



PUBLIC MONEY IS MY MONEY TOO!

Report no.1 Monitoring public procurement

Chisinau

AGER



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Abbreviations

AGER – Association for Efficient and Responsible Governance
APP – Agency for Public Procurement
ARD – Agency for Regional Development
CA – Community Association
CA – Contracting Authority
CEC – Central Electoral Commission
CMC – Municipal Council Chişinău
RC – Rayon Council
DPM – Democratic Party from Moldova
EPPM – European Peoples Party from Moldova
FDO – Family Doctors Office
GCS – General Central Store
GDP – Gross Domestic Product
GPI – General Police Inspectorate
ISS – Information and Security Service
IT – Information Technologies
LDPM – Liberal Democratic Party from Moldova
LLC – Limited Liability Company
ME – Municipal Enterprise
MIA – Ministry of Internal Affairs
Mln – million
MLSPF – Ministry of Labor, Social Protection and Family
MTIC – Ministry of Information Technologies and Communication
NGO – Non-Governmental Organization
SSP – Single Source Procurement
PA – Public Auction
PCRM – Party of Communists from the Republic of Moldova
PHCI – Public Health Care Institution
LPM – Liberal Party from Moldova
PPPN – Political Peoples Party “Partidul Nostru”
PSRM – Party of Socialists from the Republic of Moldova
RP – Request for pricing
RPNP – Request for pricing with no publication
JSC – Joint Stock Company
TC – Trading Company
SRC – State Registration Chamber
EU – European Union
ATU – Autonomous Territorial Unit

Introduction

Moldova is one of the Europe's leading countries in what concerns corruption, ranked 103 out of 175 states in the Corruption Perception Index 2014 according to Transparency International.¹

Fighting corruption remains the main recommendation of development partners and international organizations. Meanwhile, corruption is ubiquitous in Moldova affecting the whole society. It is difficult to identify the area affected by corruption the most, being it justice, public health or education. However, one of the areas where corruption is definitely present, having a significant impact on business climate and competition is public procurement. Public procurement is a significant part of the public budget, amounting to 6% of GDP in 2012, or 5,878 million MDL.²

In recent years, public procurement system in Moldova has undergone a number of changes, most of them having a positive impact. The Public Procurement Agency has been separated from the Agency for Physical Resources, Public Procurement, and Humanitarian Aid. In 2010 EU experts reviewed the national public procurement process and made a number of recommendations to national authorities in view of ensuring compliance with EU directives.³ Recently, a new Public Procurement Law was adopted and will come into force from 05.01.2016. It provides, inter alia, the creation of a separate entity for dispute resolution, thus, eliminating the existing conflict of competences. However, some weaknesses remain despite undertaken legislative amendments. In 2014 national experts reviewed the implementation of procurement legislation and identified areas with high risk of fraud. Most frequently, these refer to the following:

- Occasional planning of procurement process and making acquisitions that are not in line with the sector or locality development strategy;
- Selecting less transparent procurement procedures by splitting purchases or through subsequent conclusion of additional contracts to increase the purchase value;
- Problems in deadline setting for submission of tenders and establishing of qualification criteria;
- Publication of inaccurate information concerning the contract award and procurement

¹ <http://cpi.transparency.org/cpi2014/results/>

² <http://old.tender.gov.md/ro/anunt/1/>

³ http://www.ncu.moldova.md/public/files/publication/armonizare/SLAG_PP_RO.pdf

results;

- Discriminatory application of the law;
- Frequent cases of the refusal to declare the conflict of interests;
- Changes of contractual clauses;
- Poor compliance with contractual conditions and refusal to apply sanctions to combat this phenomenon;⁴

In 2013 the Parliament approved several anti-corruption measures, including increasing penalties, and extended confiscation. Likewise, Offences Code was complemented to include procurement offenses: procurement splitting, preventing free access to procurement of competitors and others. Penalties for new violations are still very mild. On the other hand, so far no public official has ever been convicted for breaching public procurement legislation. Recently, more cases of bad execution of procurement contracts were registered, and there were several disclosures of fraud schemes in public procurement, reflected in media.

Public accountability and transparency of the contracting authorities are rather limited, whereas the transparency of the procurement process is minimal. As a result, civil society has few levers to monitor how the public money is spent.

Project goal

The overall project goal is to increase civil society capacity to monitor the use of public money, and in particular, public procurement.

Thus, the project has two main components. The first concerns the monitoring of procurement procedures in 30 contracting authorities (including 10 in Chişinău and 20 – at the local level); the second - the conduct of journalistic investigations on the cases of abuse or fraud detected in the monitoring process. While the 10 contracting authorities in Chisinau are monitored by AGER experts, the other 20 local contracting authorities were given small grants to 10 local NGOs, through a public competition. Thus, the ten NGOs and 20 contracting authorities, that are being monitored are as follows:

⁴ <http://www.expert-grup.org/ro/biblioteca/item/969-achizitii-publice-moldova>

1. CA Business Women Association, Balti – Psychiatric Hospital Balti, Mayoralty of mun. Balti;
2. Regional Development Centre for Social-Economic Development, Cahul, - Pelinei Commune Mayoralty, Cahul Rayon, Cahul Mayoralty
3. CA Centre for International Communication and Human Rights, Ialoveni – Rayon Council, Agency for Regional Development Centre ARD;
4. Community Association for Socio-Ecology Civis, Braviceni village, Orhei rayon- Mitoc Mayoralty, Rayon Council Orhei, Braviceni Mayoralty, Orhei rayon;
5. Community Association Concordia, Inesti village, Telenesti rayon – Village Council Inesti, Telenesti rayon, Rayon Council Telenesti;
6. Cultural Foundation Mihai Eminescu in partnership with “Gazeta de Sud”, Cimislia – Cimislia Mayoralty, Rayon Council Cimislia;
7. Community Association “Generația Mea”, in partnership with information portal colonita.eu, Gratiesti commune – Colonita Mayoralty, Colonita village, Chisinau, Gratiesti Mayoralty, Gratiesti Commune, Chisinau;
8. Community Association Regional Development Agency Habitat, Rezina – Rezina Mayoralty, Rayon Council Rezina;
9. CA Hlina Victorion, Hlina village, Briceni rayon – Division for Education, Youth and Sports Briceni, Hlina Mayoralty, Hlina village, Briceni rayon;
10. Non-commercial organization Localinvest, Riscani – Riscani mayoralty, Riscani Rayon Hospital.

At the central level procurement procedures are being monitored in the following 10 contracting authorities:

1. Ministry of Health;
2. Ministry of Internal Affairs;
3. State Chancellery ;
4. Land Relations and Cadaster Agency;
5. Chisinau Mayoralty;
6. Capital Construction Department;
7. General Division for Housing;
8. National Bank of Moldova;

9. Medicines and Medical Devices Agency;

10. National Health Insurance Company.

Additionally, the project partners monitor selectively some contracts, concluded by other contracting authorities not mentioned in the list above, depending on the socio-economic importance of the area or contract as such.

Executive summary

During August-November 2015 partner organizations of the project monitored a total of 189 public procurement procedures, out of which 101 open tenders (OT), 66 requests for pricing (RP), 19 requests for pricing without publication (RPNP) and 3 single source procurements (SSP). This number is much lower than planned. Many of the procurement procedures intended to be assessed, could not be analyzed because the contracting authorities have refused to provide the access to information from procurement dossiers. Curiously, out of the ten authorities monitored in Chisinau, three have given us access to files, while seven others refused, each citing different reasons, such as, for example, commercial secrets or the fact that the law does not oblige them to provide such information.

Despite encountered difficulties, the organizations involved in the project were able to analyze a sufficient number of cases that allow us to make certain assumptions relating to procurement issues in Moldova.

The main weaknesses of the procurement procedures can be classified into two main broad categories. The first comprises legislative issues, and the second - functional. Thus, even in cases where the law is imperfect, procurement procedures can be performed in an efficient manner if there is good will of the contracting authority. Unfortunately, we realize, however, that contracting authorities mostly use these shortcomings in their own interest and not public good.

The following legislative drawbacks may be highlighted:

1. Ambiguous regulations on access to information on public procurement.

In this regard, the Law no. 982 of 11.05.2000, regarding the access to information, provides that public bodies (information providers) provide to the applicant any official information, except information under limited accessibility. Article 7 of this law establishes rather comprehensively, what is the official information with limited accessibility, and procurement files do not fall under this article. Paragraph (4) of this article states: *"There will be no restrictions on freedom of information unless the information provider can demonstrate that the restriction is regulated by organic law and is necessary in a democratic society to protect the rights and interests of the*

people or protection of national security, and that damage to these rights and interests would be greater than the public interest in knowing the information. "

Procurement law does not prohibit providing information on procurement documents, however, it does not expressly provide the obligation to give the information, or it does not establish what kind of information may or may not be provided.

The Decision no. 9 of 17.01.2008, approving the Regulation on the establishment and keeping the public procurement dossier, states:

"Unless the court requires, the contracting authority shall not disclose information regarding qualification data of bidders, bid price or the foundation for price setting, brief description of other essential conditions of each tender and procurement contract, the summary of evaluation and comparison of requests for pricing (taking into account the application of the preferential margin), summary of undertakings that have sought explanations concerning the preselection documentation or the tender documents, the summary of responses to them, as well as brief presentation of any amendments to these documents, if their disclosure is contrary to the law and state interests, brings prejudices to the legitimate commercial interests of the parties or prevents fair competition (pt. 12)."

This provision is used more often by the contracting authorities to justify the denial of access to information. However, other normative acts in the procurement domain contain different provisions, as for example GD no. 763, which states in section. 26.1 Annex 1, the following:

"Information related to the examination, evaluation, comparison and post-qualification of offers will not be disclosed to tenderers or other persons that are not officially involved in the process, prior to the registration of contract as established."

From the above provisions results that this type of information can be provided to persons not being involved in the public procurement process after the contract registration.

2. Confusion in terms between “notice of intent” and “public procurement plan”

Thus, the Law 96 on public procurement states the following:

"(1) The contracting authority is obliged to publish in the Public Procurement Bulletin a procurement notice of intent for all planned acquisitions. In case of public procurement set out in Article 2 para. (3), notice of intent will be also published in the "Official Journal of the European Community".

(2) The notice of intent will be published separately for goods, works and services no later than 30 calendar days from the date of approval of the budget of the contracting authority concerned.

(3) The notice of intent covering all public contracts is expected to be awarded by the end of the budget year. For procurement contracts whose estimated value for goods and services is less than 200 000 lei, and works more than 1 million lei publication of procurement notice of intent is not binding".⁵

From the paragraph 3, in particular, we can infer, that the legislature has used the term "notice of intent" instead of "procurement plan". In other normative acts concerning public procurement we can still find the notion of "procurement plan". This confusion leads to non-planning or incorrect planning of procurement by the contracting authorities.

The following functional drawbacks can be mentioned:

1. Poor monitoring of the implementation of legislation

Thus, cases of non-planning or inadequate planning of procurement remain unnoticed and unpunished, even if the Offences Code provides for penalties in this regard.

Likewise, cases of procurement splitting still persist, despite sanctions imposed by the Code of Administrative Offences. These cases must be monitored with greater attention by the Public Procurement Agency, which records procurement contracts.

The completion and keeping of procurement case is another aspect that was observed during

⁵ Law no. 96 regarding public procurement from 13.04.2007, <http://lex.justice.md/md/324662/>

monitoring as being problematic. The signing of the minutes of the invitation to initial tender, documents missing from the set of procurement files are among the problems frequently encountered during monitoring.

One of the most important issues concerns the actual implementation of contracts. Here it seems that besides the self-interest of the contracting authority and good faith of the economic agent, there are no effective levers to monitor the achievement of contractual provisions.⁶

Thus, we are witnessing various cases when contracts are implemented differently from what is provided in the contract, the works are not completed or not implemented at all.

Performance guarantee is not required in all cases provided by law. Thus, in contracts with high value, contract performance bond is missing, since, it is an important remedy until the judicial solution, to ensure performance of the contract or compensate for certain losses in the event of non-performance.

2. Other breaches in the process of public procurement

We mention some violations that occur despite the existence of adequate legal provisions.

One of these is the development of technical specifications either too vague or too specific, which may limit competition, or induce bidders in error.

There is also biased application of certain legal provisions in the evaluation of bids. Different participants in the procurement procedure apply the same legal provision differently, or the same provision is applied differently to the same undertaking in two separate procedures.

⁶ Except the Audit of the Court of Accounts, which still cannot cover all country contracting authorities

Chapter 1. Transparency and public procurement planning

The organizations involved in the project have assessed the transparency of contracting authorities monitored in public procurement planning. One of the elements is the transparency of procurement, and it relates directly to planning and publication of information on planning. It must be noted that the current regulatory framework is somewhat ambiguous with respect to procurement planning. The Law no. 96 on public procurement⁷ does not mention specifically procurement plans, their compulsory character, and specific means of their drafting and publication. Instead, art. 19 reads:

"(1) The contracting authority is obliged to publish in the Public Procurement Bulletin a procurement notice of intent for all planned acquisitions. In case of public procurement set out in Article 2 para. (3), notice of intent will be also published in the "Official Journal of the European Community".

(2) The notice of intent will be published separately for goods, works and services no later than 30 calendar days from the date of approval of the budget of the contracting authority concerned.

(3) The notice of intent covering all public contracts is expected to be awarded by the end of the budget year. For procurement contracts whose estimated value for goods and services is less than 200 000 lei, and works more than 1 million lei publication of the notice of intent is not binding."⁸

Thus, we see that the law is somewhat confusing defining the notions of "notice of intent" and "procurement plan". However, the Regulation on the activity of the public procurement working group⁹ states that among working group functions is also "the elaboration of annual and quarterly plans for making procurements".

However, the Law 96 states that procurement planning is an important step, noting that the purchase agreement is concluded pursuant to the procurement plan.¹⁰ It seems, however, that, although it is a precondition for the conclusion of contracts, no one verifies the presence of these

⁷ Law nr. 96 on public procurement 13.04.2007, <http://lex.justice.md/md/324662/>

⁸ *Ibidem*

⁹ Approved by GD 1380 din 10.12.2007

¹⁰ Para. (1), art. 67, Law no. 96 on public procurement 13.04.2007, <http://lex.justice.md/md/324662/>

procurement plans, these are being developed and published at the discretion of the contracting authority.

Following the evaluation we found that **14 local authorities (out of 20)**¹¹ developed procurement plans. Only **8 of them have published the plan on the website.**

At the central level 6 (out of 10) authorities that were monitored published procurement plan, and **7 in total** had such a plan.

Organizations performing monitoring activities have informed **15 authorities in total (7 local and 8 central)** on the need for elaboration and publication of the procurement plan. Following the communication activities, 4 authorities (**1 local and 3 central**) developed and published procurement plans on their web pages.

Often impossibility to publish procurement plans is justified by the lack of the website of the contracting authority. We examined this matter and found that in total 26 of the 30 authorities monitored (10 central and 16 local) have web pages. However, it is already a proven fact that it facilitates transparency in procurement planning. However, reviewing the existing web pages, we noticed that not all of them have a dedicated section devoted to procurement. Thus, only 15 of 26 web pages have a section dedicated to public procurement (8 central and 7 local). A deficiency in this regard is found in the regulatory framework, as GD on the official pages of public administration in internet¹² does not foresee the obligatory character of such a section.

Another aspect of monitoring targeted the presence of announced acquisition in the procurement plan of concerned authority. Thus, we found that, in large part, purchases were included in the authority's procurement plan, obviously, if the authority had a Procurement Plan. However, attempts were made to assess the relevance of procurement carried out in the context of sector or village development, where appropriate. Locally, most acquisitions were considered relevant by the organizations involved in monitoring, relying on existing strategic documents, or, in the absence thereof, the personal subjective assessment of the monitor. However, in some cases,

¹¹ Please see the Annex 1 for details

¹² GD no. 188, from 03.04.2012, <http://lex.justice.md/md/342699/>

purchases were not considered relevant to the locality or sector. One of such examples is the case described in journalistic investigation at the end of this report.

Chapter 2. Conduct of public procurement procedures

Planning and conducting meetings for opening tenders

The organizations that conducted monitoring of public procurement procedures attended meetings for opening the tenders, in cases of public auctions. This allowed them to assess the extent to which these meetings are conducted in accordance with the legal framework. We noted in this regard that the tender opening meetings are conducted largely according to the law. Several cases of postponing opening session (multiple postponements) have raised questions, particularly given that the contracting authority could not provide explanation justifying the delay. Finally, at the last meeting procurement working group's president warned the bidders to be more responsible in submitting their offers, making the false impression that they were to blame for the postponement of the meeting several times. The question arises how could the working group members know that the documents were not dully submitted, considering the fact that the envelope is opened only at the opening session.

Completion and keeping of tender documents

Another aspect that has been reported both by the monitors in the regions, as well as from the center was not filling or improper completion of the minutes of the tender opening session. They have observed cases when such documents were signed "in blank"¹³, or when the names of companies appearing in the opening minutes did not correspond to the minutes of the tender evaluation (i.e. list of companies that have picked the package of documents or those who submitted bids until the deadline specified).

There were reports that the information presented on web page www.tender.gov.md was different from the one shown in the records of contracts by contracting authorities. More specifically, certain contracts kept in the registry did not appear on the Agency web page, and vice versa. In other cases, it was observed that on date of monitoring, procurement contract was not submitted in the Register of contracts, leaving a blank spot, and there were made some notes in pencil. This was observed in Colonita Hall, although it is more than half a year that public procurement took place.

¹³ Noted la Colonita, for example

Cases of careless storage of procurement files were also observed. For example, the organization that monitors procurement in Gratiesti Mayoralty told us the following:

*"Village Mayoralty Gratiesti in person of the new mayor, Victor Mardare was very responsive to our requests, but, unfortunately, there were not found processes or minutes of the working group and of the first procurement. Secretary of the Commission for organization and conduct of public procurement, Elena Lungu motivated their absence, in that the ex-mayor would have taken these. At the moment in the town mayoralty accounting department were hired new people struggling to bring the accounting documents of mayoralty in order."*¹⁴

However, some procurement dossiers missed documents. For example, Colonita mayoralty lacked certain acts for procurement, which was made in November 2014. Subsequently, these acts have been added, dating 15.11.2015 (!), in other words being dated a year after the procedure ended.

The content of tender documentation

In terms of the content of the tender invitations, there were reported no frequent deviations from the legal requirements, the invitations contained all necessary items. The deadline for submission of tender offers during monitoring period was within legal limits, while being appreciated as sufficient by monitors, taking into account their procurement specifics. However, we should mention that it was very rare that the deadline for submission of bids exceeded the minimum established by law. Additionally, even in cases of quite complex procurements, the timing constituted the minimum prescribed by law (15 days for open tenders, sometimes reduced to 10 days).¹⁵

However, some specifications in the tender invitation have raised questions. For example, there were cases requiring offer accommodation services, a number of nights during the year, and no maximum hotel capacity was specified, or how many guests can stay in a certain period. Or, in other case, the purchase of playground complexes for kids, narrowly specified certain aspects of the equipment, others, instead being insufficiently specific, allowing the submission of inappropriate tender documentation, which, may serve as a motive for excluding of participants

¹⁴ Monitoring report of the organization „Generația Mea”, for the period July-December 2015.

¹⁵ For example: 203/15 PA RC Orhei /local public roads rehabilitation works/Period: 15 days; 17 PDA Centre/Design works for the Surgical Block at Nisporeni Rayon Hospital/Period: 15 days; 45260000-7 LP Colonita Mayoralty/Capital refurbishment/Period: 15 days; 1974/14 PA Cimislia Mayoralty/Design works/Period: 10 days

without sufficient reasons.¹⁶

Selection of the procurement procedure

In a number of cases there were observed instances of procurement splitting. Thus, less transparent procedures were selected, such as RPNP, for example, which does not require publication of a notice in the Public Procurement Bulletin, instead of other procedures, such as RP or PA. In this regard, several acquisitions are organized for the same type of goods / services / works in a very short period of time. They may not always be justified by "lack of time" of necessity, or "new demands".

For example, Cahul Mayorality used multiple RPNP procedures instead of organizing RP, and in other cases, avoiding PA, and held several RPs for the same type of object (examples of such procedures can be found in the Annex 2).

A journalistic investigation conducted by the Center for Investigative Journalism revealed a scheme even more "interesting" to avoid public auction. In this case, Taraclia District Council has decided to allocate 60,000 lei to district schools for the purchase of heat generators for gyms. The purchase was not centralized, and schools have made these purchases individually. The most revealing is that, although the law provides that the RP procedure is obligatory for procurements starting with 50,000 lei (excluding VAT), these purchases were not made by RPNP application, but through the conclusion of low value contracts. This has happened while the Regulation for low value public procurement¹⁷ stipulates that:

"If at the time of signing the low value procurement contracts the estimated value, unpredictably, exceeds without value added tax, 40,000 lei for goods and services and 50,000 lei for works, than the contracting authority will waive the contract and apply one of procurement procedures established by the legislation on public procurement incidence."

Likewise, where the purchase is made for the amount situated at the limit between the two types of procedures (50,000 lei for goods and services and 100,000 works - the upper limit for RPNP, or 200,000 for goods and services and 1,000,000 for works - the upper limit for RP¹⁸), and the contract is subsequently amended to increase the amount by signing an additional agreement, it

¹⁶ Examples Chisinau Hall, 15/01902 PA, procurement of hotel services; 15/01777 PA, Directorate General for Housing, play equipment for children

¹⁷ P.11, GD no. 148, from 14.02.2008

¹⁸ Amounts indicated exclude VAT

raises questions about the fairness of the election process from the start.

Bids assessment

Although, mostly, we did not notice great deficiencies on the bid evaluation stage, or we did not find "systemic" problems in this regard, however, a number of cases deserve attention in this report.

One of these cases refer to uneven or discriminatory application of qualification criteria. For example, an entrepreneur participates in an open tender, which is being canceled after public authority decision and the procedure is carried out repeatedly. During the first procedure there was a bidding offer, however the contractor was not selected as the winner, because it was not the cheapest offer. The Contractor shall submit the file in the repeated procurement process, and this time, although the offer is the cheapest, it is excluded from the competition on the grounds that he did not submit a compliance document and, thus, does not meet qualification criteria. Likewise, during the first procedure, the contractor submitted exactly the same set of documents, and they were sufficient.

Another violation was noticed in Orhei, highlighted by Socio-Ecological NGO "Civis", which found economic agents ignoring to submit licenses for services available to them, when they were contracted. At the same time, the information obtained by the Socio-Ecological NGO "CIVIS" from the Chamber of Licensing refers to the fact that a good part of economic agents working with the Division of Education of the Rayon Council of Orhei, do not have license for services rendered. It also mentions that Orhei Rayon Hospital purchases pharmaceuticals from Songorov V Ltd. firm, located in Gagauzia, Copceac, Lenin str., 18, which currently according to the Chamber of Licensing has been liquidated.

Chapter 3. Execution of public procurement contracts

One of the stages of procurement process, that is being checked/evaluated the least, is the actual implementation of the contract. Thus, the campaign aims to monitor and evaluate contracts in view of their purpose. For now, most contracts assessed do not allow us to analyze their implementation, because they are relatively recent contracts, dated with 2015. However, in order not to waste time in this regard there were also selected some older contracts (2013, 2014), especially those which were socially important, to establish what were the actual results of public money use. Thus, we noticed several cases where even though the acquisition was completed with the contract signed, works or services were not performed in accordance to the contract, and the contracting authority has not made sufficient effort to ensure the compliance.

One of these cases was reported by CA "Concordia". Thus, in Inesti village a contract has been awarded to finilize the building of Family Physicians Office (FMO) in the village. The value of works constituted 1,921,358.4 lei. The deadline for completion of the works was 11 months, while the contract was signed in 2011. By 2015 the works were not finished and FMO was not operational. Although the act of final acceptance of the work is missing, the performance bond had already been returned to the contractor. While answering to the questions from the representatives of CA "Concordia", the local government said that the entreprenuer was liquidated. But at the insistence of the Association, economic operator has been found, and in a joint meeting with representatives of CA, of association and the trader there was established a new schedulle for finishing works. Currently, the works were completed, and the act of final acceptance of the works awaits to be signed by the construction inspection.

Another case, at Colonita shows that contracts may be performed with deviations from their provisions. Thus, in case of a contract for new seats, works have been carried out differently than in the submitted design. Each seat did not have 2 lateral sides, as was indicated in the design, but only one side being joined to each other in rows. Thus, technologically less material has been used which allowed savings of approx. 30% of the contracted money. Note that subsequently there was concluded an additional contract on the delivery of a further 38 seats in the amount of 58,900 lei, the original amount of the contract being 238 700 lei. In fact, in this case an auction was avoided,

and "borderline" RP was preferred, supplemented by an additional agreement to the contract.¹⁹

Another shortcoming observed in several procurement procedures is that CA don't require performance bond, even for significant contracts. For example, RDA Center has not requested the performance guarantee for a contract with total value of 17.1 million lei.²⁰ That happened while the Public Procurement Law provides that "in case of supply contract with an estimated value of less than 200 000 lei and works with an estimated value of less than 1 000 000 lei, contracting authority is entitled not to require bidders to submit performance bond to the contract"²¹, which means that in case of contracts exceeding these thresholds, the performance guarantee should be required unconditionally.

Another case, about which unfortunately few details are known because we were denied access to information, refers to the implementation of the works contract for the modernization of the road crossing/railway points and the installation of traffic barriers without service personnel, concluded by the SE "Calea Ferata". The contract has a total value of 67,536,846.52 lei and requires construction of automated barriers in 20 points.²² The contract value seems too high for its aims. We intended to check if the contract was at least executed, as the contract term expired on November 5, 2015, but we could not get a list of 20 points, obtaining the information from the officials of SE "Calea Ferata" that it is a "problematic" contract and that they will not provide us with data.

¹⁹ 39000000-2, RP, Colonita, Blasmobil LLC, Delivery and installment of seats at Creative Recreational Centre

²⁰ 15/01668, PA, RDA Center, Construction works of the sewerage system in villages Negrea, Balceaa, Hincesti rayon, value of contract 17100000 lei

²¹ Art. 42 (11), Law no. 96 from 13.04.2007

²² PA 1689/14

Capitolul 4. Investigații jurnalistice

Conclusions and Recommendations

The first stage of monitoring of the public procurement allows us to make the following conclusions:

1. Largely, the legislation on public procurement is good, but there still some weaknesses.

Neither the new law that will come into effect from 5.1.2016 does resolve these deficiencies. Among those, seen at this stage of monitoring, the following drawbacks may be mentioned:

- Lack of clarity regarding the public nature of the information contained in the procurement dossier;
- Confusion between the terms "notice of intent" and "procurement plan";
- Web-sites of public authorities should not necessarily contain the Procurement section.

1. Monitoring compliance with public procurement legislation is imperfect.

Agency admits that during the time of publication of invitations for participation or registration of procurement contracts, there are cases of inadequate preparation of technical specifications, procurement splitting, and the existence of substantial contracts that do not contain performance guarantee.²³

On the other hand, flagrant violation of legal provisions supported by the public bodies, that should not approve such contracts breaches.

1. Reduced responsibility or hidden interests of contracting authority have a negative impact on the use of public money

In this regard, we mention that completion and keeping of procurement dossier is another aspect that was observed during monitoring as problematic. The signing of the minutes of invitation to tender "in blank", documents missing from the procurement dossier are among the problems frequently encountered during monitoring.

²³ The case described in journalistic investigation regarding Taraclia schools

One of the most important concerns relates to the actual implementation of the procurement contract. Here it seems that besides self-interest of the contracting authority and good faith of the economic entrepreneur, there are no effective levers to monitor the achievement of contractual provisions. Thus, we witness cases when contracts are implemented in a different fashion from what is provided in the contract, the works are not completed or not implemented at all.

Biased and / or selective application of qualification criteria was noticed in some of the monitored cases.

Recommendations

Proceeding from the above, the authors propose, at this stage, the following recommendations:

Legislative or regulatory:

- Amendment of the new law on public procurement so that it could provide information on procurement dossiers, which can be offered on request to any person, and information that can be classified as confidential or commercial secret and can only be revealed on the basis of court decision;
- Clarification of the terms "notice of intent" and "procurement plan" and the introduction of a separate article in the law on public procurement on the "procurement plan";
- Amendment the GD no. 188 of 03.04.2012 on the official internet websites of public administration, making mandatory the introduction of procurement section on the websites of public authorities.

Functional:

- PAA need to check more thoroughly invitations and contracts submitted for registration to identify and prevent or, where applicable, punish offenders establishing unsuitable qualification criteria, cases of procurement splitting or non-application of the performance guarantee;

- PAA need to verify the preparation and publication of procurement plans of contracting authorities, and to avoid the registration of contracts that are not completed under the plan, as required by law, and to impose sanctions where appropriate.
- Treasury Regional Offices must not allow the registration of contracts of small value above the ceiling set for them by law;
- To establish an effective mechanism for monitoring the implementation of public procurement;

Annex 1

Authorities monitored	Web page	Proc. section	Procur. plan elabor.	PA publish.	Changes as a result of project intervent
<i>Central</i>					
National Bank of Moldova	Yes	Yes	Yes	No	Publish
State Chancellery	Yes	Yes	Yes	No	Publish
Land Relations and Cadaster Agency	Yes	Yes	Yes	Yes	
Ministry of Internal Affairs	Yes	Yes	Yes	Yes	
Division for Capital Construction	Yes	Yes	Yes	Yes	
General Division for Housing	Yes	Yes	Yes	No	No
Ministry of Health	Yes	No	No	No	No
Chişinău Mayoralty	Yes	Yes	No	No	No
Agency for Drugs and Medical Devices	Yes	Yes	Yes	No	No
National Centre for Health Insurance	Yes	Yes	Yes	Yes	Yes
<i>Local</i>					
Regional Development Agency Centre	Yes	Yes	Yes	Yes	
Ialoveni Rayon Council	Yes	Yes	Yes	No	No
Cahul Mayoralty	Yes	No	Yes	No	No
Pelinei Mayoralty	Yes	No	Yes	No	No
Cimislia Mayoralty	Yes	Yes	Yes	Yes	
Cimislia Rayon Council	Yes	Yes	Yes	Yes	
Colonita Mayoralty	Yes	Yes	No	No	No
Gratiesti Mayoralty	No	No	No	No	No
Division for Education and Sports Briceni	No	No	Yes	No	Elabor
Hlina Mayoralty	No	No	No	No	No
Rezina Rayon Council	Yes	No	No	No	No
Rezina Mayoralty	Yes	No	No	No	No
Riscani Rayonal Hospital	Yes	No	No	No	No
Riscani Mayoralty	Yes	Yes	Yes	No	No
Inesti Mayoralty	Yes	Yes	Yes	Yes	
Telenesti Rayon Council	Yes	No	Yes	No	No
Orhei Rayon Council	Yes	No	Yes	Yes	
Braviceni Mayoralty	Yes	No	Yes	Yes	
Balti Mayoralty	Yes	Yes	Yes	Yes	Yes
Balti Psychiatric Hospital	Yes	Yes	Yes	Yes	Yes

Annex 2

Procurement splitting or inappropriate procedures selected by Cahul Mayoralty

No. of contr	Date of concluding contr	Procurement object	Contract Amount	Type of Procedure
22	26.02.2015	Diplomas	6000	s/v ²⁴
58	26.05.2015	Diplomas and clothing	8385	s/v
75	26.06.2015	Diplomas and trophies	46330	s/v
		Total	60715	s/v

Services (Festival “Nufărul Alb”)

57	26.05.2015	Services for scene installation	7725	s/v
71	22.06.2015	Services for scene installation	47583	s/v
		Total	55308	

Building materials

15	07.01.2015	Paints and accessories	18694	s/v
32	24.03.2015	Paints and accessories	18100	s/v
42	30.04.2015	Road paint	18560	s/v
84	29.06.2015	Road paint	7424	s/v
		Total	62778	m/v
28	12.03.2015	Lime	48000	m/v

²⁴ s/v – “small value” procurement, a procedure which is not regulated by the public procurement law and contracts are not registered by the Public Procurement Agency.