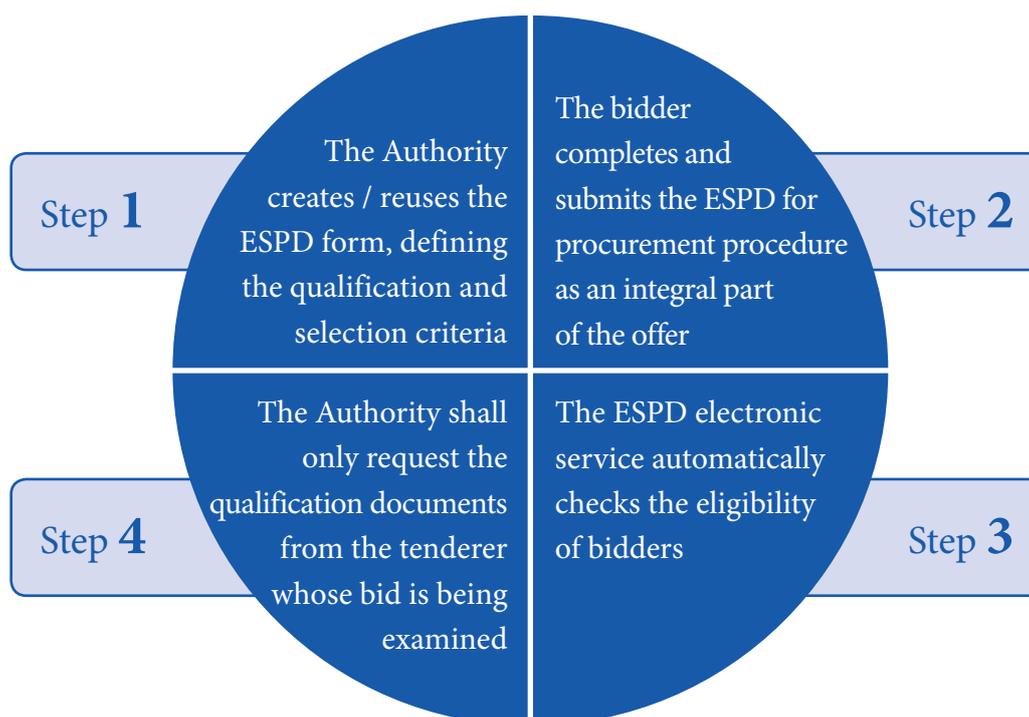
How does ESPD work?

Contracting authorities use the ESPD to define and establish the qualification and selection criteria, pre-filing the ESPD, as appropriate, in electronic or paper format. The document is then published so that it can be filled in by economic operators willing to participate in public procurement procedures and submitted as an integral part of the offer, together with the technical proposal, the financial proposal and the offer guarantee, as the case may be.

Bidders complete the relevant information requested in the ESPD, which thus constitutes an affidavit and preliminary proof that they meet the qualification and selection criteria set out in the awarding documentation, without being required to transmit confirmatory documents at the bidding stage. If the contracting authority is able to obtain certain certificates which confirm the information contained in the ESPD by accessing a national database free of charge for an offer which is being examined, then the economic operator is not required to provide supporting documents or other evidence as proof of the information filled in the ESPD. The ESPD usage implies also the "**one-time-only**" principle meaning that the contracting authority will not require economic operators to provide supporting documents demonstrating that they meet the qualification requirements set out in the tender documentation as long as they are already in possession of those documents.

In the case of a paper, or partially automated ESPD, the task of verifying the eligibility of bidders is performed by the working group of the contracting authority. **In the case of an electronic ESPD** and according to its original concept, the tenderers' eligibility is automatically verified. **Following the one-time-only principle, electronic ESPD becomes a safe tool to digitize public procurement.**

Figure 2. "ESPD in four steps"

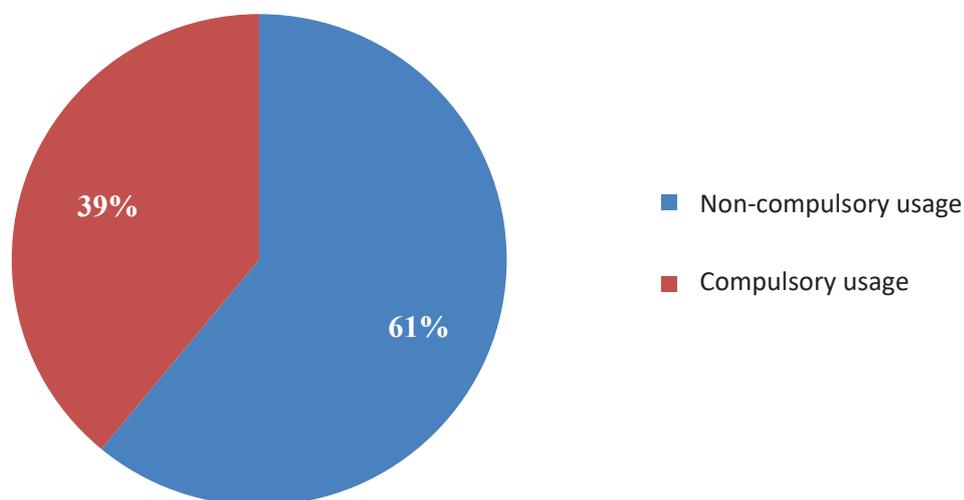


The evolution and effects of the introduction of ESPD at European level

EU directives leave it to the discretion of each Member State to decide **whether to make the ESPD compulsory below the EU thresholds**¹. **Figure no. 3 shows that 61% of member states do not intend to impose the obligation to use ESPD for purchases not exceeding EU thresholds**².

At the same time, countries such as Bulgaria, Croatia, Denmark, Latvia, Lithuania, the Netherlands, and Romania have introduced the mandatory use of ESPD for procurement procedures below EU thresholds, and in Hungary, Italy, Slovenia, Slovakia, and Spain the use of ESPD below EU thresholds is optional.

Figure 3. *ESPD usage below EU thresholds*



ESPD integration with national databases

In eleven EU member states it is not possible to access data from public databases either because they are not yet fully developed or due to the secrecy of some public data, especially of data that reflect the exclusion criteria.

In eleven other EU member states, the ESPD is partially integrated with national databases. This is only possible for certain types of documents, especially for those that constitute grounds for disqualification (in Finland, Germany, Latvia, Lithuania, Spain), while the rest of the documents must be

¹ https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds_en

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0242&fbclid=IwAR11Xu74u23X0P-Nm-4cam7h0hfev3QoRRGwGjMGnXnBlJjkyEGHySMLzAh4>

submitted by the economic operators. This indicates that those countries have begun to apply the "one-time-only" principle, which significantly reduces the administrative burden on the parties involved. Latvia and Lithuania have already implemented a system that automatically checks the compliance of economic operators with certain requirements and intends to connect it to all national databases to simplify administrative processes.

In 6 EU member states, access to certain categories of contracting authorities (such as the police, the tax inspectorate, etc.) is limited.

Effects of ESPD introduction and EU level

In EU member states, the view of the positive effects of the implementation of ESPD at the national procurement system level varies according to the extent to which the instrument has been implemented in each country.

In general, most member states have had a positive experience introducing the ESPD. They point out that the benefits of this tool can be materialized by linking the ESPD to state registers and public databases.

Another group of member states, like Denmark, Germany, and Spain, reports that the ESPD is criticized both by economic operators and by contracting authorities.

In yet other countries, such as Ireland, although there is an awareness of the simplification of the procurement process due to the implementation of the ESPD, it still remains a challenge for those who use it.

Some actors in the EU member states representing both contracting authorities and economic operators express certain dissatisfaction with the complexity of the ESPD form. At the same time, they acknowledge the fact that it is precisely the usage of ESPD on paper that creates difficulties, this being a transient step towards electronic ESPD, as this instrument has in fact been conceived. Another cause is the misunderstanding and misuse of this tool.

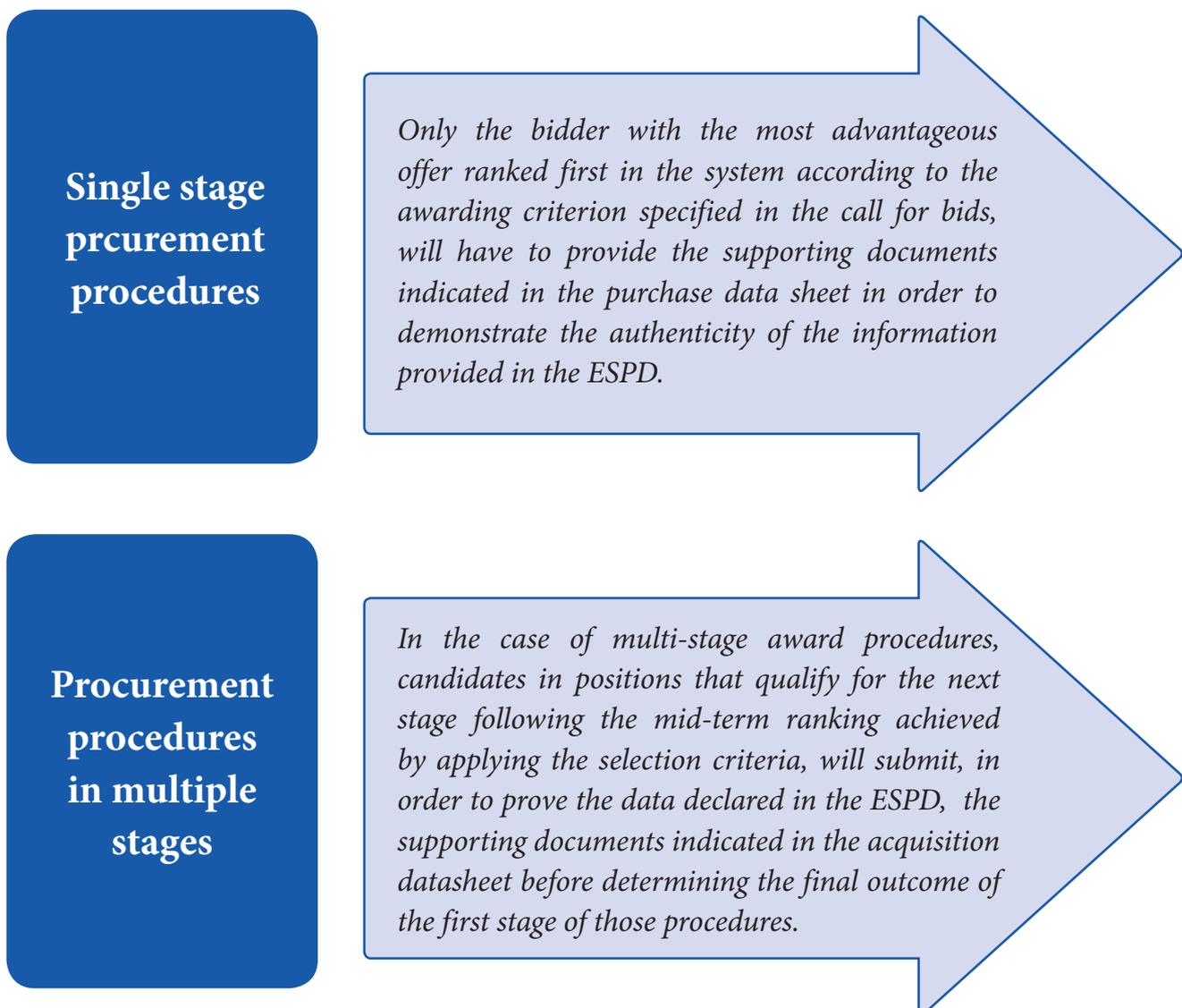
Countries like Estonia, France, Germany, Ireland, Luxembourg, Malta, and Slovenia have used the ESPD for too short a time to be able to assess the effects of its implementation in the national procurement system.

Only two EU countries have been able to make a quantitative estimate of the impact on companies in the public procurement market. For example, in Denmark, the benefits are estimated at around EUR 12 million per year, while Croatia has experienced an 83% reduction in bidding costs related to data demonstrating that bidders meet the qualification and selection requirements.

Presentation of ESPD according to types of procurement procedure

According to the latest trends and legislative modifications in the field of public procurement, especially with the implementation of the ESPD, documents confirming the compliance of the tender with the qualification criteria included in the awarding documentation are requested only from the bidder (or bidders, if the first offer is disqualified for non-compliance with qualification criteria) whose tender is under examination and evaluation. The above is valid for one-step procurement procedures. In the case of multi-stage procurement procedures, the principle is similar, only that the contracting authority will request the ESPD documents from all bidders who qualified for the first stage and were admitted to the following stages, depending on the type of procurement procedure.

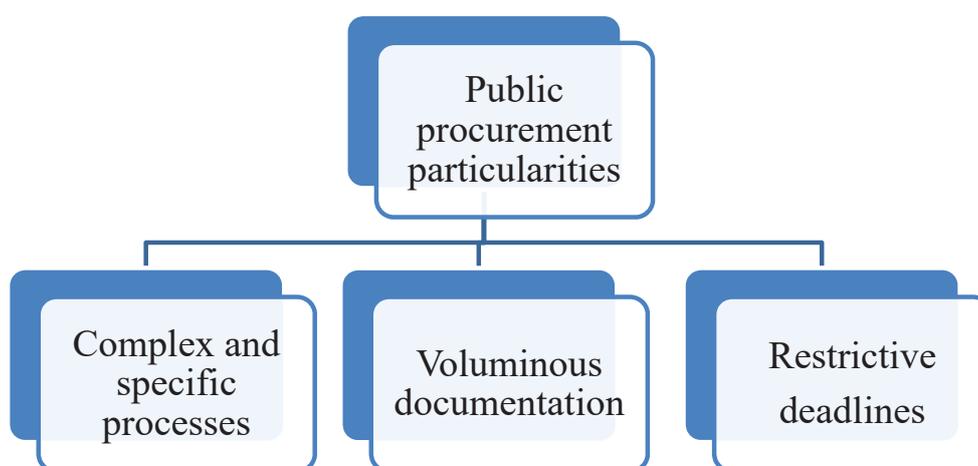
Figure 4. **Presentation of ESPD according to types of procurement procedure**



How does the ESPD facilitate the procurement process?

Being a newly introduced instrument in the Republic of Moldova's public procurement system, the ESPD was met with rather strong resistance by both contracting authorities and economic operators. In order to understand the causes of this resistance, it is necessary to understand the specificity of the public procurement process, which is quite complex, as well as the role of the ESPD in the public procurement system and the proper usage mechanism of this instrument. To this end, it is necessary to analyze the components of the offer and the role of the ESPD in the bidding process.

Figure 5. *Particularities of the public procurement process*



Specific and complex processes

The public procurement process is a complex one, guided by a number of legislative and normative acts involving several actors and requiring the preparation of a long list of documents. Each procurement procedure has its own specificity, and the range of procurement procedures is ample. Even procurement procedures involving the same type of goods, works or services differ from case to case, and from one contracting authority to another.

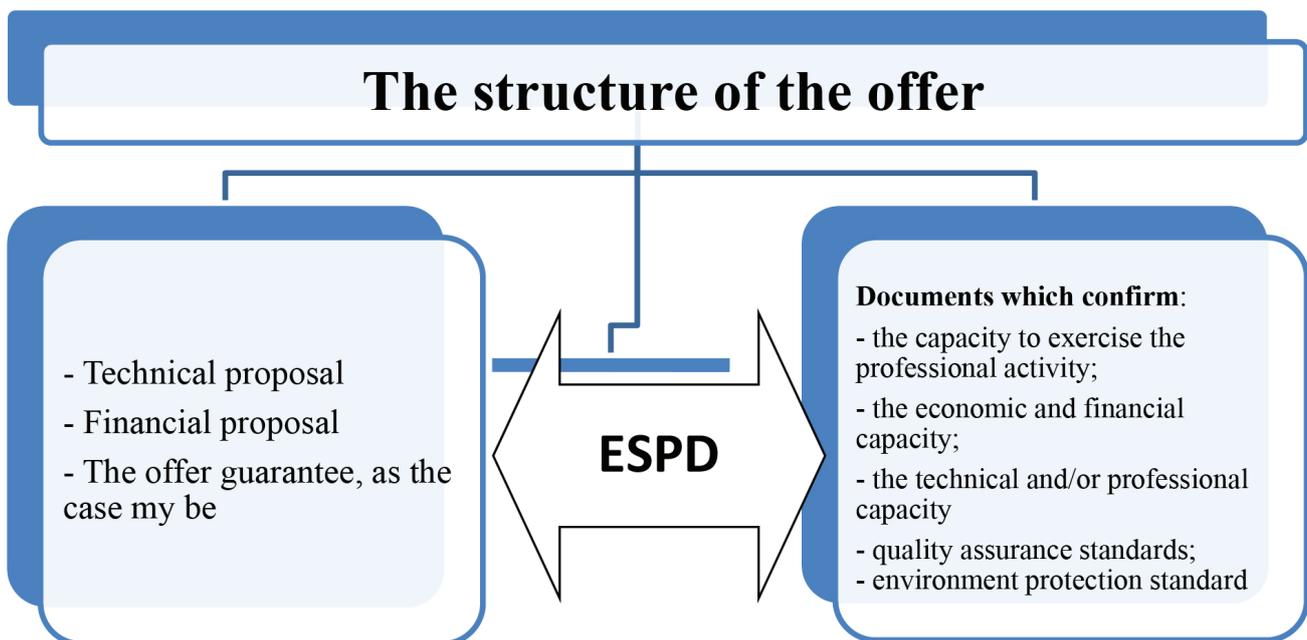
Voluminous documentation

The awarding documentation, which includes standard documentation, specifications, various forms, feasibility studies - technical documentation, drafts and other documents related to a procurement procedure, if any, is rather bulky and may contain subtle elements specific to each procurement procedure. Any economic operator intending to submit a bid for a public procurement procedure must thoroughly study all of the above documents and submit the offer in strict accordance with the awarding documentation. Sometimes documents demonstrating compliance with the qualification and selection criteria require a lot of time for collecting, sorting, signing and loading in the electronic purchasing system. Moreover, in some areas (eg insurance services), obtaining these certificates requires costs that may amount to several thousand lei per certificate.

Restrictive deadlines

In the context of the above-mentioned factors, the specific and complex process of public procurement and the bulky documentation characteristic for each procurement procedure together with the restrictive deadlines make the bidding process difficult for economic operators. Often during the bidding process, economic operators need to pay more attention and time to collect, prepare, sign and submit a multitude of documents, which reduces the time spent to prepare the technical proposal accordingly. This can generate the risk of errors, inaccuracies in the technical proposal, and reduce the time needed to develop a pricing strategy.

Figure 6. *The structure of the offer*



The bid submitted within a procurement procedure has two components. Part of the documents specific to the procedure in question is made up of the financial proposal, the technical proposal, and the offer guarantee, as shown in Figure 6, on the left. These reflect the characteristics of the goods or services to be delivered or those of the works to be performed.

The other component of the offer, represented on the right-hand side of Figure 6, is the economic operator's situation, which is related to the past, namely confirmatory documents demonstrating similar experience, and the present situation, illustrated by licenses, certifications, technical endowments, financial capacity, etc., and which are specific to the economic operator, but not to the procurement object for which the auction is being conducted. Thus, in the bidding process, the economic operator must concentrate all the resources on the technical proposal, then on the financial proposal, on the offer guarantee and on the ESPD - the statement confirming that it holds all the requested documents and that it meets all the requirements for qualification as stipulated in the tender documentation. These documents are to be submitted to the contracting authority upon its request for the offer under evaluation (or for the one ranked first in the interim ranking of the electronic system).

Advantages and constraints when using ESPD

In order to win a contract, an economic operator participates in several procurement procedures. The number of procedures in which an economic operator participates differs on a case-by-case basis depending on the object of the acquisition, the estimated value, the technical, economic and human potential, etc. From discussions with economic operators and analyzes of bids submitted for procurement procedures, it is estimated that an economic operator participates in an average of 10 procurement procedures (see Figure 7) to win single a procurement contract.

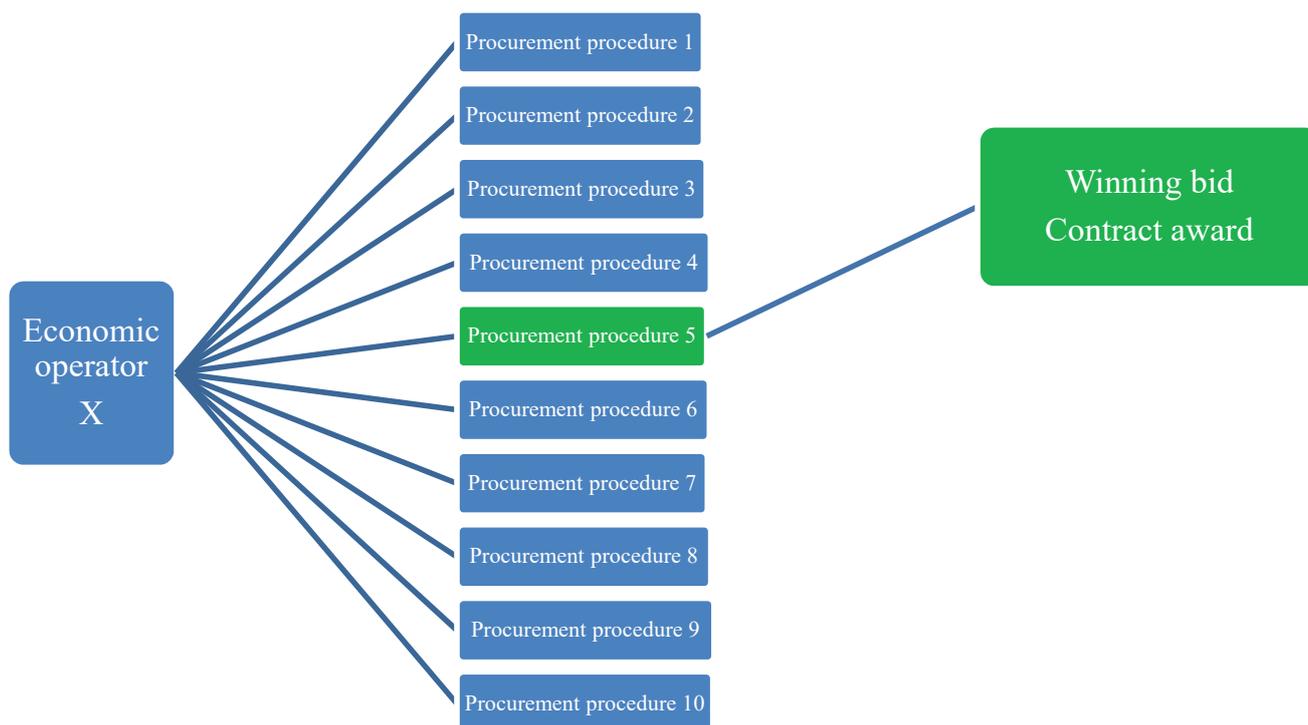
Thus, by introducing the ESPD into the public procurement system, the bidding activity of economic operators is streamlined, reducing the time needed to prepare the bids as well as the necessary resources involved in the process. Moreover, the submission of all qualification and selection documents with the offer is no longer required if their bids do not reach the examination and evaluation stage (or if they are ranked on lower positions according to the interim ranking of the electronic procurement system).

Consequently, economic operators can redirect their resources more efficiently, optimizing the costs and expenses involved in preparing tender documents for public procurement procedures. Moreover, by streamlining the bidding process, economic operators have the opportunity to participate in more procurement procedures, which improves competition on the procurement market and generates more value for public procurement money.

However, there are several challenges to ESPD being used by economic operators. In the Republic of Moldova, the ESPD is currently used in paper format, which takes a lot of time to complete, sign and load in the system, and also involves filling errors. These errors are due to the complex format of the document, the structure lacking clarity, imprecise or repetitive questions, and unclear instructions for completion for each of the parties. These errors lead to disqualifications of bidders, appealing procurement procedures, delaying the procurement process or even canceling procurement procedures.

From those described above, the advantages of the ESPD implementation for economic operators participating in public procurement procedures are evident, especially by eliminating the bureaucratic and complex process of collecting and preparing all documents proving qualification. Most of the challenges in using the ESPD are generated by the fact that it is currently paper-based and will be eliminated with the implementation of the electronic ESPD. Implementation of the ESPD also has positive effects for contracting authorities. Before the implementation of the ESPD, the working group within the contracting authority was required to examine all the documents submitted by all bidders. For some procurement procedures, there can be submitted 10-15 bids and examining all the documents submitted by each bidder can generate enormous workload, causing inefficient use of time and human resources, which entails additional costs and delays in project implementation.

Figure 7. **Ratio 1/10**



Example: An open tender/The lowest price/1 batch/5 offers

The contracting authority examines **1 bid** (or, as the case may be, 2-3 if the bid or offers ranked in the leading positions of the price list do not meet the requirements and criteria set out in the awarding documentation).

The contracting authority requests **1 set of qualification documents** as proof of the information submitted with the ESPD (or, as the case may be, 2-3 in the situation described above) or will retrieve this information directly from the national databases, if available.

As a result:

The contracting authority examines 1 offer out of 5, which represents 20% of the total volume of documents that should have been examined until the implementation of the ESPD.

Only 1 out of 5 economic operators will present the set of qualification documents as proof of the information submitted with the ESPD or will not present them if they are available in national databases to which the contracting authority has free access.

The advantages are obvious for both parties involved in the procurement process:

- 1. Contracting authorities**
- 2. Economic operators**

Final conclusions and policy recommendations

The ESPD is not just a document, as it is perceived by users (contracting authorities and economic operators). It is a new concept in public procurement, designed as a one-time-only instrument. The concept requires the submission of the economic operator's qualification documents only once, or that this information should be accessed online by integrating with the national databases.

The majority of the constraints on the use of ESPD, for both economic operators and by authorities, are generated by the novelty of this instrument which is new not only for the Republic of Moldova but also for the EU. Respectively, like any novelty, it needs time to be understood and used correctly, and then, as a result, the positive effects on the procurement process will become visible and tangible to all actors involved in the procurement process.

As highlighted in this document, in no EU member states, nor in the Republic of Moldova, is there any possibility to fully integrate the ESPD to public databases, some of which are not yet available while other have a restrictive access regime, in particular those databases and registers relating to those conditions which disqualify the bidder from the procurement procedure.

In the Republic of Moldova, ESPD is currently being used on paper, which generates errors both from contracting authorities and from economic operators. These errors are explained by the complex document format, the unclear structure, imprecise or repetitive questions, and unclear instructions for completion for each of the parties. These errors lead to disqualification of bidders, appealing procurement procedures, delaying the procurement process, or even causing the cancellation of procurement procedures.

The lack of understanding of the concept and role of the ESPD by contracting authorities creates constraints for economic operators in the bidding process. Although the ESPD was introduced into the public procurement system of the Republic of Moldova in 2018, the practice shows, however, that contracting authorities often continue to require economic operators to submit, as part of the offer, both the ESPD form and all the qualification documents. Thus, a misunderstanding and misuse of the ESPD generate the increase in workload which requires additional resources (human, financial). In this case, the economic operator is being confused with regarding the proper preparation of the offer. On one hand, the tender documentation in which these requirements are laid down is mandatory and, on the other hand, the express legal framework provides that the tender will contain the technical proposal, the financial proposal, the ESPD and, where appropriate, the offer guarantee.

As a result of these challenges in the proper use of the ESPD, and in order to increase the access of the economic operators to the public procurement market, to strengthen competition and the efficiency of the process, we come up with the following policy proposals for public procurement decision-makers (Ministry of Finance, Public Procurement Agency, National Agency for Solving Complaints).

First, it is necessary **to revise the standard ESPD blank currently in force, both in form and content**. Concerning its form, the appropriate numbering of sections and subsections should confer clarity and consecutiveness. It is also necessary that the references and instructions on the form

itself be excluded, as they create confusion when filling in. The filling in instructions for each point will be developed separately, as explained above. In terms of content, the instrument needs to be adapted to national terminology and legislation, both in the field of public procurement and in the areas to which the question refers. To exclude filing errors, it should be ensured that confusing information and repetitive questions are excluded. In the long run, to improve the ESPD form, it is advisable to ensure that it continually adjusts to changes in the legal framework, but also to user feedback from contracting authorities and economic operators.

Secondly, it is also necessary to amend a confusing legislative provision that refers to the stage at which the contracting authority can request the documents related to ESPD from the economic operator whose bid is being examined. The Law 131/2015, Article 20 (7) provides that the contracting authority may require bidders to submit all or some of the supporting documents as evidence of the information contained in the ESPD at any time during the procurement procedure public if this is necessary to ensure the proper conduct of the procedure. This rule is confusing and generates discretion, as a contracting authority can invoke it to apply it for all ESPD-related qualification documents at the stage of submission of bids. Therefore, it is recommended to amend the paragraph with the words "after the opening of tenders".

Thirdly, it is **necessary to draw up an instruction on the use of ESPD, separated from the form itself**, and focusing on the following elements:

The validity of the documents - i.e. when they must be made available? At the time of the submission of the documents? When the bids are opened in the case of electronic auctions, or when the documents are submitted by the economic operators at the request of the contracting authority, at the examination and evaluation stage?

ESPD re-use mechanism - it is necessary to explain and clarify the mechanism of re-use of the ESPD, thus avoiding the current misinterpretation by both contracting authorities and economic operators.

The mechanism of using the documents presented above, according to the "one-time-only" principle.

Finally, in order to **fully benefit from a tool that de jure and de facto facilitates the procurement process, it is necessary to implement the ESPD electronically** as well as to integrate it with the electronic procurement system and national databases for the purpose of automated data integration, at least in part, where available. This will remove a large part of the current filing errors, considerably reduce filing time, allow data re-use, as well as the pre-filing of the blank and the automated data exchange between different databases. In turn, both authorities and economic operators will benefit from automated services, facilitating the implementation of the ESPD in the procurement process.

