Public procurement process.
Stages and procedures of procurement.
Part II
EXAMINATION, EVALUATION AND COMPARISON OF THE BIDS

Bid
Qualification requirements
Technical requirements
Price
Contract awarding
EXAMINATION, EVALUATION AND COMPARISON OF THE BIDS

WORKING GROUP DECISION

Procurement contract awarding

Canceling the procurement procedure
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;
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;
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.
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;
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 accepted **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.
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.
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.
PROCUREMENT CONTRACT AWARD

1. Decision of the working group
2. Notification of the bidders
3. Waiting period
4. Signing period
5. Performance guarantee
6. Procurement contract
7. Report
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;
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;
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**;
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).
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.
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.
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;
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).
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.
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.
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;
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**.
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 327¹ 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.