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**Project "Cutting edge improvements in the public  
procurement system in Moldova through  
inclusiveness, creativity and  
law-abiding practices"**



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# **Public procurement process. Stages and procedures of procurement. Part II**



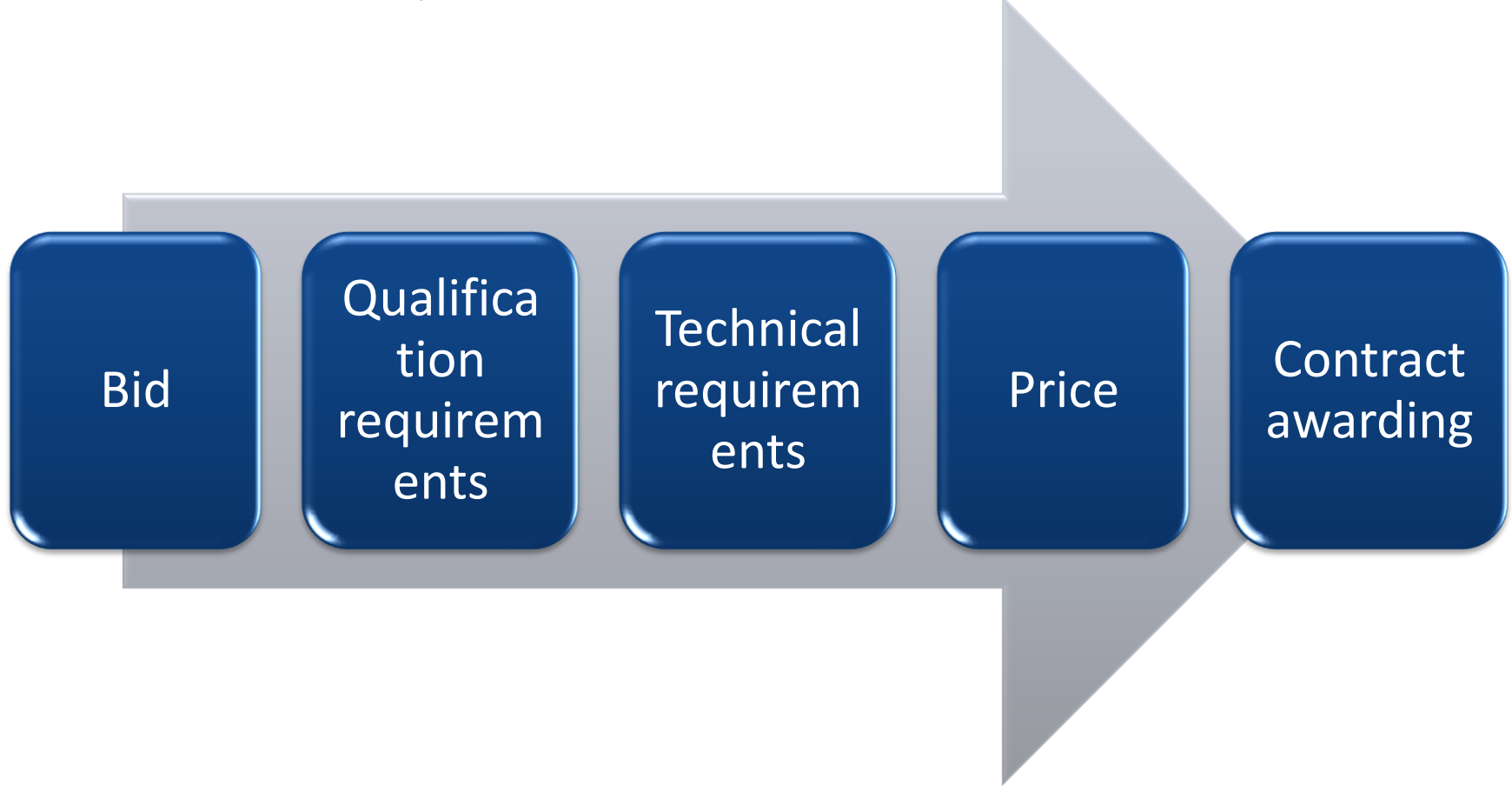
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**EXAMINATION, EVALUATION AND COMPARISON OF THE BIDS**





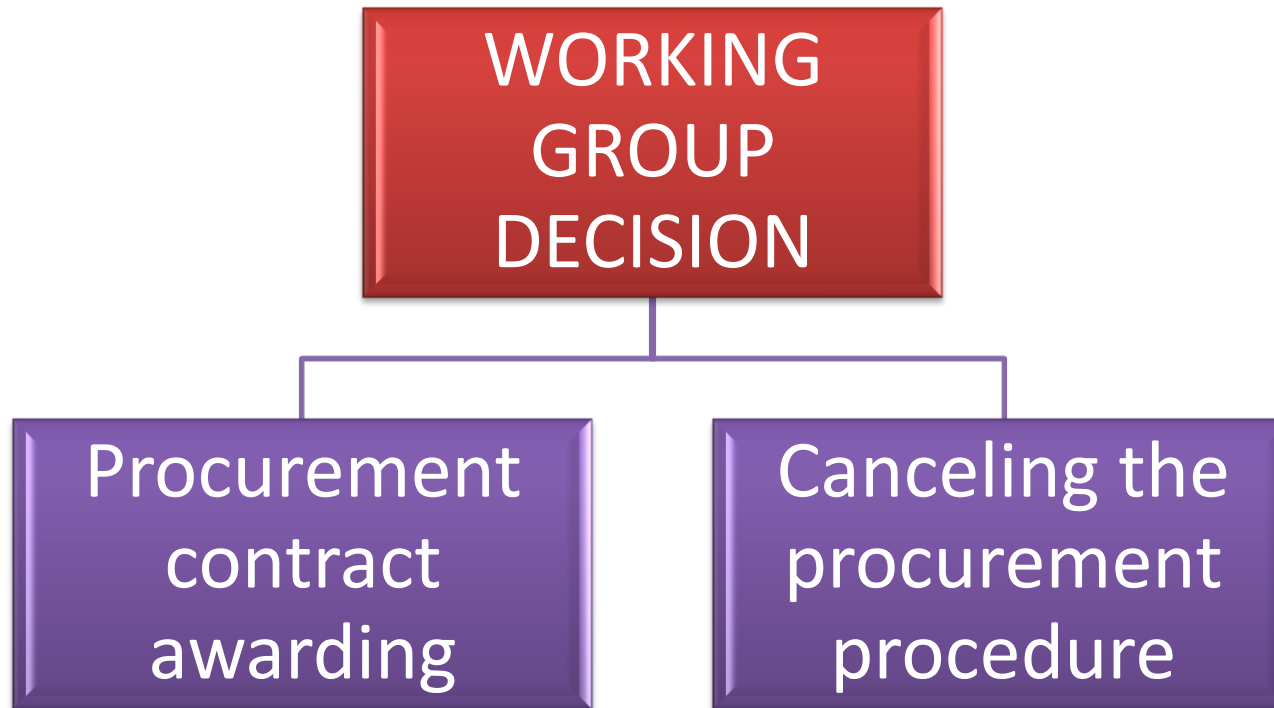
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**EXAMINATION, EVALUATION AND COMPARISON OF THE BIDS**





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## **EXAMINATION, EVALUATION AND COMPARISON OF THE BIDS**

- Examination, evaluation and comparison of the bids is carried out **without participation of the bidders** or their representatives, at the contracting authority **headquarters**;
- **Qualification of the participants** in procurement procedures is to be performed according to the requirements set forth in the award documentation;
- Examination, evaluation and comparison of the bids will take place within the **terms and conditions set forth** in the award documentation;
- The bidder will be required to submit documentary evidence in case of any **uncertainty about his or her personal situation**, cooperation and additional information from the competent authorities, including from abroad, may be required;



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### **EXAMINATION, EVALUATION AND COMPARISON OF THE BIDS**

- **Explanations, clarifications** on the bids, **reconfirmation** of certain elements of the bid or the commitments undertaken within it may be required;
- A **reasonable timeframe** for submission of responses will be granted, depending on the complexity of the request;
- The additional information submitted **must not** lead to **changes in bids**, changes that would **distort competition** or create **an added advantage** over other bidders;
- Only **arithmetic errors detected** during the examination of the bid may be corrected, with the consent of the economic operator;



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### **EXAMINATION, EVALUATION AND COMPARISON OF THE BIDS**

- The bid will be deemed **to comply** if it **contains insignificant deviations** from the provisions of the award documentation, errors or omissions that can be removed without affecting its essence;
- Decision – **open voting** by simple majority of votes;
- The evaluation of the bids is finalized by drawing up **the evaluation minutes** signed by all the members of the working group;
- **The separate opinions** shall be recorded in the minutes indicating the clear **reasons** of disagreement with the decision taken;
- Information on examination, evaluation and comparison **of the bids shall not be disclosed to the** bidders or other persons not officially involved in these procedures or in the identification of the winning bid.



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## SITUATIONS OF EXCLUSION FROM THE CONTRACT AWARD PROCEDURE

The contracting authority has the obligation to **exclude** from the public procurement contract award procedure any bidder or candidate who is in any of **the following situations**:

- In the last **5 years** he has been **convicted** by a final court judgment for participation in activities of a criminal organization or criminal group, **for corruption, for fraud and/or for money laundering.**
- In the last **5 years** he has been **convicted** by a final court judgment for a deed which prejudiced **professional ethics** or for **professional misconduct**;
- Is under bankruptcy proceedings as a result of a court judgment;
- Is included in the **List of prohibited economic operators**;



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## SITUATIONS OF EXCLUSION FROM THE CONTRACT AWARD PROCEDURE

- Two or more individual / joint bids;
- One individual bid, one joint bid;
- An individual/joint bid + subcontractor in another bid;
- The candidate, bidder, associate bidder, subcontractor is involved in the **process of verification/evaluation** of the candidates/bids;
- The candidate, bidder, associate bidder, subcontractor has participated in **preparing the award documentation**, where its involvement is likely to distort competition;
- Failed to fulfill its **obligations to pay** taxes, social security taxes and contributions according to the legal provisions in force in the Republic of Moldova or in the country where it is established;
- Submitted **false information** or **did not submit the information requested** by the contracting authority in order to demonstrate the fulfillment of the **qualification and selection criteria**;



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## SITUATIONS OF EXCLUSION FROM THE CONTRACT AWARD PROCEDURE

- The bid **does not meet the requirements** set forth in the award documentation;
- The bidder did not accept **an arithmetic error** to be corrected;
- The financial bid does not have a **fixed price**;
- **The bid is abnormally low** according to article 66/ L.131 of 03.07.2015;
- The bid contains **proposals** regarding the contractual clauses, which are obviously **disadvantageous** for the contracting authority;
- **Failure to submit the clarifications** requested by the working group or the explanations submitted **are not convincing** or are not sustained by the required **supporting documents**.
- The clarifications submitted **modified the content of the bid**.
- Commission of **corrupt deeds** have been established.



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## **ABNORMALLY LOW BID (ARTICLE 66)**

- An abnormally low bid can be the bid with a **significantly lower price** compared to other **bids of other bidders** or in relation to the **estimated value** of the contracting authority in case the bidder fails to demonstrate its access to a special technology or more advantageous market conditions that would enable him to offer such a low bid price.
- In case of the public procurement of **works**, the bid is considered to be abnormally low if the offered price represents less than **85%** of the value of the works calculated by the contracting authority in the established manner.
- Before taking a rejection decision the contracting authority has obligation to ensure the economic operator with **the possibility to justify** the abnormally low price and to request in writing **details and clarifications** which are considered significant regarding the bid and **to verify the replies**.



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## SELECTION OF THE WINNING BID AND CONTRACT AWARD

- In determining the winning bid the contracting authority evaluates and compares the received bids **using the method and criteria set out in the award documentation**. Any criteria absent from the award documentation will not be used;
- If the award criterion of the public procurement contract is “**the most economically advantageous tender**” and the working group granted the **same score** for two or more bids, the bid with **the lowest price** would be selected;
- The bid declared as winning **can not be changed**. The **uniform prices** from the bid are **stable** and cannot be changed for the duration of the contract execution;
- The procurement contracts **are registered** in one of the territorial **treasuries** of the Ministry of Finance, if the financial sources are managed through the treasury system.



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**PROCUREMENT CONTRACT AWARD**





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## **CANCELING THE PROCUREMENT PROCEDURE (ARTICLE 67)**

The contracting authority **on its own initiative will cancel** the award procedure of a public procurement contract, if it takes this decision **before the date of the communication** of the result of the application of the public procurement procedure in the following cases:

- a) it was not possible to ensure a **satisfactory level of competition** and the number of bidders/candidates is lower than the minimum number foreseen for each procedure;
- b) **none** of the bidders met the **qualification requirements** provided in the award documentation;
- c) in case of the public procurement of **works**, the total value of each bid is:
  - **higher by at least 15%** than the estimated value of the works calculated according to legislation;



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## **CANCELING THE PROCUREMENT PROCEDURE (ARTICLE 67)**

– **lower by at least 15%** than the estimated value of the works calculated according to legislation, provided that the bidders have not been able to provide **relevant justifications** according to article 66 paragraph (4) and (5)/ L.131;

**d) only inappropriate bids** were submitted, which:

- are submitted **after the deadline** for bid submission;
- **have not been** developed and presented **in accordance with the requirements** covered by the award documentation;
  - the financial proposal contains **prices** that are not the result of free competition and **can not be reasonably justified**;
  - contain **proposals** regarding the contractual clauses, which are obviously **disadvantageous** for the contracting authority;



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## **CANCELING THE PROCUREMENT PROCEDURE (ARTICLE 67)**

- **exceed by 30%** the estimated value of the procurement calculated according to the present law;
- have a value **exceeding the threshold** provided by the present law for the carried out public procurement procedure;
- by the value included in the financial proposal **exceed the amount of the funds assigned** for the public procurement contract fulfillment;
- e) it was found that an **act of corruption** was committed confirmed by a final court judgment;
- f) the submitted bids although they can be taken into account they can not be compared because of the **uneven approach to technical and/or financial solutions**;





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## **CANCELING THE PROCUREMENT PROCEDURE (ARTICLE 67)**

**g)** the existence of **serious deviations** from the legal provisions **affects the award procedure** or makes it impossible to conclude the contract. Serious deviations from the legal provisions mean that:

– **the principles** or rules on **transparency and communication** regulated by this law have not been respected; or

– during the analysis, evaluation and/or finalization of the award procedure **errors or omissions** are found, and the contracting authority **is unable to take corrective measures** without leading to a violation of the **principles** set forth in article 6/L.131.

➤ **Note!** In case of the public procurement of works the procurement procedure would be canceled if the bidders ranked No.1 and No.2 **refuse** to sign the contract (G.D. 669/27.05.16).



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## REPORTING OF THE PROCUREMENT PROCEDURE RESULTS (ARTICLE 73)

- **The report** (according to an approved **model**) is presented to the Public Procurement Agency within **5 days** from the date of the contract conclusion or from the date of issuance of the decision to cancel the public procurement procedure.
- The report on the public procurement procedure is a **public document**. People's access to this information **may be limited**, according to the provisions of **Law no. 171-XIII** of July 6, 1994 on **Commercial Secret** or **Law no. 245-XVI** of November 27, 2008 on **State Secret** only to the extent that such information includes, in particular, technical or commercial secrets or include confidential aspects of the bids.
- The Public Procurement Agency **processes** the information from the reports submitted by **e-mail** or via **SIA "RSAP"** and places the data on the awarded contracts on the **webpage**.



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## EXECUTION OF THE PROCUREMENT CONTRACT

- The parties **must fulfill** in good faith the **obligations** assumed in terms of **quantity, quality, within the timeframe and budget established**;
- The working group will ensure **monitoring of the execution** of the public procurement contracts according to the procurement contract specifications compiling its **reports** on this **quarterly/half-yearly and yearly**;
- These **reports** will compulsorily include **information on the stage of execution** of contractual obligations, the causes of non-execution, the complaints submitted and the penalties applied, notes on the quality of the contract execution etc;
- Will be placed on the contracting authority's **webpage**, and in its absence on the official website of the central authority to which it is subordinated or of the local public authorities of the second level.



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## EXECUTION OF THE PROCUREMENT CONTRACT

An **ancillary act** or a **contract** concluded following the application of a **negotiation procedure without prior publication** of a contract notice (according to article 54/L.131) can be used as tools if during the implementation of the procurement contract a need comes up **to modify some contractual clauses**, provided the following **conditions** are met cumulatively:

- ✓ An **agreement of all contracting parties** is in place;
- ✓ The amendments **do not contravene the legal provisions** in force.

**Examples** of situations when **contractual clauses are modified**:

- **Changing** the name of the parties or their identification data;
- **Extending** the duration of the contract;
- **Reducing** the quantity of goods or **exclusion** of works or services in reasonably justified cases;



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## EXECUTION OF THE PROCUREMENT CONTRACT

- **Justified** increase in the quantity of **goods** according to paragraph 35-36/G.D. 667/27.05.2017 (**max. 15%** of the value of the goods initially contracted or of the remaining balance after the previous decrease of the contracted goods value);
- Application of the **negotiation procedure without prior publication of a contract notice for additional works/services** which were not stipulated in both the initially estimated project, and initial contract and which became necessary due to **unforeseen circumstances**, provided that the contract is awarded to the economic operator which conducts the respective works/services (applied within **3 years** after the initial contract was concluded, and the cumulative value of the contracts awarded for additional works/services will be **max. 15%** of the initial contract value).



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## EXECUTION OF THE PROCUREMENT CONTRACT

The main **problems** that may arise during the **implementation phase** of a public procurement contract are:

- Delays/refusals in supply of goods/services or completion of works;
- Price increase;
- Non-compliance with quality standards;
- Non-compliance (partial or total) with the requirements of the term of reference and contractual provisions;
- Deviation from the objectives of the contract;
- Occurrence of unpredictable situations that prevent successful completion of a procurement contract, etc.



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## **PENALIZATION OF THE ECONOMIC OPERATOR**

- **Note!** The contracting authority is the **entity responsible of compliant monitoring** of the public procurement contracts and hence of **taking actions** in accordance with the legislation in force, in cases of **non-compliant execution** of public procurement contracts.
- Actions to address the issues appeared will be identified;
- Notification of the contractor's claims specifying the obligations that have not been fulfilled;
- Application of penalties;
- Retention of the performance guarantee;
- Termination of the procurement contract;
- Inclusion of the economic operator into the List of prohibited economic operators;
- Notification of the competent law enforcement agencies.



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## LIST OF PROHIBITED ECONOMIC OPERATORS

**Grounds** for an economic operator to be included into the List of prohibited economic operators are the following:

1) there is a **final court judgment** whereby the procurement **contract was terminated** as a result of the economic operator's **non-fulfillment or inadequate fulfillment** of the contractual clauses;

2) the economic operator **does not fulfill its contractual obligations, supplies goods, services or executes works** on its own initiative, **other** than those stipulated in the contract, or the **quality** of goods, services and works **is lower** than the one stipulated in the contract and in the documents regarding the carrying out of the procurement procedure;

3) submission of **false documents** within the public procurement procedures. For this paragraph to be applied the occurrence of prejudice or damage to activity is not a mandatory condition;





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### LIST OF PROHIBITED ECONOMIC OPERATORS (G.D. 1418/28.12.16)

4) **there is evidence** presented by the contracting authority or by the control body which demonstrates that economic operators have participated in the procurement procedure with **rigged bids**, have participated as members of the group of dependent enterprises in the same public procurement procedure with several bids or have created **unfair competition** between participants.

- The request will be submitted within **60 days** from the occurrence of the grounds for inclusion into the List;
- **Proper preparation** of the request and attachment of all supporting documentation;
- The economic operator included into the List or which has **at least one founder who is or was founder** of an operator included into the list **has no** right to participate in public procurement procedures for a period of **3 years**.



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## EX-POST CONTROL

- The Public Procurement Agency carries out the ex-post control regarding the **application** by the contracting authorities of the **legal and procedural provisions in the field of public procurement**;
- The procedures subject to control are selected based on **risk indicators** identified under the monitoring of the procurement procedures, as well as based on **notifications** rendered by ANSC or other public institutions;
- The Agency shall establish the commission of contraventions, shall prepare documentation on contraventions and, where appropriate, shall apply **penalties** according to **article 327<sup>1</sup>** of the Contravention Code of the Republic of Moldova;
- The findings made during the ex-post control are **rendered to control institutions, structures or bodies** of the state empowered to apply penalties/correct the respective deviations, if penalization or correction of deviations **falls within the competence of those institutions.**