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# MONITORING PUBLIC PROCUREMENT GUIDE: A TOOL FOR CIVIL SOCIETY

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The guide is produced within the project [“Increasing the integrity in public procurement”](#). The project is implemented by Institute for Development and Social Initiatives (IDIS) "Viitorul", in partnership with Partnership for Transparency Fund (PTF). It aims to support procurement reforms in Moldova that will increase transparency and fairness of public procurement through empowering citizens to hold relevant institutions accountable. This will be accomplished through training civil society organizations to serve as watchdogs by monitoring public procurement.

The views expressed in this report are those of the authors and do not necessarily reflect the views of the Partnership for Transparency Fund (PTF).

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## ACRONYMS

<b>AA</b>	Association Agreement between the Republic of Moldova and the European Union
<b>CCPPH</b>	Centre for Centralised Public Procurement in Health
<b>ESPD</b>	European Single Procurement Document
<b>EU</b>	European Union
<b>GDP</b>	Gross Domestic Product
<b>LPA</b>	Local Public Authority
<b>MTENDER</b>	Automated Information System “State Register of Public Procurement”
<b>NAC</b>	National Anticorruption Centre
<b>NASC</b>	National Agency for Settlement of Complaints
<b>NIA</b>	National Integrity Authority
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>OJUE</b>	Official Journal of the European Union
<b>PPA</b>	Public Procurement Agency
<b>PPB</b>	Public Procurement Bulletin
<b>SIGMA</b>	Support for Improvement in Governance and Management in Central and Eastern European Countries
<b>SMEs</b>	Small and medium-sized enterprises
<b>RFP</b>	Request for Proposals

## INTRODUCTION

Public procurement represents the procurement of goods, services, and works carried out by public authorities (central and local) with public money or resources accrued in the public budgets. According to the Law on Public Procurement no. 131/2015, a public procurement is the procurement of goods, services, and works, based on a public procurement contract, carried out by one or multiple contracting authorities from economic operators that they select, regardless of whether the goods, services, and works are intended or not to serve a public purpose. The contracting authority is any public authority or legal entity and an association of these authorities or entities.

Annually, a significant volume of public budgetary resources circulates through the public procurement system. According to the [statistical data](#), in 2021, public authorities procured goods, works, and services in the amount of about 8.44 billion lei, which constitutes a 3.53% share of the GDP<sup>1</sup>. As a whole, national public authorities concluded 13,450 procurement contracts in 2020, as a result of 3,485 public procurement procedures, excluding low-value procurement contracts.

The share of public procurement represents around 12% in relation to the national public budget expenditures. For purposes of comparison, in the OECD member countries, public procurement represents nearly 12% of the GDP and 29% of public expenditures.<sup>2</sup> Concerning the EU, public procurement represents, on average, 16% of the EU GDP, and it varies from country to country.

According to the law, the efficient use of public money; transparency; competition and fighting anti-competition practices; environmental protection, and promotion of sustainable development are among the fundamental principles of the public procurement process. Therefore, efficient and transparent public procurement is at the core of good governance. Public procurement in the Republic of Moldova is still a vulnerable domain, susceptible to fraud and corruption, consequently, the role of civil society and mass media in overseeing the conduct of the procurement process is even greater. Limited transparency, inconsistent legal framework, lack of control, and qualified specialists in the field represent major issues for the public procurement process and generate high corruption and fraud risks. All these lead to negative effects on the development of social and economic infrastructure, quality of public services provided, as well as on citizens' and economic operators' trust in public institutions.

Although recent progress in terms of transparency facilitated access to the procurement documents, bids/offers, and complaints, nevertheless, contract performance remains the least transparent stage. The introduction of a new electronic system (MTender) represented an important component of the public procurement sector reform and contributed to enhanced transparency and more active involvement of civil society in monitoring. Despite this, the system does not assure a fully electronic

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<sup>1</sup> Calculated for the 9 months of 2021

<sup>2</sup> <https://www.oecd-ilibrary.org/sites/fc0c31c5-en/index.html?itemId=/content/component/fc0c31c5-en>

procurement process and does not support all the procedures provided for in the law. Besides, the system does not allow the secure submission of bids/offers (encryption) and there are mismatches with the provisions of the legal framework<sup>3</sup>.

A lack of transparency was found in relation to low-value procurement, whose value thresholds increased significantly in October 2018 (from 80,000 lei to 200,000 lei for goods procurement and from 100,000 lei to 250,000 lei for works procurement). In spite of this, under current legislation, there is no obligation to conduct them through the electronic system and the Public Procurement Agency does not include the statistical data on low-value contracts in the annual activity reports.

International experience has shown that civil society has an important role in monitoring public procurement and ensuring transparency in awarding and performance of procurement contracts. When public authorities fail to observe the principles of transparency, integrity, and efficiency in the procurement process or are part of corrupt schemes, civil society organizations can use the findings and risks revealed in relation to corruption, refer them to law-enforcement bodies and mobilize the citizens, so that they demand more accountability from the government. Thus, by overseeing the manner in which public money is used, civil society can significantly contribute to strengthening governance and building bridges between society and all-level authorities.

This guide was developed to support the organizations of civil society, civic monitors, and investigative journalists in their monitoring of public procurement conducted at all levels and in any domain. The guide was developed based on the monitoring methodology of the US Transparency International – Civil Society Procurement Monitoring Tool.<sup>4</sup> It is a monitoring tool widely used on an international scale that relies on the identification of “red flags” at each stage of the procurement process. The red flags are signals or indicators of potential irregularities, fraud, or corruption. Nevertheless, a red flag does not necessarily point to any illegality or corruption act, but rather a probability that those might exist. Sometimes, a red flag could indicate a human or technical error and no bad faith.

The guide follows a logical structure. First, it examines the functioning mechanism behind the procurement system (legal and institutional framework, stages in the procurement process, access to and analysis of available data, etc.) and then, the selection of procurement for monitoring along with the monitoring tools. Finally, the guide provides step-by-step instructions to identify risk indicators (the red flags) at each stage of the procurement process. The guide includes post-monitoring recommendations, including the ones that refer to advocacy, referral to competent authorities, coalitions with other civil society actors, mass media, etc. These actions aim to enhance transparency, ensure efficiency in using the public money, sanction those who committed irregularities and make contracting authorities accountable before the citizens.

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<sup>3</sup>[http://viitorul.org/files/library/RO\\_Analiza%20de%20politici.%20Constrangeri%20in%20utilizarea%20sistemului%20electronic%20de%20achizitii%20publice%20MTender.pdf](http://viitorul.org/files/library/RO_Analiza%20de%20politici.%20Constrangeri%20in%20utilizarea%20sistemului%20electronic%20de%20achizitii%20publice%20MTender.pdf)

<sup>4</sup><https://www.coalitionforintegrity.org/publications-resources/publications/>

To make the information from this guide clear and accessible to everyone, a list of main terms used in public procurement will be presented further on.

**Bidder** – the economic operator who submitted an offer in order to be awarded a public procurement contract.

**Central Procurement Authority** – a contracting authority performing centralized procurement activities and, where applicable, ancillary procurement activities;

**Centralized procurement activities** – activities that are carried out by a central procurement authority, on a regular basis, in order to procure goods and/or services for the contracting authorities or award public procurement contracts or conclude framework agreements for goods, services, and works for the contracting authorities;

**Contracting authority** – any authority of the central or local public administration, public institution, or autonomous authority/institution that manages the means of the national public budget.

**Economic operator** – any natural or legal person, any public entity or association of such persons and/or entities that supply goods, performs works, and/or provide services on the market.

**Electronic auction** – a repetitive process that involves electronic means of presenting, in descending order, the new prices and/or new values for certain elements of bids, following a complete and initial evaluation of bids, allowing their ranking based on automated methods of evaluation.

**European Single Procurement Document (ESPD)** – a standard document issued in electronic format (a standard format approved by the Ministry of Finance), that implies a self-declaration form submitted by the economic operator on compliance with the qualification and selection criteria;

**Financial proposal** – a part of the bid containing information on the price, tariff, other financial and commercial conditions that meet the requirements of tender documentation.

**Inadequate bid** – an offer which is irrelevant to the object of the procurement, which does not meet, without substantial changes, the needs and requirements specified in tender documentation;

**Low-value public procurement** - means contracts for the purchase of goods, the execution of works, or the provision of services, planned and concluded by the contracting authorities/entities, the estimated value of which, without value-added tax, does not exceed the following thresholds:

	<b>Law no.131/2015</b> on public procurement	<b>Law no.74/2020</b> on procurement in the energy, water, transport, and postal services sectors
Public procurement contracts for <b>goods and services</b>	200,000 lei	800,000 lei

Public <b>works</b> contracts	250,000 lei	20,000,000 lei
Public procurement contracts having as object <b>social services and other specific services</b> (listed in Annex to Law no.131/2015 and Law no.74/2020)	400,000 lei	1000000 lei

**Non-compliant bid** – an offer which does not comply with the requirements specified in the descriptive documentation or in the tender documentation, and was received with delay, being the result of some anti-trust or corrupt actions, established in the manner provided by law, or was considered to be abnormally low by the contracting authority;

**Offer** – a legal act whereby an economic operator expresses their willingness to legally engage in a public procurement contract. The offer includes *the technical* and the *financial proposals*, as well as other documents foreseen by tender documentation.

**Public procurement** – the process by which one or more contracting authorities, purchase, through a public procurement contract, goods, works, or services from the selected economic operators.

**Sectoral procurement** – the purchase, through a procurement contract, of goods, works, or services by one or more contracting entities operating in the energy, water, transport, and postal services sectors from the economic operators selected by the contracting entities.

**Technical proposal** – part of the bid which was developed based on the requirements of technical specifications or, where applicable, of the descriptive documentation;

**Technical specifications** – the technical guidance notes indicated, in particular, in the *standard conditions*, which define the characteristics demanded from equipment, product, service, or good and which allow their characterization so as to comply with the use intended by the contracting authority. These features include the levels of environmental performance, planning for all types of uses (including access by persons with disabilities), and the assessment of compliance, performance, safety or dimensions, including the procedures related to quality assurance, terminology, symbols, testing, and testing methods, packaging, marking and labeling, as well as the production process and methods.

**Terms of Reference:** They contain a description of the characteristics and nature of the consulting services, explaining the requirements to be satisfied and, if appropriate, the procedures to determine whether the requirements are satisfied. TORs and budgets are the essential building blocks for any specific consulting services assignment. Consulting services needs are identified, keeping project objectives and timing in mind, followed by consultancy outputs, deliverables, and needed expertise.

**Tender documentation** – a document containing the requirements, criteria, rules, and other information necessary to provide economic operators with complete, accurate, and explicit data concerning the procurement requirements and elements, the object of the contract, and the awarding procedure, including technical specifications or the descriptive document, the proposed contractual conditions, the format of the presentation of the documents made by the bidders/candidates, and the information regarding the applicable general obligations.

**Tender rigging** – implementation, through auctions or other tendering forms, of anti-trust agreements of the competing companies related to prices, market allocation, sources of supply, or product quality.

**Unacceptable bid** – an offer submitted by the bidder that does not have the required qualifications set out in the tender documentation, as well as any bid whose price exceeds the contracting authority's budget, established and documented at the provisional stage of the public procurement procedure;

**Working group** – a group of specialists of the contracting authority that performs public procurement procedures.

## 2. NORMATIVE AND INSTITUTIONAL FRAMEWORK IN PROCUREMENT

### 2.1. Normative Framework

The Public Procurement System in the Republic of Moldova is regulated by Laws, Governmental Decisions, Orders of the Ministry of Finance, and of the Public Procurement Agency. [The Law 131 of 03.07.2015](#) on public procurement is the principal normative act regulating the system of public procurement in the Republic of Moldova.

Some aspects related to awarding and performance of sectoral concessions and contracts are regulated by [Law no.121/2018](#) on works and services concessions and [Law no.74/2020](#) on procurement in the fields of energy, water, transportation, and postal services. A series of secondary legislation acts included in Government Decisions, Orders of the Ministry of Finances, and Public Procurement Agency supports the implementation of public procurement legislation. The acts can be accessed on the website [www.tender.gov.md](http://www.tender.gov.md) (see Annex no. 1).

The system of public procurement is regulated by other laws and normative acts, in particular, normative acts for public procurement of **works**, including normative and practical codes in constructions. (see Annex no. 2).

The national normative framework in public procurement is continuously updated and enhanced. This is a needed process to make the public procurement process more efficient and to implement Moldova's international commitments in this field.

**Recommendation!** Users of this Guide should regularly check for amendments to the primary and secondary legislation, by accessing the PPA website [www.tender.gov.md](http://www.tender.gov.md), section “Legislation”.

### 2.2 Institutional framework

The **institutional system** implies all the institutions that shall ensure the application of the regulatory framework in the field of public procurement, monitoring, and increase in efficiency of



public procurement procedures. For this purpose, there are several institutions directly responsible for the procurement and some others which are related to this field.

**Institutions with responsibilities in public procurement:**

- Ministry of Finance;
- Public Procurement Agency;
- National Agency for Settlement of Complaints;
- Regional treasuries.

**Institutions with responsibilities related to public procurement:**

- Competition Council;
- Court of Accounts;
- Financial Inspection;
- National Anticorruption Center;
- National Integrity Authority.

**Ministry of Finance** – a specialized body of the central public administration, which ensures the regulation of state policy in the field of public procurement through the development and promotion of the legislative and normative framework. The Ministry has the following responsibilities:

- Development of normative acts for public procurement;
- Monitoring the implementation of normative acts in the field of public procurement;
- Monitoring the activity of subordinated public authorities and services, which are related to public procurement (Public Procurement Agency, Regional Treasuries, Financial Inspection).

**Public Procurement Agency** – an administrative authority that is subordinated to the Ministry of Finance, established to build the capacities of contracting authorities and develop the business sector capacities in the field of public procurement, in order to monitor the compliance of public procurement procedures and evaluate the public procurement system.

The key responsibilities of the Public Procurement Agency, according to [Law no.131/2015](#) (article 10) and the Regulation on the organization and functioning of the Public Procurement Agency and its staff, approved by [Government Decision no.134/2017](#) (p. 6-7) are:

- development and submission of proposals to the Ministry of Finance in order to amend and supplement the legislation on public procurement;
- participation in the process of gradual alignment of national legislation to community legislation;
- implementation of the normative acts in public procurement;
- development and implementation of the standard documentation regarding the procurement procedures;

- drafting, update, and maintenance of the [List](#) of Prohibited Economic Operators;
- monitoring of the compliance of the public procurement procedures and analysis of the public procurement system;
- control of the compliance of economic operators with the regime of incompatibilities to participate in procurement proceedings (jurisdictions and autonomous regions that fail to implement the international standards of transparency);
- methodological assistance and consultations, and provision of training in the field of public procurement;
- drafting, development, and implementation of certification mechanisms for contracting authorities' employees and the procurement service providers, who are responsible for the organization, development of the public procurement procedures, and award of the public procurement contracts;
- publication of the Public Procurement Bulletin (PPB);
- management of the [official website](#) on public procurement in the Republic of Moldova;
- development of bi-annual and annual statistical analysis regarding public procurement;
- requests and obtains from the competent bodies any information necessary for the exercise of the attributions;
- the organisation of awareness campaigns on public procurement;
- publication of annual reports based on the analysis of cost-effectiveness, efficiency, and effectiveness of the public procurement system;
- cooperation with international institutions and counterpart agencies from other countries in the field of public procurement;

**National Agency for Settlement of Complaints** – an autonomous public body that is independent of other public authorities, natural and legal persons, and examines the claims made concerning the public procurement procedures.

**Regional Treasuries** – subdivisions of the State Treasury within the central administration of the Ministry of Finance, which keeps records of the use of the national public budget and its elements and registers public procurement contracts.

**Competition Council** – an autonomous public authority that is accountable to the Parliament. It secures compliance with the Competition Law, through actions aimed to prevent anti-competitive practices, removal of competitive infringements, promotion, and development of competitive culture.

**Court of Accounts** – the supreme audit institution of the Republic of Moldova, which carries out control over the establishment, management, and use of public financial resources and public assets by conducting external public audits.

**Financial Inspection** – a specialized administrative authority under the Ministry of Finance that performs financial inspections (controls) concerning the compliance of operations and transactions related to the management of national public budget resources and public assets with the legislation, including inspections at the central and local public authorities and subordinate institutions on issues related to the public procurement procedures.

**National Anticorruption Center** – a body specializing in preventing and fighting corruption, corruption-related acts, and acts of corrupt conduct.

**National Integrity Authority** – an independent public authority that ensures integrity in relation to a public position or an office of public dignity and prevents corruption by monitoring the wealth and personal interests and controlling the way the legal regime of conflicts of interest, incompatibilities, and restrictions is observed.

### 3. CIVIC MONITORING OF PUBLIC PROCUREMENT

#### 3.1. Monitors' Role

Civil society's monitoring of the way public money is used, i.e., in the procurement procedures, implies a series of challenges. Once a new e-procurement system was put in place, the procurement process has become more transparent, which made the monitors' activity easier. However, monitors face some barriers, among which are limited transparency at some stages of the procurement process (contracting), lack of a single data source on the procurement process, and failure of authorities to observe the legal requirements related to transparency. Under such circumstances, the impact that findings and monitoring results might have is significant.

CSO monitors/investigative journalists are not auditors, nor do they have competencies or powers of constraint and law enforcement, yet, they play an important role in increasing the efficiency of public procurement and the application of sanctions against corrupt stakeholders. First, the monitoring of public procurement has a big impact on raising public awareness regarding authorities' lack of accountability in the use of public money, as well as alerting the public to concrete cases of corruption and public funds embezzlement. Secondly, monitors are essential in making more public authorities more responsible and improving procurement processes through their findings and recommendations made to address the gaps. Thirdly, monitors can contribute to sanctioning corrupt stakeholders by referring their case to control, audit, investigation, and prosecution bodies which will further hold accountable the authors of corruption and fraud.

“Red Flags” do not always point to corruption, rather, to deficient management, and lack of knowledge and capacities among the members of the working group, etc.

Therefore, civil society's monitoring efforts in relation to public procurement and journalists' investigation of fraud and corruption cases can lead to:

- a higher degree of transparency and lower corruption risks (prevention);
- accountability of public authorities by ensuring the observance of legislation during the procurement of goods, services, and works with public money;
- higher trust and commitment to undertake reforms of governing authorities and public sector managers who promote transparent public procurement and efficient use of money;
- dissemination of information on cases of corruption, conflicts of interests, irregularities, and fraud identified during the monitoring process, which leads to social pressures against corruption;
- identification and punishment of corrupt stakeholders, those who committed irregularities and compromised the public budget by corrupting the procurement process, as well as deterrence and prevention of corruption and fraud in the future;
- raising awareness and encouraging citizens to become more involved in the decision-making process, in the constant monitoring of public authorities and their spending of public money;
- provision of opportunities to the civil society, including citizens, for active engagement in the development of programs and initiatives which will lead to higher transparency and efficiency in the public sector, namely budgetary and public procurement processes, etc.
- establishment of bridges between government, civil society, and the private sector for increased good governance.

In conclusion, while it may not be possible to totally root out corruption, its mitigation is a goal to be pursued by those who monitor public procurement.

### 3.2. Selection of procurement for monitoring

The selection of procurement for monitoring is important as it is impossible to monitor all procurement because of their extraordinarily high volume and number. Annually, national public authorities conduct thousands of procurement (in 2021 – 3,485 procedures) and conclude thousands of procurement contracts (in 2021 – 13,450 contracts). Regardless of the monitoring capacities and advancement of monitoring tools, it is not possible to have qualitative and efficient monitoring of all national public procurement. Therefore, monitors must become aware of the need to select some procurement procedures, contracting authorities, specific regions or sectors for monitoring.

Monitoring can take various forms, depending on the monitors' priorities and capacities. Observation is the simplest and most accessible method. Thus, any citizen can observe if goods were procured, if a public work was performed qualitatively or not, fully or partially. For instance, citizens/procurement beneficiaries can observe the procurement of the appropriate number of school furniture items, food products for pre-school institutions, availability of medicines according to patients' needs, or construction of a local road segment. To be efficient and successful public procurement monitoring must be systematic (not one-off) and long-term focused, as follows:

- ✓ **Organized (have a plan).** Deciding ahead of time which sectors and which procurement to monitor is key. Some may even decide to specialize on a particular stage of the procurement rather than the full process.
- ✓ **“Educated/trained”.** Monitors cannot improvise, they need to know what to do, where, when, what to look for, what to expect, and what to do with the results.
- ✓ **Responsible and unbiased.** Not every issue is corruption, sometimes it is just a case of inexperience on the part of contracting authorities.
- ✓ **Adequately resourced.** Based on the monitoring plan, ensure that the organization has the right number of people, skill mix, knowledge, time, and financing. If it is an investigative journalist, she/he will need access to a team having these resources.
- ✓ **Have the right tools.** This could involve a low technology approach, such as a series of questions/checklists, risks indicators to be used at every stage of the procurement process (i.e., red flags). It could also involve a more sophisticated approach using digital solutions such as algorithms, databases, artificial intelligence, in order to detect patterns of behavior and capture in the real-time relevant essential information in a systematic and timely fashion. Alternatively, a mix of low technology and more elaborate tools could be used.

For efficient monitoring to yield good results, the procurement process has to be tracked from planning to contract performance, has to include interaction with contracting authorities, as well as the adoption of some measures to solve the problems that are identified. Accordingly, the most common methods applied in the monitoring process are an in-depth analysis of information and documents at every stage of the procurement process for their compliance with the legal framework; analysis of different sources of data and comparison of the quality/quantity of goods, services or works, and their timely delivery, all measured against the contractual provisions. Additionally, tools for corruption indicators identification are used throughout the process of monitoring.

In the process of monitoring, monitors have to set up clear objectives to make sure that the allocated time and resources are used efficiently and the results, including the monitoring data, analyses, and reports are reliable. The recommendation is to avoid assumptions, blaming certain people, and/or general formulations that do not ensue from precise data and facts.

To make the monitoring activities more efficient, the following **selection criteria to monitor the procurement process, authorities, and sectors should be considered:**

- focus on public procurement and high-value contracts;
- the complexity of the procurement process;
- transparency of some procurement procedures (for instance, low-value procurement, which cumulatively, can sometimes amount to 70% of the total procurement of authority, in particular, in the case of local public authorities);
- sectors of the economy that are vulnerable to irregularities and corruption schemes;
- contracting authorities with the biggest volume of procurement; sometimes they can be the least transparent in the procurement process or have previously had violations, either

disclosed in audit reports of the Court of Accounts, or previous monitoring reports of the civil society and journalistic investigations;

- goods, services and works with the biggest share in the total volume of public procurement (construction works, road repairs, medicines, medical devices, etc.);
- area of activity and expertise capacities of the civil society organization/investigative journalist (for example, organizations active in the field of education can monitor the procurement in the educational institutions or organizations active in healthcare can monitor the procurement in healthcare or the contracting authorities from the field, such as the Centre for Centralised Public Procurement in Health (CCPPH);
- regions or territorial-administrative units (local organizations are closer to the realities of the local level and can monitor all or a part of the contracting authorities from the community/region where they work – municipality, local councils, district hospitals, educational institutions, and other public institutions).

### 3.3 Credibility and objectivity of the monitors

In addition to proper training, CSOs and investigative journalists monitoring public procurement must be independent and not have a conflict of interest when choosing to monitor a particular project/sector or transaction. They must have appropriate ethical rules in place within their own organization such as a Code of Ethics or a Code of Conduct explaining clearly how they have to conduct business and the principles they must adhere to when doing so, and these rules must be enforced.

At the organization or entity level, a Code of Ethics and Conduct normally includes the following elements:

- Ethical Principles: general statements indicating a professional approach.
- Ethical Rules: these typically take the form of "do's and don't's".
- Practice Principles: general statements about how to achieve what is intended for the good of the user or public.
- Practice Rules: very specific guidance related to professional practice

Many times an organization has a Code of Ethics which is written but not routinely followed. This is a major problem since, without continued forceful application of the Code by management, the Code of Ethics becomes mere “window dressing” to show to outsiders but which is not effective in forestalling ethical problems. Among the key implementation challenges are:

- Getting Management’s commitment;
- Political will and implementation arrangements;
- Having clear policies and procedures;
- Having a reporting system that works;

- Getting staff to report;
- Having a sanctions system and enforcing it;
- Proper internal controls;
- Timely and appropriate training.

#### 4. THE “RED FLAGS” TOOL IN PUBLIC PROCUREMENT MONITORING

The core of the monitoring methodology is a tool developed by Transparency International USA – Civil Society Procurement Monitoring Tool.<sup>5</sup> It is a monitoring tool widely used on an international scale and relies on the identification of “red flags” at each stage of the procurement process. Red flags are some signals or indicators of potential irregularities, fraud, or corruption.

Additionally, it is worth mentioning that the identification of a red flag does not mean that there is an irregularity or corrupt act, but rather a possibility that these may occur. Sometimes, a red flag is merely the result of a human or technical error, free of bad faith and not a signal of corruption. Therefore, monitors must know not only the methods to identify red flags but also measures to be undertaken for their in-depth analysis, including their referral to oversight and control bodies in the area of procurement, to the bodies investigating anti-competition practices, conflicts of interests, corruption, etc.

The public procurement process is complex and is conducted in a series of stages and sub-stages. As a result, a public authority receives the necessary goods, services, or works when an economic operator is awarded a procurement contract. For any efficient monitoring process, detailed knowledge of each stage, from needs assessment to delivery of goods, services, and works is essential.

For the monitoring activity, we shall divide the public procurement process into four main stages:

1. **Stage of planning and development of tender documentation;**
2. **Stage of launching the procurement procedure;**
3. **Stage of bids/offers evaluation and contract awarding;**
4. **Stage of contract performance and monitoring;**

##### 4.1. Stage of planning and development of tender documentation

###### Needs identification

The procurement process begins with a needs assessment by the contracting authority, cost estimation, and prioritization depending on available financial resources. The process continues with the development and publication of a notice of intent and of an annual public procurement plan.

###### **Public Procurement Planning Rules:**

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<sup>5</sup> <http://monitoring.coalitionforintegrity.org/>

1. exact knowledge of needs of goods, works or services;
2. availability of financial sources or evidence of their allocation;
3. calculation of estimated value or cumulative value in case of contracts in the form of separate lots.

**Planning of Public Procurement Contracts for Goods** is a process considering the indicators of market average prices; the place of goods delivery; goods complexity; purpose of goods procurement; contracts performance period (continuous performance contracts or immediate performance contracts that meet an immediate precise requirement, without continuous performance – no need to have a guarantee).

**Planning of Contracts for Public Procurement of Services** is conducted by considering the place of their provision, description of services, the goal of service procurement, and the period of delivery.

**Planning of Contracts for Public Procurement of Works** is conducted for the whole item (construction) or by accumulating multiple items into lots, by identifying the basis for evaluation and award (award of a winner for each item/or designation of a winner) for a lot (for each construction).

**If seasonal goods and services are procured**, public procurement contracts planning shall be conducted in line with the aforementioned criteria, for each period during which the goods are delivered or services are provided. Seasonal goods and services can be procured based on separate (periodic) contracts, which implies the conclusion of contracts for a certain period of time.

Seasonal goods are **food products**, while seasonal services are **food services and air passenger transport services**.

**NOTE! The contracting authority is not entitled to divide the procurement** by concluding separate public procurement contracts in order to apply another public procurement procedure, other than the one which would have been used in line with the law if the procurement were not divided. The procurement of seasonal goods and services forms an exception. In case of procurement of goods, services, and works whose lead-time is greater than one year, the contract can be concluded for the whole procurement, but its performance shall be safeguarded within the limits of annual allocations foreseen for such purposes and shall be stipulated annually in the contract.

### **Division by Lots**

The contracting authority has the right to award public procurement contracts and framework agreements by lots and therefore establish the size and object of the lot unless this information is embedded in the tender documentation. The award of the contract in lots does not mean the division of procurement, which is a prohibited practice for contracting authorities, whereby they conclude separate procurement contracts for the purpose of applying another public procurement procedure. The contracting authority regulates the object of each lot:

If the contracting authority does not award the contract by lots, it shall justify this decision.



1. either **on a quantitative basis**, by adapting the extent of individual contracts so that they better comply with the capacity of a small or medium-sized enterprise (SME), or
2. **on a qualitative basis**, in line with different trades and specializations, for a closer adaptation of individual contracts content to specialized sectors of SMEs or in line with the next stages of the project.

### Notice of Intent

A **notice of intent** includes all public procurement contracts to be awarded until the end of the fiscal year whose estimated value for goods and services is equal to or higher than 800.000 lei, while for works, the value is equal to or higher than 2.000.000 lei. It shall be published in the PPB no later than 30 days from the date of the contracting authority's approval of its budget. If the procurement does not exceed the aforementioned values, it is not mandatory to publish the notice of intention.

The contracting authority is not required to conduct a public procurement even in the case it has issued a notice of intent.

**NOTE!** In case of public procurement of goods/services whose value is  $\geq 2.3$  million lei and in case of works whose value is  $\geq 90$  million lei, the notice of intent shall be published in the Official Journal of the European Union (OJEU) as well.

### Public Procurement Plan

The **procurement plan** encompasses all the goods, works, or services that need to be acquired by a contracting authority for the whole fiscal year, by concluding one or multiple public procurement contracts, depending on their planning.

The contracting authority **shall publish the annual plan** of procurement on its website, within a period of 15 days from its approval or within 5 days from its amendment.

**Public procurement plan** must be:

- ✓ Aligned with the budget of the public entity and authority's development strategy;
- ✓ Drafted as the first version prior to the development of the budget proposal;
- ✓ Finalized after the approval of the contracting authority's own budget;
- ✓ Amended or supplemented in case of new amendments to the budget and when new financial resources are identified.

For additionally earmarked financial resources (amendments to the funding plan, subsidies awarding) that were not accounted for when the procurement plan was drafted, a new

Low-value procurement are conducted based on annual public procurement plans. The annual public procurement plan shall include planned low-valued contracts as well.

procurement procedure shall be put in place, in line with the thresholds laid down in the Law on Public Procurement procedures.

If the public procurement contract is terminated, and the contracting authority needs the goods, services, or works foreseen by the contract, the new procurement procedure will be carried out based on the balance of the initial contract (non-delivered, non-provided, and non-executed volume). This procedure shall fall within the limits foreseen in the Law on Public Procurement procedures.

**NOTE! Penalties stipulated by the Contravention Code** (art. 327<sup>1</sup> “Violation of rules for the initiation and performance of public procurement procedures”): failure to plan public procurement or their planning by infringing normative acts, failure to publish the invitation to tender and the notice of intent, the division of public procurement by concluding separate contracts in order to apply a different procurement procedure, other than the one which would have been used according to normative acts shall be subject to the application of a fine in the amount of 15 to 60 conventional units to persons in leading positions.<sup>6</sup>

PROCUREMENT PLANNING STAGE	
Red flags	Identification methods and actions recommended to monitors
✓ <b>deficient planning</b> of public procurement without considering the average market indicators, place of goods/services delivery, aim of procurement, contract performance period, etc.	✓ analysis of market prices of goods, services or works that are planned to be procured (market prices, procurement prices, procurement prices of similar goods, services and works acquired by other authorities, etc.); ✓ the request of explanations from the CA on the way the procurement was planned (aspects that were considered).
✓ <b>manipulation of the needs</b> , by inserting into the procurement plan goods, services, or works that do not comply with the real needs of the authority or its beneficiaries usually to benefit favored contractors ( <i>for instance, a school procures security cameras despite not having appropriate school furniture, heating system or toilets</i> ).	✓ analysis of ongoing procurement, as well as of those that are planned for the current fiscal year; ✓ analysis of historic procurement contracts and potential links between the CA managers and the contracting companies; ✓ the request of explanations from the CA on the need of the respective procurement and whether public opinion/beneficiaries was/were consulted;
✓ <b>overestimation of procurement value</b> (goods, services, or works) with a view to favoring a certain economic operator and/or gaining personal benefits, later on, during the contract awarding stage.	✓ analysis of market prices of goods, services, or works that are planned to be procured; ✓ analysis of procurement prices of goods, services, or works recently acquired by other contracting authorities; ✓ the request of explanations from the CA;
✓ <b>failure to publish the notice of intent</b> in the PPB and	✓ verification of data published in the PPB/

<sup>6</sup> a conventional unit is equal to 50 lei

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<p>in the electronic system MTender within a period of 30 days from the date of CA's budget approval.</p>	<p>✓ electronic system MTender; the request of explanations from the CA, including the unpublished notices.</p>
<p>✓ <b>planned procurement (included in the annual procurement plan) which does not meet the authority's budget</b> or authority/community's development strategy (the case of LPA) - Procurement Plan includes useless goods, services, or works that do not meet the real needs of the community (<i>often, these "are concealed" in low-value contracts, with limited transparency, and are harder to monitor</i>)</p>	<p>✓ analysis of the budget approved by the CA; ✓ analysis of the development strategy of the authority/community from the viewpoint of procurement(s) fitting the priorities and real needs of the authority/community (the case of LPA); the request of explanations from the CA on the need of the respective procurement and whether public opinion/beneficiaries was/were consulted;</p>
<p>✓ <b>unplanned low-value procurement/non-inclusion</b> of low-value contracts in the CA's annual procurement plan.</p>	<p>✓ analysis of the CA's annual procurement plan (if not made public, it shall be requested from the CA); ✓ request to CA to observe the legal provisions on low-value procurement planning and inclusion of all planned contracts into the annual procurement plan.</p>
<p>✓ <b>failure to publish the annual procurement plan on the website of the CA</b> within a period of 15 days from its approval or within 5 days from its amendment.</p>	<p>✓ request for explanations from the CA in parallel with the request to publish the annual procurement plan in accordance with provisions laid down in the law; ✓ referral to PPA with the view to initiate monitoring;</p>
<p>✓ <b>planning of procurement depending on the interests of some individuals or groups of people</b> (<i>construction/rehabilitation of a road segment that will run in front of a politician's or community leader's house, while the other roads are in the same condition and require construction/rehabilitation works</i>)</p>	<p>✓ analysis of procurement contracts included in the Annual Procurement Plan of the CA; ✓ analysis of previous procurement contracts and contracting authorities, including their founders/administrators; request for explanations from the CA on the need for such a procurement, whether it was incorporated in the development strategy or if public opinion/beneficiaries was/were consulted;</p>
<p>✓ <b>procurement division</b> by applying a different procedure than the one which would have been used in line with the Law on Public Procurement should the procurement be left undivided.</p>	<p>✓ analysis of previous procurement conducted during the current fiscal year, as well as those planned for a whole fiscal year; ✓ request from the CA on the information on procurement and low-value contracts concluded during the fiscal year; ✓ referral to PPA with the view to initiate monitoring;</p>

Tender Documentation

**Tender documentation** includes all the criteria, rules, and other relevant information to provide economic operators full, correct, and explicit information on procurement requirements and elements, the object of the contract, awarding procedure, technical specifications or descriptive document, contractual conditions, template documents that bidders/candidates shall submit, and information on generally applicable obligations. The working group on procurement from the contracting authority has the duty to develop the tender documentation.

The contracting authority is obliged to foresee in the tender documentation **any requirement, criterion, rule as well as other necessary information**, to provide the bidder/candidate full, correct and explicit information.

In order to award the public procurement contract, the contracting authority must develop tender documentation based on the standard documentation, as follows:

- **Goods, services** – Standard documentation for public procurement of goods and services, approved by the Order of Minister of Finance no. 115 of 15.09.2021
- **Works and procedures of public procurement of design services and of works** – Standard documentation for public procurement of works, approved by the Order of Minister of Finance no. 69 of 07.05.2021

**Standard documentation for public procurement of goods and services** (Annex no. 1 of Order of MF no. 115/2021) contains annexes for the initiation, publication, award, and amendment of public procurement, whose aim is to facilitate the development and submission of the bid/offer and documents that will be examined and evaluated by the working group.

**Technical specifications or terms of reference in case of contracts of public procurement of goods and services** – a specification mentioned in a document to define the characteristics that a good or service should have, such as:

**For goods and physical services:**

- ✓ quality levels,
- ✓ ecological performance levels,
- ✓ design for all types of uses (including access for people with disabilities) and compliance assessment,
- ✓ performance,
- ✓ use of the good,
- ✓ safety,
- ✓ its sizes, requirements applicable to the good in relation to the name under which the product is sold,
- ✓ terminology, symbols,
- ✓ testing and testing models,

- ✓ packaging, marking, and labelling,
- ✓ instructions for use,
- ✓ production processes and methods at all stages of the good or service's life cycle,
- ✓ compliance assessment procedures.

**Standard documentation for public procurement of works or procedures of public procurement of design services and of works** (Annex no. 1 of Order of Ministry of Finance no. 69/2021) contains annexes for initiation, publication, award, and amendment of public procurement, whose aim is to facilitate the development and submission of the bid/offer and documents that will be examined and evaluated by the working group.

**Technical specifications in case of contracts of public procurement for works** – the set of technical requirements, included, in particular, in the tender documentation, which defines the characteristics that a delivered material or good must have so that it fulfills the use for which it is intended by the contracting authority:

- ✓ ecological performance levels,
- ✓ design for all types of uses (including access for people with disabilities) and compliance assessment,
- ✓ performances, safety or sizes,
- ✓ quality and quantity standards and quality assurance procedures,
- ✓ terminology, symbols,
- ✓ testing and testing models,
- ✓ packaging, marking, and labeling, instructions for use,
- ✓ production methods and processes at all stages of the works life cycle.
- ✓ design and cost calculation norms,
- ✓ conditions of testing, control, and receipt of works,
- ✓ construction techniques and methods,
- ✓ all the other conditions having a technical nature that the contracting authority is in a position to prescribe, in line with some general or specific regulations, in relation to the finalized works and their materials or components

Upon the analysis of tender documentation, including the technical specifications, the monitors shall analyze and evaluate whether technical **specifications of the goods, services and works and terms of reference for the consulting services**:

- ❖ contain a clear and full description of the procurement item;

Upon drafting technical specifications, designs, technical drawings, schemes and descriptions, the contracting authority conducts the physical description of the requested goods, works or services unless it's impossible to describe the performance and/or functional requirements.

- ❖ comply with the requirements of the contracting authority from the viewpoint of quality, efficiency, testing, security, sizes, symbols, terminology, package, transportation means, marking, labeling, manufacturing processes and methods, as well as the procedures to determine its compliance with the requirements from the tender documentation;
- ❖ do not refer to a certain trade-mark or a certain proprietary methodology for consulting services, or a certain economic operator, patent, scheme, or a type of good, work, or service, do not indicate a specific origin, producer, or economic operator. If the requirements for procurement are not sufficiently precisely expressed, and such a reference cannot be avoided, the characteristics shall encompass the phrase “or the equivalent”.
- ❖ relies on national and international standards, technical regulations, and national norms, where applicable.
- ❖ are defined so as to comply, when relevant, with the needs/requirements of any user, including persons with disabilities.
- ❖ allow bidders/candidates legal access to the tender procedure and do not entail the introduction of any unjustified obstacles that could limit the competition among economic operators.

<b>DEVELOPMENT OF TENDER DOCUMENTATION</b>	
<b>Red flags</b>	<b>Identification methods and actions recommended to monitors</b>
<p>✓ <b>Discriminatory technical specifications</b>, making reference:</p> <ul style="list-style-type: none"> <li>- to a certain trademark;</li> <li>- to a certain patent;</li> <li>- to a drawing;</li> <li>- to certain types of goods, works, or services;</li> <li>- to a certain origin, specific producer, or economic operator.</li> </ul>	<ul style="list-style-type: none"> <li>✓ detailed analysis of the awarding documentation and of the specifications against technical requirements;</li> <li>✓ parallel requests from the CA on clarifications and amendment of technical specifications and republication of tender documentation in the MTender system;</li> <li>✓ examination of whether a complaint was lodged in relation to tender documentation and analysis of the NASC decision, including economic operators' claims, CA reasoning if a complaint was submitted.</li> <li>✓ referral to PPA with a view to initiating monitoring;</li> </ul>
<p>✓ <b>technical specifications or terms of reference are complex, vague, too narrow, or “tailored”</b> to a certain economic operator;</p> <p>! Economic operators lodge complaints because they consider that their right to participate in procurement is infringed;</p> <p>! there is one single bidder/candidate to multiple procurement procedures of the monitored authorities;</p>	<ul style="list-style-type: none"> <li>✓ the analysis of past procurement of the monitored CA, to exclude any potential error or CA's lack of capacity;</li> <li>✓ consulting an expert in the field where the procurement will be carried out;</li> <li>✓ request to CA to revise and change the tender documentation and if relevant, to contract an independent expert who will develop the specifications or terms of reference;</li> </ul>
<p>✓ <b>non-division of procurement into lots (including in absence of justification)</b>, in particular, in the case of</p>	<ul style="list-style-type: none"> <li>✓ detailed analysis of the item of procurement, of each category of goods, services, and works and</li> </ul>

<p>major procurement that comprise various goods, services, and works aiming to limit the participation of some economic operators and to favour a certain economic operator. ✓</p>	<p>of the opportunity for lots (including based on the analysis of similar procurement); analysis of eventual decisions of the NASC (accepted, rejected, etc.) concerning the complaints lodged at the stage preceding bid opening, namely, regarding the non-division into lots and arguments brought forward by the contesting party; ✓ request for explanations from the CA on background reasons for not dividing the procurement into lots, although that would have complied with the market, some sectors and needs of SMEs, etc.</p>
<p>✓ <b>complaints lodged</b> by one or multiple economic operators at the stage preceding bid opening/against the tender documentation, including restrictive requirements; tender criteria and evaluation factors with subjective/obscure calculation algorithms; mentioning of certain names of technologies/products/marks/manufacturers; lack of a clear answer to clarification questions; non-division into lots in case of similar goods/works; the form to set up the bid guarantee, etc. ✓</p>	<p>✓ participation in the NASC meeting for complaint examination; ✓ analysis of the decisions adopted by NASC (partially/fully admitted complaint, rejected complaint, remedies, canceled procedure, etc.) on the complaint (s) lodged by the economic operators and invoked violations; ✓ analysis of the actions undertaken by the CA (changes in the tender documentation, including through division into lots, cancellation of the procedure, etc.) following the decision of the NASC;</p>

## 4.2. Stage of Procurement Procedure Launching, Bids Submission, and Opening

### Procurement Procedure Launching

When the planning stage ends, along with the development of tender documentation, the procurement procedure can be initiated. For open procedures and requests for proposals (RFP), the contracting authority is obliged to publish the notice in the electronic system MTender.

#### **Notice of Participation**

When preparing the notice of participation, standard forms have to be used. They are approved for that purpose, and this gives the green light to the disclosure of public procurement. All the information included in the Notice shall be presented **clearly, precisely, and unambiguously**. The contracting authority must include at least the information from Annex 3 of Law no. 131/2015 in the notice.

To launch the procurement procedure into the electronic system, the contracting authority shall develop: **tender documentation, notice of participation and the ESPD form.**

To ensure **maximum transparency**, the contracting authority is entitled to publish the notice of participation in other national or international media, but only after the publication of the notice in the PPB and on the website of the PPA. The notice of participation shall be sent in electronic format **to the EUOJ for publication** if the estimated value of the future contract is equal to or higher than:

- *2.3 million lei for goods and services;*
- *90.0 million lei for works,*

**NOTE!** The notice of participation will be published **in terms that would provide all economic operators, without discrimination**, real opportunities to participate in the procedures for the award of public procurement contracts.

### **European Single Procurement Document (ESPD)**

The ESPD form is a solemn statement, serving as preliminary evidence instead of the certificates issued by the public authorities or third parties, confirming that this very economic operator meets the following requirements:

- is in none of the exclusion situations laid down in Law no. 131/2015;
- fulfills the criteria related to capacity, as requested by the authority;
- if applicable, complies with the selection criteria established by the authority;

### **Stage of Clarifications and Submission of Bids**

Any economic operator that is interested in a procurement procedure is entitled to ask for clarifications regarding tender documentation. In the electronic system MTender, the period to lodge bids implies two separate stages: *clarification* and *bids submission*.

In case of any request for clarification, the contracting authority **shall answer** in a clear, complete and unambiguous manner, as soon as possible.

According to the MTender system functionalities, **the contracting authority has the obligation to answer all clarification questions** formulated by the economic operators. Otherwise, upon the expiry of the period for clarifications, the procurement procedure is automatically suspended and bid submission is blocked until the publication of the answers to all clarification questions. Therefore, the submission period will be extended by the number of days elapsed in providing the answer, after the expiry of the period for clarifications. During the submission period, the bids are lodged only in electronic format via the electronic system MTender.

According to Law no. 131/2015, submission of a bid implies the submission **in one common set of:**

- 1. technical proposals;**
- 2. financial proposals;**
- 3. ESPD form and,**
- 4. bid guarantees** (if requested by the contracting authority in the documentation unless the authority requested this in the documentation).

The electronic system declines any bid beyond the deadline of bids submission.



Until the expiry of the bid submission period, **the contracting authority is entitled to change the tender documentation** either on its own or in response to the economic operator's clarification request, extending, where applicable, the term for bids submission so that until the new term, there is, at least, 50% of the time-limit initially set from the date of notification of changes.

**NOTE!** The contracting authority can change the tender documentation in the MTender electronic system of public procurement only during the period of “*request for clarifications*”.

### **Participation of Civil Society in the CA’s Working Group on Procurement**

According to art. 14, para (5) of Law no. 131/2015, the **contracting authority must include the representatives of civil society in the working group** if a written application was submitted two days before the closing date for submitting the bids, however, representatives from civil society cannot constitute more than one-third of the total composition of the group. The representatives of civil society included in the working group **shall be entitled to an advisory vote or have the right to a divergent opinion**, which is to be included in the deliberative act of the group.

The contracting authority can decide to accept the inclusion of the representatives of civil society as members of the working group without the ceiling laid down in the legislation.

The contracting authority keeps records of the applications submitted by civil society and when there are multiple numbers, a procedure of drawing lots is carried out to include the respective persons into the working group. The working group shall inform the representatives of civil society about their inclusion/non-inclusion in the group, about the date, place, and time of drawing lots, at least one day before the time limit for bids submission.

**The procedure of drawing lots** includes:

- the working group prepares the cards whose number matches the number of civil society representatives;
- the cards are numbered as follows: 1, 2, 3 ,... n;
- the cards are placed in envelopes;
- the cards are put in a ballot box;
- the representatives of civil society each draw (in the order in which they lodged the participation applications) an envelope with the cards from the ballot box (if one is absent, the Chairperson or a member of the working group will draw one);
- a decreasing ranking will be set up based on the drawn numbers;
- the minutes will be drafted on the ranking of the representatives of the civil society, signed by all members of the working group and the participants attending the drawing by lots (they will receive a copy of the minutes);

Representatives of civil society are included as part of the working group for each separate procurement procedure based on a decision (order) or enactment, which is then published on the website of the contracting authority and/or made public at the premises of the contracting authority at least one day before the time-limit for bids submission.

Members of the working group have to take all measures to avoid situations that could lead to a conflict of interest and/or an anti-competitive practice, as well as sign solemnly **the statement of confidentiality and impartiality** (*the civil society representatives included in the working group have this obligation as well*).

**By the statement of confidentiality and impartiality, the members commit to observing unconditionally the provisions of Law no.131 of 3 July 2015 on public procurement and confirm that:**

- They are not the spouse, relative or third-degree relative by affinity with one or several employees of the bidder(s) or with one or several founders;
- They did not work in the last 3 years based on an individual labour contract or any other documentary evidence that would prove labour relations with one of the bidders or were not part of bidders' Board of Directors or any other managerial or administrative body;
- They do not own shares or interests in the subscribed share capital of the bidders (founder, shareholder).

**NOTE!** In case members of the working group failed to sign the statements of confidentiality and impartiality, they shall be fined in accordance with the provisions of art. 327<sup>1</sup>, para (5) of the Contraventions Code of the Republic of Moldova in the amount of 15 to 90 conventional units applied to the person in a managerial position.

**At this stage, the monitors recommend the assessment and analysis of the following:**

- If the notice of participation is drafted in line with the legal provisions and includes all the necessary data to properly inform the potential bidders and the public;
- If the information from the notice of participation, tender documentation, and the ESPD fully match and there are no contradictions.
- If the contracting authority assures an appropriate degree of transparency and observes the legal provisions on the publicity of the notice of participation, both in the electronic system, as well as in other sources, including its official website;
- If the authority is responsive to the applications of the civil society representatives to be included in the working group and informs them of the adopted decision.

### **Bids Opening**

Bids are opened at the time mentioned in the tender documentation as the **deadline for bids submission** or at the time specified as the time limit of an extended period, regardless of the number of bidders, in line with the procedures foreseen in the tender documentation. The bid is valid within the terms foreseen in the tender documentation.

Before the expiry of the validity term of the bid, **the contracting authority can request bidders to extend this time limit**. And in such a case, bidders have the right:

- a) to reject the request, without losing the right to withdraw their bid guarantee;

- b) to accept the proposal, extending the validity period of bid guarantee or propose new bid guarantees during the extended validity period of the bid. If the bidder did not extend the validity period of the bid guarantee or did not propose a new bid guarantee, it shall be considered that they refused the extension of the validity period of the bid.

**Electronic Auction**

The **electronic auction** represents a repetitive process implying electronic means to present, decreasingly, the new prices and the new values referring to certain elements of the bids, that emerge after a full evaluation of the bids, allowing for their ranking based on automated evaluation methods.

The bids are displayed in the MTender and electronic platforms after the expiry of the submission time limit, while in the case of options with electronic auction – after the end of the electronic auction. If there is only one participant registered for the procedure with the electronic auction, the bid opening takes place automatically, after the expiry of the submission time limit.

Currently, in the electronic system MTender, **electronic auction is compulsory** only for the procedures of procurement of **goods and services via RFP**.

Currently, in the electronic system of procurement **MTender**, the contracting authorities use electronic auction that takes place:

- ✓ based on the principle of open reverse auction;
- ✓ the bidders can reduce the price of the initial bid during 3 rounds (according to the minimum sum established by the authority, either in absolute value or in percentages).
- ✓ the system puts the bids in an increasing order after each round of the auction, the bidder with the lowest price is given priority;
- ✓ at the end of the electronic auction, the bids are ranked automatically, and the authority will evaluate the resulting bids.

According to article 33 of Law no. 131/2015, the **electronic signature shall be applied on electronic bids**. According to p. 25 of the GD no. 987 of 10.10.2018, the economic operator must develop the bid in line with the provisions laid down in the tender documentation. The written and electronically signed bid has to be submitted by using the electronic system before the submission date and time limit, as established by the contracting authority in the invitation to participate or notice of participation. [The government service for digital signature “MSign”](#) is used to verify the electronic signature.

PROCUREMENT LAUNCHING, BIDS SUBMISSION, AND OPENING	
Red flags	Identification methods and actions recommended to monitors
✓ <b>the notice of participation was published within too tight deadlines</b> for the procurement	✓ detailed analysis of all procurement documents; ✓ data analysis in relation to authority's previous

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<ul style="list-style-type: none"> <li>✓ type and complexity;</li> <li>✓ non-compliance in relation to the requirements included in the participation notice, documentation, and ESPD form</li> </ul>	<ul style="list-style-type: none"> <li>✓ contracts regarding similar goods, services, and works and contractors.</li> <li>✓ notification of the CA regarding the content of the notice and compliance with the legislation in force;</li> </ul>
<ul style="list-style-type: none"> <li>✓ <b>CA's evasive/unclear answers to the clarification requests lodged by economic operators</b></li> </ul>	<ul style="list-style-type: none"> <li>✓ analysis of published clarification questions and CA's answers published in the electronic system;</li> <li>✓ it shall be checked for any complaints and the analysis of the NASC will be carried out (partially/fully admitted complaint, rejected complaint) in relation to the complaints that claim there was no clear and full answer from the CA whenever the economic operators would request further clarification</li> </ul>
<ul style="list-style-type: none"> <li>✓ <b>ungrounded refusal</b> of the contracting authority to the request of the civil society to be part of the working group on procurement;</li> <li>✓ although the representative of civil society was included in the working group, they are not invited to all the meetings of the working group and are not provided with all the documents, etc.</li> </ul>	<ul style="list-style-type: none"> <li>✓ referral to the PPA on the violation by the CA of the legal provisions that entitle civil society to participate in the working group on procurement;</li> <li>✓ request for information from the CA, including the explanations for the grounds of refusal;</li> <li>✓ awareness of the public opinion and mass media;</li> </ul>
<ul style="list-style-type: none"> <li>✓ <b>complaints lodged</b> by one or multiple economic operators at the stage preceding bids opening concerning the evasive and unclear answers given to the clarification questions addressed by economic operators;</li> </ul>	<ul style="list-style-type: none"> <li>✓ analysis of the decisions adopted by the NASC (partially/fully admitted complaint, rejected complaint) on the complaint(s) lodged by the economic operators and invoked violations;</li> <li>✓ the analysis of the actions taken by the CA following the decision of the NASC;</li> </ul>
<ul style="list-style-type: none"> <li>✓ <b>failure to sign the statement of confidentiality and impartiality</b> by the members of the CA's working group on procurement</li> </ul>	<ul style="list-style-type: none"> <li>✓ if the monitor was accepted in the working group, immediate referral, upon bids opening, to the chairperson of the working group and request for replacement with another person/alternate member.</li> <li>✓ awareness of the public opinion and mass media;</li> </ul>
<ul style="list-style-type: none"> <li>✓ <b>a conflict of interest between a member of the working group and one of the bidders</b> (founders/administrators) which did not result in requesting their exclusion from the working group and replacement with another person/alternate member.</li> </ul>	<ul style="list-style-type: none"> <li>✓ analysis of the connections between the members of the working group and the company's founders/administrators who submitted bids;</li> <li>✓ notification of CA regarding the conflicts of interest;</li> <li>✓ submission of a motion to NIA;</li> </ul>

### ***Anti-competitive Practices in Public Procurement***

Competition in public procurement is vital since it ensures the necessary conditions to efficiently use public money and is an incentive for the companies which want to become more efficient, innovative, and developed. On the other hand, anti-competitive practices represent a threat to good governance and economic development, while the phenomenon of collusion results in “reallocation” of public funds to individuals and companies, and the money is not used in the public interest.

According to Law on procurement no. 131/2015, technical specifications **should provide any bidder equal access to the awarding procedure of a procurement contract** and should not entail the introduction of unjustified obstacles that could lead to restrained competition between economic operators. The contracting authorities have the obligation to exclude any bidder or candidate from the procedure of awarding public procurement contracts that concluded agreements with other economic operators that distort the competition.

The Competition Law no. 183/2012, **states that an anti-competitive practice** is an agreement, a decision of the association of companies, an orchestrated practice, abuse of a dominant position, action or inaction of the public authorities to limit the competition, which is prohibited by the law. **Bid-rigging** occurs when anti-competitive practices are used in auctions and other forms of tendering procedures regarding prices, division of markets, supply sources, and quality of products.

**Collusion** is a secret agreement between two or multiple participants in the public procurement procedures whose aim is to limit free competition through deceit or deprivation of the others of their legal rights in order to influence the process of winner selection. Collusion and corruption are two separate issues within the auctions, although very often, they can emerge together and have a mutual “support” effect. Corruption is a vertical agreement between a bidder and the contracting authority (an official or a public servant), while collusion is a horizontal agreement between bidders.

### TYPES OF COLLUSION<sup>7</sup>

<i><b>Bid Suppression</b></i>	<i><b>Bid Rotation</b></i>	<i><b>Market Allocation</b></i>	<i><b>Complementary Bidding</b></i>
an agreement based on which economic operators agree to abstain from submitting bids so that one bidder wins the contract.	an agreement based on which economic operators agree to win procurement contracts by taking turns, while submitting bids for all procedures "to secure the competition".	an agreement based on which economic operators divide the procurement market into geographical regions, contracting authorities and agree to submit bids only for the procedures that "were allocated" based on the agreement.	an agreement based on which economic operators agree to submit bids that are either higher than the one designated to win, or too high to be accepted, or bids that do not meet the requirements of the authority and of tender documentation.

### IDENTIFICATION OF ANTI-COMPETITION PRACTICES

<b>Red flags (actions of economic operators)</b>	<b>Identification methods and actions recommended to monitors</b>
✓ some companies win regularly the procurement contracts of the authorities from the same regions of the country. It is a sign of	✓ the analysis of the procurement process and of the data on past procurement

<sup>7</sup> According to OECD

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<p>geographical division of the market;</p> <ul style="list-style-type: none"> <li>✓ very often, the same bidder has the lowest price bid, although multiple companies take part in the procedures of the monitored CA;</li> <li>✓ a certain company wins the procurement of one CA in a certain area/related to a certain aspect (e.g., reconstruction works/road rehabilitation; delivery of food products, etc.)</li> <li>✓ withdrawal of bids or intentional failure to submit additional information requested by the contracting authority during the clarification stage, the aim being the exclusion from the procedure by the CA;</li> <li>✓ the winning bidder permanently subcontracts the bidders who participate in the procedure but are not usually assigned as winners;</li> <li>✓ two or more companies that have submitted the bids are founded and/or managed by the same individuals (<i>data about founders and managers of each bidder can be checked on <u>OpenMoney</u> (connected to the MTender system) or gateways that take over the data from State Register of Legal Units: <a href="http://www.companii.md">www.companii.md</a>; <a href="http://www.idno.md">www.idno.md</a>; <a href="http://www.bizzer.md">www.bizzer.md</a></i>).</li> <li>✓ a substantial price gap between the lowest bidding price and the other submitted bids;</li> <li>✓ the price gaps between the bidders are very low, and if every position is analyzed, one can see that there's a fixed cost difference between the positions of bid 1 and bid 2 (10 lei or 1%, for instance);</li> <li>✓ certain bidders participate together in multiple tenders, with different contracting authorities or, on the contrary, never go against each other;</li> <li>✓ one or multiple bids are far below the market price/abnormally low, so that “the designated” wins;</li> </ul>	<p>contracts concluded by the monitored CA(s) to evaluate the competition and the extent to which the same company (companies) occasionally win the procurement contracts with the same CA(s);</p> <ul style="list-style-type: none"> <li>✓ consultations with economic operators who participated in the procurement procedures of the monitored CA and who could provide further details;</li> <li>✓ notification of the CA about potential anti-competition practices that can occur, in order to analyze the situation and decide on carrying on or canceling the procedure as laid down in the legal provisions;</li> <li>✓ a referral shall be made to the Competition Council on the signs of anti-competition practices on the public procurement market;</li> <li>✓ awareness of the public opinion and mass media;</li> </ul>
<ul style="list-style-type: none"> <li>✓ some economic operators <b>rigged their bids</b>/participated as members of the group of independent companies with multiple bids/created unfair competition among the participants, as proven by the control bodies or by evidence.</li> </ul>	<ul style="list-style-type: none"> <li>✓ analysis of information on the bidders' founders and administrators (OpenMoney, idno.md, etc.);</li> <li>✓ a notification on bid-rigging is lodged with the CA as a part of the procedure and CA's obligation is to remove the operators from the procurement procedure;</li> <li>✓ submission of a notification to the PPA and a request to include the economic operator into the List of Prohibited Operators;</li> </ul>
<p><b>Indicators related to bids and documents submitted by economic operators:</b></p> <ul style="list-style-type: none"> <li>✓ identical spelling and editing mistakes, same format/font in the</li> </ul>	<ul style="list-style-type: none"> <li>✓ notification of the CA about potential anti-competitive practices that can occur, in order to analyze the situation</li> </ul>

<ul style="list-style-type: none"> <li>✓ documents of submitted bids;</li> <li>✓ the bids comprise contact data, phone numbers, addresses which can be found in the other bids;</li> <li>✓ the bids contain identical calculation errors, identical cost estimations for certain products;</li> </ul>	<ul style="list-style-type: none"> <li>and decide on carrying on or canceling the procedure;</li> <li>✓ a referral to the Competition Council;</li> <li>✓ awareness of the public opinion and mass media;</li> </ul>
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### 4.3. Stage of Bids Evaluation and Contract Awarding

**The examination, evaluation, and comparison of bids** test the contracting authority's competencies and responsibilities. After the bid opening, the working group will examine and evaluate the bids according to the functionality of the MTender electronic system. If the “lowest price” is the award criterion, the system automatically ranks the submitted bids in ascending order, by price and the CA will examine the first bid. If the first bid corresponds to all selection and qualification criteria, it shall be assigned as the winner. Otherwise, the CA will disqualify the bidder, based on legal grounds and will evaluate the next bid. For cases where an awarding non-price criterion was established, the CA will open all submitted bids to evaluate them and identify the winning bidder based on the evaluation factors included in the documentation.

The examination and evaluation of bids take place without the participation of bidders or any other people who are not members of the working group. Representative of the civil society, as a member of the working group, shall be informed by the contracting authority on the date, hour, and place of the meeting (s) on bids evaluation.

**At the stage of bids examination, evaluation, and comparison**, the authority has the right to request from the bidder only written explanations concerning their bid, if the documents submitted are incomplete, or, where appropriate, concerning the supporting documents related to ESPD.

The authority **shall not accept changes to the bid**, including its price, which would make the offer meet the requirements it did not initially meet.

At the stage of bids evaluation, any explanations, clarifications on bids, reconfirmation of certain elements of the bid or of the commitments undertaken in relation to the bid may be requested. The authority shall allow reasonable time for the submission of answers. The information submitted additionally by bidders shall not result in changes to the bids, since these could distort the competition or create an additional advantage over other bidders.

If the information/documents submitted by the bidder are incomplete/erroneous, the contracting authority shall request them to supplement, clarify or complete the information/documents, **by observing the principle of transparency and equal treatment**. The bidder shall be disqualified if it fails to supplement, clarify or complete the information/documents requested by the authority within the time limit set by the authority (at least three working days or, one working day in case of RFP). The Authority may require bidders to submit all supporting documents or one part as evidence of the information contained in the ESPD.

The Working Group examines bids in a confidential manner and does not disclose information regarding the examination, evaluation, and comparison of bids to bidders or persons not formally involved in these procedures or in determining the winning bid.

**NOTE!** According to article 33 of Law no. 131/2015, the **electronic signature shall be applied on electronic bids**. The CA shall check the validity of the electronic signature, which is possible through the [“MSign” government service of electronic signature](#).

The contracting authority is entitled to consider the bid compliant if it contains **insignificant deviations** from the provisions of the tender documentation, errors or omissions that can be removed without affecting its essence. Any insignificant deviation shall be expressed quantitatively, to the extent possible, and shall be considered upon the evaluation and comparison of bids.

In certain circumstances foreseen by the legal framework, **the contracting authority is obliged to exclude the bidders from the procedure of awarding the public procurement contract**. Therefore, the monitors shall closely follow the situations where the contracting authority excludes certain bidders from the awarding procedure, either based on a reason or in its absence.

#### CASES WHEN A BIDDER IS EXCLUDED:

- a) the bidder is in a process of insolvency following a court decision;
- b) the bidder did not meet their obligations to pay the taxes, fees, and social security contributions in line with the legal provisions in force either in the Republic of Moldova or in the country they reside;
- c) the bidder was convicted in the last 3 years, based on a final decision of the court of law, of an offense concerning their professional conduct or for a professional error;
- d) the bidder either submitted fake information or did not submit the information requested by the contracting authority with the intention of proving compliance with the qualification and selection criteria;
- e) the bidder violated the obligations applicable in the area of environment, labor, and social security when the contracting authority proves this by any appropriate means;
- f) the bidder was found guilty of professional misconduct that casts doubt on their integrity if the contracting authority proves this by appropriate means;
- g) the bidder concluded agreements with other economic operators – a fact which envisages distortion of competition - if this is found by a decision of the competent authority;
- h) the bidder is in a situation of conflict of interest that cannot be solved effectively by means foreseen in art. 79.
- i) the bidder is on the List of Prohibited Economic Operators;
- j) the bidder does not observe the regime of incompatibilities laid down in article 16, para. 6.

**Insignificant deviations** should not serve as grounds for bid rejection.



The contracting authority finalizes the process of bids evaluation by **awarding the public procurement contract** and adopts the decision of awarding the public procurement contract (where relevant, of cancellation of the awarding procedure). The contracting authority shall award the procurement contract by using the awarding criteria specified in the tender documentation and based on the information from the bid.

The contracting authority shall consider the following when awarding the contract:

- The contract is awarded during the bids validity period;
- The authority must inform the bidders in written form, about the decisions of the result of selection, the result of the public procurement contract awarding procedure or cancellation of an awarding procedure, and potential initiation of a new procedure, but no later than three working days after the adoption of these decisions.

**Cancellation of the Procurement Procedure**

According to the provisions of Law no. 131/2015, the contracting authority has the right to cancel the procurement procedure in the following situations:

1. *No bid was submitted;*
2. *The number of qualified bidders is lower than the one foreseen in the legislation;*
3. *None of the bidders met the qualification requirements laid down in tender documentation;*
4. *All the bids have one or more of the flaws specified in the bullets below:*
  - are not appropriate, acceptable, and compliant;
  - were not developed in line with the requirements of tender documentation;
  - contain prices that are not the result of free competition and cannot be justified;
  - contain proposed changes to the contractual terms that are detrimental to the CA;
  - exceed by 30% the estimated value of procurement;
  - exceed the value of allocated funds;
5. *a corrupt act or related acts were committed, which was confirmed by a final court decision;*
6. *bids cannot be compared because of the proposed approach to the proposed technical and/or financial solutions makes them impossible to compare;*
7. *there are serious deviations from the legal provisions that seriously affect the evaluation process or render impossible the conclusion of the contract.*

Beyond the date of presentation of the communication on the result of public procurement enforcement, **only NASC can cancel the procedure.**

BID EVALUATION AND CONTRACT AWARDING	
Red flags	Identification methods and actions recommended to monitors

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<p>✓ <b>any situation of conflict of interest</b> when the members of the CA working group on procurement:</p> <ul style="list-style-type: none"> <li>- are spouse, relative, or third-degree relative by affinity with one or several employees of the bidder(s) or with one or several founder(s);</li> <li>- did work in the last 3 years based on an individual labor contract or any other documentary evidence that would prove labor relations with one of the bidders or was part of bidders' Board of Directors or any other managerial or administrative body;</li> <li>- owns shares or interests in the subscribed share capital of the bidders (founder, shareholder)</li> </ul>	<p>✓ verification of potential conflicts of interest that might exist (verification of data from the State Register of Legal Entities; of statements of wealth and personal interests, etc.);</p> <p>✓ notification of the chairperson of the CA's working group on procurement;</p> <p>✓ a referral sent to NIA, NAC;</p> <p>✓ awareness of the public opinion and mass media;</p>
<p>✓ <b>submission of fraudulent documents</b> for the public procurement procedure e.g forged data in the form attesting to the bidder's lack of debts to the state budget)</p>	<p>✓ notification of CA of the false information/document submitted by the bidder during the procurement procedure;</p> <p>✓ submission of a notification to the PPA and a request to include the economic operator in the List of Prohibited Operators;</p>
<p>✓ <b>exclusion of one/multiple bidder(s) in absence of legal grounds</b> (for instance, disqualification of a bidder for insignificant deviations, without requesting further clarifications);</p>	<p>✓ analysis of potential complaints and if lodged, analysis of NASC decisions (partially/fully admitted, rejected, remedies – a re-evaluation of bids, cancellation of procedure, etc.);</p> <p>✓ the request of explanations from CA concerning the grounds for bidder(s)' exclusion;</p> <p>✓ awareness of the public opinion and mass media;</p>
<p>✓ <b>acceptance of inappropriate bids</b> (which do not comply with the qualification and selection criteria from the tender documentation; which contain prices in the financial proposal that did not result from the free competition; etc.) or of some bidders that had/have been involved in corrupt acts.</p>	<p>✓ analysis of potential complaints and if lodged, analysis of NASC decisions (partially/fully admitted, rejected, remedies – a re-evaluation of bids, cancellation of procedure, etc.);</p> <p>✓ requesting explanations from the CA;</p> <p>✓ a referral sent to PPA to initiate the monitoring;</p>
<p>✓ <b>deviations from evaluation criteria and factors</b> laid down in tender documentation during the evaluation process;</p>	<p>✓ analysis of potential complaints and if lodged, analysis of NASC decisions (partially/fully admitted, rejected, remedies – a re-evaluation of bids, cancellation of procedure, etc.);</p> <p>✓ requesting CA's explanations of bids evaluation;</p> <p>✓ a referral sent to PPA to initiate the monitoring;</p>
<p>✓ <b>ungrounded cancellation of procurement procedure</b> (for instance, to favor one bidder during the repeated procedure)</p>	<p>✓ analysis of potential complaints concerning the cancellation of procurement procedures and, if lodged, analysis of NASC decisions (partially/fully admitted, rejected, remedies – a re-evaluation of bids, cancellation of procedure, etc.)</p> <p>✓ requesting explanations from the CA;</p> <p>✓ a referral sent to PPA to initiate the monitoring;</p>
<p>✓ <b>conclusion of the procurement contract</b> when:</p> <ul style="list-style-type: none"> <li>- the bidder did not submit the performance guarantee;</li> <li>- the performance guarantee is presented for a shorter period</li> </ul>	<p>✓ requesting explanations from CA for the reasons behind signing the contract without complying</p>

than that of contract performance;	with legal provisions; ✓ a referral sent to PPA to initiate monitoring; ✓ awareness of the public opinion and mass media;
✓ <b>CA does not publish the awarding decision in the MTender system</b> , although the system includes such a function; ✓ <b>CA does not provide access to the Report</b> on the procurement procedure, which, is a public document, according to the law.	✓ request for a CA's report through an application for access to information ( <i>the refusal to provide access to information can give rise to court action by the requesting party</i> ); ✓ a referral sent to PPA to initiate monitoring; ✓ awareness of the public opinion and mass media;
✓ <b>the bidder that was awarded the procurement contract previously won the majority or even all procurement contracts of the CA</b> regarding similar goods/services or works;	✓ analysis of the CA's procurement and procurement contracts from the last years; ✓ analysis of the winning company's activity and past procurement contracts; ✓ a referral sent to PPA to initiate monitoring; ✓ referral sent to other competent bodies (MF, NAC; Competition Council)
✓ <b>the results of the procedure were challenged by one or multiple bidders of the procurement procedure</b>	✓ consultation of the opinion of economic operators that challenged the results of the procurement procedures; ✓ participation in the NASC meeting for complaint examination; ✓ analysis of the NASC decision (partially/fully admitted, rejected, remedies – a re-evaluation of bids, cancellation of procedure, etc.) and subsequent actions undertaken by the CA

#### 4.4. Contract Implementation and Monitoring Stage

The **economic operator shall comply**, in good faith, with **the obligations** they committed to under the contract in terms of **quantity and quality , within the established time limits and budget**. The economic operator shall implement unconditionally the terms of the concluded public procurement contract, by respecting the quality requirements and the established price. Failure to fulfill or inappropriate accomplishment of the contractual obligations makes the economic operator liable according to the law and terms of the public procurement contract.

The **contracting authority** is responsible for **the appropriate monitoring** of public procurement contracts and for undertaking actions in line with the current legislation, in case of non-performance or inappropriate performance of procurement contracts.

The contracting authority **shall not accept** the following situations at the stage of contract performance:

- Delays/refusals to deliver the goods, provide services and finalize the works;
- Any price increase;
- Failure to observe the quality standards;
- Failure to deliver the right quantity

- Partial or total failure to comply with the requirements of the technical specifications, terms of reference, and contractual terms;
- Any deviations from the objectives of the contract;
- The emergence of unpredictable situations that hinder the successful completion of the public procurement contract, exceptions may be situations of an impediment beyond the control of the parties (force majeure, etc.).

In the event of non-compliance or improper performance of contractual obligations by the economic operator, the contracting authority **can undertake** the following actions:

- solve the problem by identifying a solution together with the economic operator;
- notify the operator of the irregularities that have arisen during the performance of the contract;
- suspend the enforcement corresponding obligation (payment);
- request the payment of compensations for the suffered harm;
- apply penalties according to the contract;
- call the performance guarantee;
- terminate the contract;
- request from the PPA the inclusion of the operator on the Prohibited List;
- make referrals to competent authorities.

**NOTE!** Public bodies with functions of control apply sanctions in line with the legislation against **the manager of the contracting authority** who did not apply or take actions imposing sanctions against the economic operator who did not fulfill or failed to carry out appropriately the terms of the public procurement contract

There might be situations in the process of public procurement contract performance when contractual terms are changed or a part of the contract is subcontracted to other economic operators.

Public procurement contracts can be **changed** by concluding additional agreements. The decision of the working group, the report, and the notice of procurement contract/framework agreement amendment shall be sent to the PPA, while the Additional Agreement shall be submitted to the regional treasury of the Ministry of Finance for registration.

Contractual terms can be amended if there is a need to change the name of parties or their identification data, in case of need to extend the duration of the contract, etc. Very often, the contractual terms can be changed when there is a need to **reduce/increase the number** of goods, works or services in duly substantiated cases, which leads to a reduced/increased value of the contract.

The CA's working group can reduce or increase the quantity of initially contracted goods and/or services, in duly substantiated cases, without changing the terms and conditions of the bid and of tender documentation. The CA can procure additional goods if their quality requirements are met, other requirements set out in the initial contract, and the value of additionally contracted goods shall

not exceed 15% of the value of initially contracted goods (it refers to the cumulative value of successive changes).

The situations where the public procurement contracts can be *changed, without organizing new procedures* of public procurement are precisely described in Law no. 131/2015 on Public Procurement. If the conditions foreseen in the law are not met, the contracting authority must *organize new procedures* of public procurement, and shall not change the existing contract.

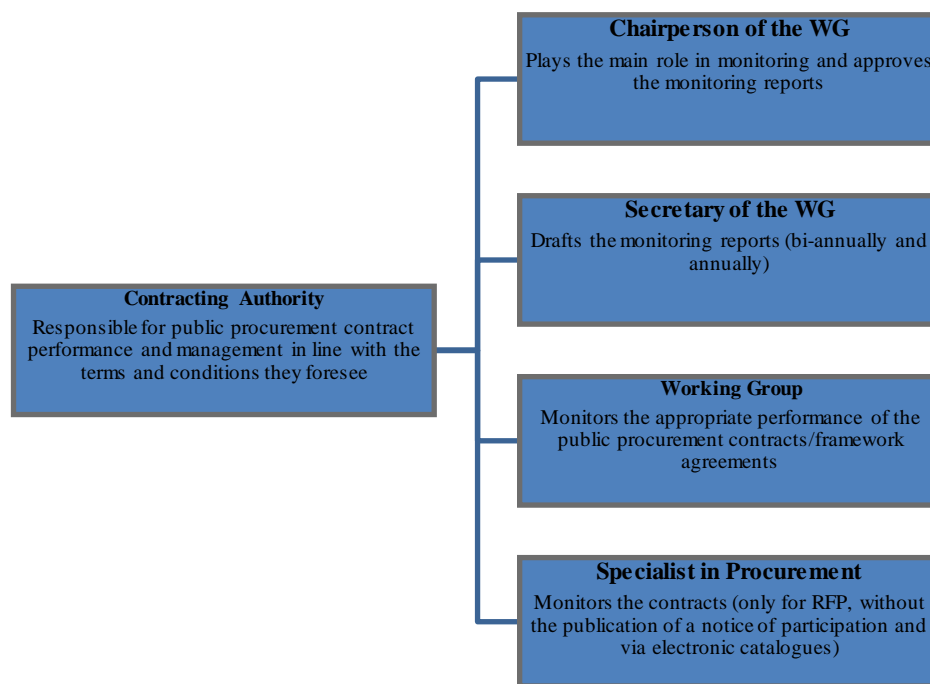
**REMARK!** It is important that monitors follow if the change in the contractual conditions occurs in line with the legal provisions, that it does not aim to circumvent the awarding procedures, and that additional agreements are not employed as a means of wrongly increasing the initial price of the contract. Additionally, monitors shall pay attention to the quantity and quality of delivered goods by checking the delivery, their de facto performance in line with the contractual conditions.

**Subcontracting** a part of the public procurement contract can take place at the stage of bid submission, after the awarding of the contract, at the beginning of a performance, or even during the implementation process.

These are mandatory **conditions** that have to be implemented in the case of subcontracts:

- the same regime of incompatibilities, restrictions, and exclusion grounds apply to the subcontractors, as foreseen in the Law in relation to bidders;
- the bidder must notify the CA about any involved subcontractor (name, contact data, and legal representatives of the subcontractors);
- the contracts between the bidder and subcontractor(s) shall be in line with the bid;
- the contracts between the bidder and subcontractor(s) shall be submitted for information to the CA and included as annexes to the public procurement contract;
- in the case of works contracts, the volume of works that may be subcontracted may not exceed 40% of the total volume

**NOTE!** Subcontracting does not reduce the main contractor's responsibility to perform the future public procurement contract/framework agreement.



The contracting authority, via the working group, will ensure monitoring of the performance of public procurement contracts, documented in **monitoring reports**, bi-annually and annually. These reports shall include information on the performance of contractual obligations, causes of non-performance, submitted complaints and applied sanctions, remarks about the quality of contract performance, etc.

The monitoring reports shall be published on the **website of the contracting authority** or, in its absence, on the official website of the central authority to which it is answerable or that of a second-level local public authority.

Likewise, the **Public Procurement Agency** shall monitor the public procurement procedures and evaluate the efficient functioning of the national public procurement system as laid down in Law no. 131/2015.

Monitoring objectives:

- assessing the conformity of the procedures for the award of public procurement contracts in order to prevent and combat infringements of public procurement rules;
- identifying systemic non-compliance and submitting proposals to improve the procedural and regulatory framework in the field;
- dissemination of relevant information in the field;
- systematization of information for the evaluation of the functioning of the national public procurement system and its efficiency.

Sources of information for monitoring:

- SIA "RSAP" information system ([MTender](#));
- information and documents received from the CA;

Thus, PPA **develops monitoring reports** revealing any irregularities and breaches committed by the contracting authority in the process of awarding the public procurement contract. The findings in the Monitoring Reports are of a recommendation nature to the contracting authorities. There are no legal instruments to oblige and sanction contracting authorities for non-compliance with the findings and recommendations of the monitoring reports.

**Concerning low-value public procurement**, the contracting authority shall draft and present to the Public Procurement Agency (before 1 February of the next year), **the report** on low-value public procurement, including in electronic format.

*Supervision* of low-value public procurement is carried out:

- ✓ by the contracting authority, during contract performance;
- ✓ by the *State Treasury or territorial treasuries* of the Ministry of Finance, at the stage of low-value public procurement contracts registration;
- ✓ by the *Public Procurement Agency* by examining the reports submitted by the contracting authorities.

<b>CONTRACT IMPLEMENTATION AND MONITORING</b>	
<b>Red flags</b>	<b>Identification methods and actions recommended to monitors</b>
✓ in the process of contract performance, <b>the CA does not request the inclusion in the List of Prohibited Economic Operators</b> , although the contractual obligations are not fulfilled or fulfilled inappropriately.	✓ contractor's compliance with contractual obligations is analyzed (discussions with beneficiaries, verification at the place of goods delivery, the performance of works, request for information from the CA based on an application for information access); ✓ a referral is sent to PPA (MF and NAC) on admitted infringements; ✓ awareness of the public opinion and mass media;
✓ <b>the contractor requests the increase of the contractual value</b> (independently from the CA) in a very short time after the conclusion of the contract ( <i>initially, the bidder proposed a much lower price in order to win the contract and to request immediately afterward an increase of the contractual value</i> ). ✓ <b>CA accepts the request of the contractor to increase the contractual value without valid reasons</b>	✓ a referral is sent to the CA to be vigilant and reject the ungrounded increase of the contractual value; ✓ a referral is sent to PPA in order to initiate monitoring; ✓ raising the awareness of the public and mass media;
✓ <b>CA tolerates breaches in relation to the</b>	✓ contractor's performance of contractual obligations is analyzed (based on discussions with beneficiaries; verification of the place of delivery of

<p><b>quality/quantity of delivered goods/services or works</b>, which is different from what has been foreseen in the contract;</p> <p>✓ <b>CA tolerates the breach of delivery terms of goods/services and works;</b></p>	<p>goods, the performance of works, information from the CA);</p> <p>✓ when relevant (in particular in the case of works), a technical specialist in the field has to be consulted. They will analyze the situation and find any irregularities;</p> <p>✓ the CA is requested to provide explanations and to impose sanctions and include the operator on the List of Prohibited Economic Operators if no remedies are found;</p> <p>✓ a referral is sent to the PPA in order to include the operator on the List of Prohibited Economic Operators;</p> <p>✓ raising the awareness of the public and mass media;</p>
<p>✓ <b>The CA does not apply sanctions as prescribed by the contract</b> against the economic operator who failed to fulfill or implemented inappropriately the contractual terms and accepts the goods/services that are not delivered fully but are of appropriate quality; partially carried out works or works carried out in a non-qualitative manner (could be an illegal agreement between the CA and EO);</p> <p>✓ <b>The CA does not request the PPA to include the contractor in the Prohibited List</b> for non-performance or inappropriate performance of the contract;</p>	<p>✓ the CA is requested to provide explanations and to impose sanctions and includes the operator on the List of Prohibited Economic Operators if no remedies are found;</p> <p>✓ a referral is sent to the PPA in order to include the operator on the List of Prohibited Economic Operators;</p> <p>✓ a referral is sent to other competent bodies having control, anti-corruption, and law-enforcement attributions (MF, NAC, Financial Inspection, etc.)</p> <p>✓ raising the awareness of the public and mass media;</p>
<p>✓ <b>the working group fails to ensure the monitoring of public procurement contracts performance</b>, to develop and to publish (on the website of the CA) bi-annual and annual reports in this respect;</p>	<p>✓ the CA is requested to provide explanations regarding the violation of the legal obligation to ensure the monitoring of public procurement contracts performance;</p> <p>✓ a referral is sent to the PPA in order to initiate monitoring;</p> <p>✓ raising the awareness of the public and mass media;</p>
<p>✓ <b>monitoring reports are developed and published on the website of the CA, as a formality</b> but lack information about the stage of contractual obligations performance, causes of non-performance, complaints made and applied sanctions, remarks about the quality of contract performance, etc.</p>	<p>✓ a request is sent to the CA regarding the legal obligation of publishing the monitoring reports according to the provisions on the content of monitoring reports which shall include the information related to the stage of contractual obligations performance, causes of non-performance, complaints made, and applied sanctions, mentioning the quality of contract performance, etc.</p> <p>✓ raising the awareness of the public and mass media;</p>

## 5. Monitoring tools/sources of information



## SIA RSAP MTender Electronic Procurement System

Currently, the main data source in the field of public procurement is the portal of the electronic procurement system MTender.gov.md. In [the electronic procurement system MTender](#), data are provided on all high-value public procurement procedures (regulated by Law 131/2015) and, in part, on low-value procurement, sometimes published at the discretion of the contracting authority.

Currently, the electronic system provides access to the following types of data and documents of the public procurement process, according to the table below.

Documents	Information and data
Participation notice	Type of procedure (i.e. open tender)
Award documentation and, as appropriate, amendments	Estimated purchase value
ESPD form	Award criteria and the deadline for submission of tenders
Bid documents (fully publicly available for the highest-ranked bidder offering at the lowest price, while for the other bidders only the eligibility and qualification documents are available) <sup>8</sup> : <ul style="list-style-type: none"> <li>✓ Technical proposal;</li> <li>✓ Financial proposal;</li> <li>✓ Qualification documents (guarantee, other certificates);</li> <li>✓ Eligibility documents (ESPD form)</li> </ul>	Clarification questions submitted by economic operators
Appeals filed and NACS decision	CA answers to clarification questions
Award decision, if the CA publishes it (publication in the system is not mandatory)	Information on the electronic auction, if the procurement procedure involves its use
	Contract award information: award date, winner

MTender also has available a filter and search engine based on the following criteria:

- **Information about CA** (name, INDO, region, type of activity);
- **Procurement procedure** (type of procedure, unique identification number of the procedure, status, range for the estimated value of the procurement, CPV code);

<sup>8</sup> This holds true if each bidder has submitted documents in the appropriate folder. Otherwise, the documents will be fully or partially accessible to the public, depending on the folder in which they were submitted.

- **Periods** (period of publication, clarifications, electronic auction, submission of tenders, award of the contract).

### Public Procurement Agency website - [www.tender.gov.md](http://www.tender.gov.md)

The following data and information can be publicly accessed on the [tender.gov.md](http://tender.gov.md) portal:

- **Data on the [awarded procurement contracts](#)** (number and date of the contract, value, economic operator, object of the procurement).
- **Data regarding the additional agreements to the awarded contracts** (reduction/termination of the contract, increase of value, extension of the contract term);
- **[Prohibition list of economic operators](#)** (name and legal address of the economic operator, data on the founders and administrators of the economic operator, applicant, reason for listing, date of listing, deadline for listing, and, where applicable, suspension of the execution of the PPA's decision to be included in the list as a result of the court's decision).
- **[Reports with quarterly statistical data](#)** on the evolution of public procurement at the national level (number and value of procedures, contracts awarded, etc.);
- **Legislative and normative acts** in the field of procurement; **instructions and document templates** (notices, standard documentation, ESPD, reporting, statements, etc.)

**Note!** According to the legislation, public procurement contracts, are not public documents and are therefore not publicly available.

### Website of the National Agency for the Complaints Settlement

The following data and information can be accessed on the [NACS website](#):

- data regarding the submitted appeals (CA, appellant, date of registration of the appeal, object of the appeal, the contested procurement procedure, the panel examining the appeal);
- NACS decisions on the submitted appeals (main data and the complete decision document );
- NACS decisions regarding the suspension of procurement procedures (main data and full decision document).

### Digital Data Analysis in Procurement (Business Intelligence)

[The Public Procurement Data Analysis Tool](#) was developed based on open data available in the MTender electronic system and launched in April 2021.

The digital tool presents public procurement data in a structured way and according to the user's purpose, with available advanced filters and search engines. The tool provides open access to data on:

- **Bidders** (contact details, goods/services/contracted works, contracting authorities with which they had concluded contracts, number of procedures in which it has submitted bids/won tenders, number and value of contracts awarded);

- **Contracting authorities/buyers** (goods/services/purchased works, contracted companies, number of procedures, number and value of awarded contracts, average number of bidders per lot, average duration of a procurement procedure, etc.);
- **Competition analysis** (average number of bidders per category of goods/services/works, per contracting authority, market concentration, etc.); **efficiency** (rate of canceled procedures, duration of the procurement process, rate of awarded contracts exceeding the estimated value, number of contested procedures); appeals (number of appeals, value, and rate of contested procurement, top authorities with the most appeals, object of appeals and outcome - analysis of NACS decisions on appeals).

### Public procurement monitoring platform Revizia.md

[The Revizia.md portal](#), developed by AGER, based on the data available in the MTender electronic system, is a civic platform that facilitates the monitoring of public procurement by identifying errors, signaling them, and bringing them to the attention of the competent authorities. Thus, the following information can be accessed on the portal:

- revisions/materials developed as a result of the monitoring of public procurement and the red flags identified in concrete public procurement procedures;
- the profile of the contracting authorities and of the economic operators, with the most significant information about them (number of procedures performed, contracts won, etc.);
- statistics on risk indicators specific to public procurement;
- a list of the most frequent violations detected in the public procurement procedures (explained by reference to the legislative provisions and with concrete examples, where appropriate, from the materials previously published on the portal).

The platform was updated in March 2022, with the launch of the CA and EO profile pages, the risk indicators tool, as well as the page with violations and letter templates.

### Open Money Platform

The OpenMoney.md platform uses open data sources and electronic government data registers to provide civil society and journalists with access to open data in a structured and accessible format. Launched in 2016, the first version of the platform aimed to publish data on the beneficiaries of public procurement contracts, being connected to the old Electronic Register of Public Procurement (SIA RSAP - etender.gov.md) and the State Register of Legal Entities (currently, the Register State Legal Units). The new version of the platform, released in December 2020, is connected to the MTender e-Procurement system and therefore provides data on:

- public procurement procedures carried out through MTender;
- beneficiaries of public procurement contracts (identification and contact details of the economic operator, administrators, and founders, procurement contracts won, top economic operators with the most voluminous procurement contracts);

- contracting authorities (identification data, contact, top authorities with the largest public procurement contracts)
- connections between the beneficiaries of procurement contracts and those responsible within the contracting authorities;
- an interactive map showing data on contracting authorities, public procurement, and economic operators by regions/districts of the country..

The Open Money Platform also has a [market analysis tool available](#), which presents procurement data disaggregated by lots, procured quantities, procurement costs by lot, and procurement costs by unit. The tool allows the analysis of the market and, directly, of the purchase prices of different categories of goods, services, and works.

### **P Public procurement data platform for Covid-19 infection control**

The [tender.health](#) platform presents data on public procurement carried out by the contracting authorities of the Republic of Moldova for preventing and combating Covid-19 infection from 2020 to 2021. The platform presents in a structured format the data provided by CAPCS (centralized procurement according to the needs of medical institutions), PPA (procurement by individual contracting authorities), and the Ministry of Health (procurement through the World Bank project), including:

- the contracting authority (top contracting authorities by volume of procurement) and the contractor (top contractors by volume of contracts);
- no. and date of the procurement contract awarded;
- category and type of purchased goods/services;
- data source (CAPSC, PPA, or the Ministry of Health);
- value of the procurement contract (quantity and unit price, as applicable);

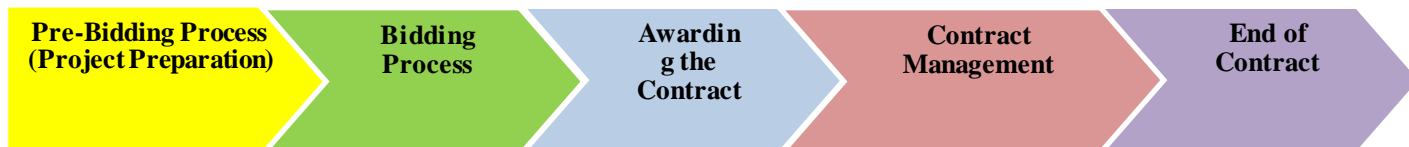
The platform also has:

- [A price analysis tool](#), which presents the unit prices (lowest / highest purchase price, average purchase price) of different categories of medicines, equipment, medical devices, consumables, etc.
- Data on the [Covid-19 vaccine](#) (type, country of manufacture, delivery platform, quantity, date of receipt, disaggregated data by region on vaccine administration) based on data provided by the Ministry of Health.
- [General presentation of data on health procurement](#)

### **Integrity Pacts**

These Pacts are agreements between government agencies charged with the execution of procurement processes, the companies bidding for these opportunities, and usually CSOs. Under such an agreement, the companies that are bidding commit themselves to abstain from bribery, collusion, and other corrupt practices for the extent of the contract/project. To ensure accountability, Integrity Pacts also include an independent monitoring system. The Integrity Pact could be entered into for one, usually large, procurement transaction, or for several transactions, or even for all procurement in a particular sector or by a particular government purchaser.

The Integrity Pact should cover all phases of the procurement cycle including contract implementation. See the figure below for the potential scope of an integrity pact. This means that for civil works, in particular, the implementation/construction period could be very long, and the Integrity Pact therefore could extend over a long time.



Monitors commit to maximum transparency and all monitoring reports and results are made available to the public on an ongoing basis.

Integrity Pacts provide the following advantages:

- Help ensure clean operations on the part of contractors and public officials during the execution of a project;
- Provide enhanced access to information, increasing the level of transparency in public contracts;
- Increase confidence and trust in public decision-making;
- Reduce litigation over procurement processes; and
- Increase the number of bidders competing for contracts.

Romania has implemented Integrity Pacts in the context of four projects under the EU project “Integrity Pacts – Safeguarding EU Funds Programme”. They are:

- Electronic Catalogue (National electronic platform for e-education) by the Ministry of National Education;
- Enhancing Coverage and Inclusiveness of the Property Registration System in Rural Romania, by the National Agency for Cadastre and Land Registration;
- Digital Library of Romania by the Ministry of Culture and National Identity;
- Service contracts financed under Priority Axis 3 “Technical Assistance” of the Operation Programme on Administrative Capacity, by the Ministry of Regional Development and Public Administration.

Find more information on Integrity Pacts within the European Union at: [transparency.org/integrity pacts](https://transparency.org/integrity-pacts).

### Other data sources for monitoring public procurement

- **Website of the contracting authority** subject to monitoring (budget of the authority, decisions of the authority, annual public procurement plans, reports on monitoring of public procurement contracts, etc.);
- [The website of the Court of Accounts](#) (audit reports on compliance/performance of the national procurement system/public authorities);
- [The website of the Competition Council](#) (the decisions of the Plenum of the Competition Council regarding the findings of anti-competitive practices in public procurement);

- [The web page of the National Anticorruption Center](#) (investigated cases of corruption in public procurement, studies and strategic analysis of corruption risks in the field of procurement, institutions with responsibilities in the field);
- [Statements portal of the National Authority for Integrity](#) (declarations of assets and personal interests of the members of the working groups on procurement within the contracting authorities);
- Open data portals regarding companies from the Republic of Moldova: [idno.md](#), [companii.md](#), [bizzer.md](#). They provide open access to data such as IDNO, founders, and administrators - natural persons, address, status, date of registration, types of activity, company history.

## ANNEXES

### Annex no. 1 List of Normative Acts in Public Procurement

Laws		
1	Law on Public Procurement	131/2015
2	Law on Concessions of Works and Services	121/2018
3	Law on Procurement in the Sectors of Water, Energy, Transport and Postal Services	74/2020
Government Decisions		
4	Regulation concerning the planning of public procurement contracts	1419/2016
5	Regulation on low-value public procurement	665/2016
6	Regulation on the procurement of goods and services under RFP	987/2018
7	The technical concept of the Automated Information System “State Register of Public Procurement” (MTender)	705/2018
8	Regulation on the accreditation of electronic procurement platforms under the SIA SRPP	985/2018
9	Regulation concerning the maintenance of the “State Register of Public Procurement” under the Automated Information System “State Register of Public Procurement” (MTender)	986/2018
10	Regulation concerning the regular adjustment of the value of public procurement contracts with continuous performance concluded for more than one year	1129/2018
11	Government Decision on organizational measures concerning the procurement process in the field of information technology and communication	544/2019
12	Regulation on public procurement of works	638/2020
13	Regulation on public procurement based on the negotiated procedure	599/2020
14	Regulation on the framework agreement as a special awarding method for public procurement contracts	694/2020
15	Regulation on the establishment and maintenance of the public procurement dossier	778/2020
16	Government Decision on the approval of additional transparency measures	493/2020

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	concerning the public procurement undertaken to prevent, mitigate and eliminate the consequences of the coronavirus pandemic (COVID-19) in 2020	
17	Regulation on public procurement needed to prevent and control the COVID-19 infection	494/2020
18	Regulation on public procurement based on the negotiated procedure	599/2020
19	Regulation on the activity of the public procurement working group	10/2021
20	Regulation on the organisation and functioning of central procurement bodies	56/2021
<b>Orders of the Ministry of Finance</b>		
21	Order of the Ministry of Finance on the registration of public procurement contracts by regional treasuries	193/2018
22	Regulation on public procurement certification	46/2020
23	The standard form of the European Single Procurement Document	72/2020
24	Instruction concerning the method, conditions, and procedure for organizing and conducting market consultations for public procurement	105/2020
25	Standard documentation for public procurement of works	69/2021
26	Standard documentation for public procurement of goods and services	115/2021

**Annex no. 2 List of Normative Acts and Other Regulations for Public Procurement of Works**

<b>Laws</b>		
1	Law on quality in constructions	721/1996
2	Law regarding the authorization of construction works performance	163/2010
<b>Government Decisions</b>		
3	Regulation regarding the reception of constructions works and related installations	285/1996
4	Government Decision on monitoring the in-service behavior, timely interventions, and post-use of constructions	382/1997
5	Regulation concerning the technical and construction expertise	936/2006
6	Regulation on the technical-professional assessment of specialists working in constructions	329/2009
<b>Regulations and practical codes in constructions</b>		
7	Rules to determine the value of construction objectives	NCM L.01.01-2012
8	Procedure for drafting, endorsement, approval, and framework content of the construction project documentation. Main requirements and provisions.	NCM A.07.02-2012
9	Instructions on drafting the estimates for constructions and installation works by using the resource method	CP L.01.01-2012
10	Instructions to determine the estimated costs for remuneration of construction workers	CP L.01.02-2012
11	Instructions to calculate overheads to determine the value of construction projects	CP L.01.03-2012