PUBLIC MONEY IS MY MONEY TOO!

Public Procurement Monitoring Report (No.3)

Chişinău 2016

AGER

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The report was developed within the Project "Public Money Is My Money Too!", implemented by the Association for Efficient and Responsible Governance (AGER) and the Centre for Journalistic Investigations, with the financial support of the European Union and of the National Endowment for Democracy.

Contents

Abbreviations

PPA – Public Procurement Agency
CA – Contracting authority
RDA – Regional Development Agency
AGER – Association for Efficient and Responsible Governance
PA – Public association
CEC – Central Electoral Commission
SRC – State Registration Chamber
CMC – Chișinău Municipal Council
RB – Request for bids
RBNP – Request for bids with no publication
DC – District council
GPI – General Police Inspectorate
PMSI – Public Medical-Sanitary Institution
IT – Information Technologies
ME – Municipal enterprise
PA – Public auction
MIA – Ministry of Internal Affairs
MLSPF – Ministry of Labour, Social Protection and Family
Mln – millions
MITC – Ministry of Information Technologies and Communication
FDO – Family Doctors Office
NGO – Non-governmental organisation
SSP – Single source procurement
PCRM – Party of Communists of the Republic of Moldova
DPM – Democratic Party of Moldova
GDP – Gross Domestic Product
LP – Liberal Party
LDPM – Liberal-Democratic Party of Moldova
EPPM – European People's Party of Moldova
PNPP – "Partidul Nostru" Political Party
PSRM – Party of Socialists of the Republic of Moldova
JSC – Joint Stock Company
TC – Trading company
ISS – Information and Security Service
LLC – Limited Liability Company
EU – European Union
GCS – General Central Store
ATU – Autonomous Territorial Unit

Introduction

The Republic of Moldova is one of the European leaders in terms of corruption, being ranked 103rd out of the 168 countries from the perspective of the Corruption Perception Index 2015, according to Transparency International.[1] Fighting against corruption still remains the major recommendation made by development partners and international organisations. At the same time, the phenomenon of corruption is present everywhere in Moldova, having affected the whole society. It is difficult to identify what field is the most affected by corruption, either justice, or healthcare, or education. Nevertheless, one of the spheres where corruption is no doubts present, having a considerable impact on the business climate and competition, is public procurements.

Throughout the past years, the system of public procurements in the Republic of Moldova was subject to a range of changes, most of them having a positive impact. The Public Procurement Agency was separated from the Agency for Material Resources, Public Procurement and Humanitarian Aid. In 2010, the EU experts evaluated the national procurement process and formulated a series of recommendations for the national authorities from the perspective of the EU directives.[2] More recently, a new Public Procurement Law was passed and it entered into force on 01.05.2016. It provides, inter alia, for the establishment of a distinct entity in charge of handling the complaints, a measure intended to eliminate the conflict of interest that exists now. At the same time, despite the legislative amendments, there are still a number of deficiencies. In 2014, the national experts assessed the way how the legislation in the field of procurements is enforced and identified the fields with a high risk of fraud.

Here are the most frequent of them:

- Occasional planning of the procurement process and making procurements that are not compliant with the development strategy of the sector or of the community;
- Opting for the less transparent procurement procedures, either through procurement splitting, or through the subsequent conclusion of additional contracts with the purpose to increase the value of the procurement;
- Problems related to setting the time limit for bid submission and to the establishment of the qualification criteria;

[1] http://www.transparency.org/cpi2015/#map-container
[2] http://www.ncu.moldova.md/public/files/publication/armonizare/SLAG_PP_RO.pdf

- Publication of inaccurate information about contract award and the results of the procurements;
- Discriminatory enforcement of legal provisions;
- Frequent cases of failure to declare the conflict of interest;
- Modification of contract clauses;
- Unsatisfactory compliance with contract provisions and failure to penalize such a phenomenon.[3]

In 2013, the Parliament adopted a number of anti-corruption measures, including the increase of the amount of penalties, the extended confiscation. In addition to it, contraventions related to the field of procurements, such as procurement splitting, impeding the free access of the competitors to the procurement process, etc. were included in the Code of Contraventions. The penalties established for the newly-established infringements are too mild. On the other side, none public servant was condemned for contraventions in the field of procurements so far. At the same time, more and more cases of bad execution of procurement contracts and disclosure of procurement fraud schemes are disseminated by the mass-media.

The public responsibility of the contracting authorities is low, while the transparency of the procurement process – minimal. As a result, the civil society has limited levers for monitoring of the way how public money is spent.

Goal of the project

The general goal of the project consists in enhancing the capacity of the civil society to undertake the monitoring of the way how public money is used, with a special focus on public procurements.

The project has two basic components. The first component concerns the monitoring of the procurement procedures in 30 contracting authorities (including 10 – in Chişinău and other 20 – at the local level); the second – the conduct of journalistic investigations about the cases of abuse or fraud detected in the process of monitoring. The 10 contracting authorities from Chişinău are under the monitoring of AGER experts, and small grants were awarded, as a result of a public competition, to 10 local non-governmental organisations for the monitoring of the other 20 contracting authorities at the local level. The 10 non-governmental organisations and the 20 contracting authorities subject to monitoring are, as follows:

1. Association of Business Women PA, town of Bălți – the Psychiatric Hospital of Bălți, local government of Bălți municipality;

[3] http://www.expert-grup.org/ro/biblioteca/item/969-achizitii-publice-moldova

2. Regional Centre for Social-Economic Development PA, town of Cahul – local government of the commune of Pelinei, district of Cahul, local government of Cahul;
3. Centre for International Communication and Human Rights PA, town of Ialoveni – District Council of Ialoveni, Centre Regional Development Agency (RDA);
4. Civis Social-Ecological Public Association, village of Brăviceni, district of Orhei – local government of Mitoc, village of Mitoc, district of Orhei; District Council of Orhei; local government of Brăviceni, village of Brăviceni, district of Orhei;
5. Concordia PA, village of Inești, district of Telenești – Local Council of Inești, village of Inești, district of Telenești; District Council of Telenești;
6. "Mihai Eminescu" Cultural Foundation, in partnership with "Gazeta de Sud" newspaper, town of Cimișlia – local government of Cimișlia, District Council of Cimișlia;
7. "Generația Mea" PA, in partnership with the information website colonita.eu, commune of Grătiești – local government of Colonița, village of Colonița, Chișinău municipality; local government of Grătiești, commune of Grătiești, Chișinău municipality;
8. Habitat Regional Development Agency PA, town of Rezina – local government of Rezina, District Council of Rezina;
9. Hlina Victorion PA, village of Hlina, district of Briceni – Briceni Directorate for Education, Youth and Sports, local government of Hlina, village of Hlina, district of Briceni;
10. Localinvest non-commercial organisation, town of Rîșcani – local government of Rîșcani, District Hospital of Rîșcani.

At the central level, the procurement procedures conducted by the following 10 contracting authorities are subject to monitoring:

1. Ministry of Health;
2. Ministry of Internal Affairs;
3. State Chancellery;
4. Agency for Land Relations and Cadastre;
5. Local government of Chișinău;
6. Directorate for Capital Constructions;
7. General Directorate for Housing;
8. National Bank of Moldova;
9. Agency of Medicines and Medical Devices;

10. National Health Insurance Company.

In addition to the above-mentioned, the project's partners selectively monitor certain contracts within other contracting authorities that are not mentioned in this list, depending on the social-economic importance of the respective field or contract.

Executive Summary

During the period May-September 2016, the project's partner organisations conducted the monitoring of a total number of 162 public procurement procedures, including: open auctions - 71, requests for bids - 71, requests for bids with no publication - 9, single-source procurements - 11[4]. This number is smaller than planned. The basic reason is the budget austerity that the Republic of Moldova faced over the past year, that has considerably limited the possibilities of the contracting authorities to conduct procurements. Another reason consists in the limitation by certain public authorities of the access to public procurement information. In such cases, a legal action was taken. In one of the cases, a settlement agreement was concluded with the contracting authority, and the access to the requested files was thus allowed. But such an agreement was reached one year after the start of the proceedings. In the rest of the cases, we unfortunately remark a procrastination of the legal proceedings that seems to be intentional.

Despite the difficulties, the organisations involved in the project succeeded to analyse a sufficient number of files for fact-finding about the problematic of procurements in Moldova.

The main deficiencies of the procurement procedures may be classified into two large categories. The first category includes the legislatives drawbacks, the second - the functional ones. But even if the legislation is imperfect, the procurement procedures may be conducted in an efficient way, provided that the contracting authorities display goodwill. But, unfortunately, certain contracting authorities explore the drawbacks for their own interest, not for the public benefit.

<u>The following legislative drawbacks may be mentioned:</u>

1. **The ambiguous regulations concerning the access to the information about public procurements.**

This deficiency was thoroughly described in the previous monitoring report. It is an essential deficiency that impedes the good implementation of the project and, in particular, threatens the citizen's right of access to public information.

It is worth mentioning that the Ministry of Finance has initiated a revision of the new Law on public procurements, aiming at its adjustment to the requirements of the Association Agreement. In addition

[4] The new law on public procurements, Law no. 131, does not provide anymore for the single source procurement procedure as such, but it includes it among the negotiated procedures. In the context of the monitoring exercise, we will use the name of single source procurement.

to the amendment of the provisions related to the Agency for Dispute Resolution, the draft law also regulates the provision of public access to procurement reports. The draft was endorsed by the Government on the 27th of April 2016, and was adopted in final reading by the Parliament on the 23rd of September 2016[5]. Although the report itself is not always sufficient to assess the correctness of the conduct of a procurement procedure, this proposal is a step towards the procurement transparentisation and we look forwards to its publication in the Official Journal in order to see what version was approved in final reading.

2. **The possibility to conclude contracts for the total amount of works/services, with no financial guarantee**

We identified a lot of cases, when contracts were concluded for the total amount of works, while the financial coverage was sufficient for not more than 10-15% of them. Consequently, the entrepreneur executes the share of works for which the payment is done, and the rest of works are to be performed when financial resources are available. But meanwhile the quality/ topicality or even the relevance of the executed works are lost, and the money is wasted. With regard to this issue, Article 72 (1) of Law no. 131 provides that "The contract for the procurement of goods, works and services whose period of implementation exceeds one year may be signed for the full procurement, but its execution shall be done within the limits of the annual allocations allotted for such purposes and specified yearly in the contract". Although, from the formal viewpoint, this provision is appropriate and it contributes to the limitation of procurement splitting, its application raises some problems from the practical viewpoint and requires a more detailed regulation

3. **The new legal provisions need to be specified appropriately in the documents subordinated to the law**

In this context, we refer in particular to the clause that we appreciated as very good and that provides for the possibility of participation of civil society representatives to the procurement working-group. According to the provisions of Article 13 of Law no. 131 of 03.07.2016 and paragraph 5 of the Regulations on the activities of the procurement working-groups, the contracting authority shall mandatorily include the civil society representatives in the working-group, if a written request was submitted two days before the time limit for bid submission. At the same time, the Regulations stipulate that: The request specified in paragraph 5 *shall include at least*: the name of the organisation, the name and the family name of its representative, a copy of the document confirming the mandate or

[5] http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3238/language/ro-RO/Default.aspx

the name and the family name of the natural person; the legal and postal address or the home address; the contact information, including the email; the procurement procedure to whose working-group is requested the acceptance." Although this provision does not raise questions at first glance, in our monitoring practice we faced a case that suggested to us that the syntagma "at least" is not the most appropriate, as the contracting authority may take advantage of it for requesting additional documents, delaying thus the acceptance of the proposed representative to the working-group, and sometimes it becomes even too late to do it.

4. **Unclarity concerning certain provisions related to the conflict of interest**

Law no. 131 on public procurements contains an article about the avoidance of the conflict of interest, what is very salutary. On the other hand, paragraph (2) of the respective article provides that: The natural person or the legal entity that took part in developing the tender documentation, as an economic operator, has the right to be a bidder, an associate bidder or a subcontractor exclusively if their involvement in drafting the tender documentation is not likely to distort the competition. This provision is very dangerous, while the syntagma *"exclusively if their involvement in drafting the tender documentation is not likely to distort the competition"* may be interpreted discretionarily, and by whom? Who shall establish if such an "involvement" distorts or not the competition? In our opinion, the individual or the company that developed the tender documentation may not take part in the respective procurement.

<u>The functional drawbacks include:</u>

1. **The irresponsible attitude of the working-group towards the procurement documentation**

A number of cases of inaccurate writing and/or storage of the procurement dossiers were found out during the period under consideration. They consist in signing "in blank" the tender opening minutes or drafting them inaccurately; signing of the tender opening minutes by working-group members who have not attended the meeting; inaccuracy in terms of attaching the declarations of impartiality to the file; compulsory documents lack in the dossier and they are submitted only after notification by the monitors; postponing the visits of the observers for the reason that the folder is not "bound" yet

2. **The shortage of qualified staff**

The shortage of qualified staff in developing the tender book/technical specifications leads to multiple repetitions of the procedures, because of the inaccurate formulation of the requirements. This deficiency is the reason for frequent amendments to the contracts or even for their cancellation by the

business entities, after discovering on-site that the specifications of the tender book do not comply with the reality.

3. **The deficient supervision on the compliance with the legislation**

The cases of unplanned or inappropriately planned procurements still remain unnoticed and unpunished, despite the fact that the Code of Contraventions provides for penalties in such situations. As a result of the conjugated insistence of the project's partners, a number of contracting authorities have developed procurement plans for the year 2016, but they make up a small share in the thousands of contracting authorities of the country.

Procurement splitting, that needs to be more carefully monitored by the Public Procurement Agency in charge of registering the procurement contracts, still persist despite the penalties established by the Code of Contraventions.

One of the most important issues concerns the implementation of the procurement contract itself. From this perspective, it seems that, except the self-interest of the contracting authority and the goodwill of the business entity, there are no efficient levers for the monitoring of the execution of contract provisions.[6] As a result, there are cases when the practical implementation of the contracts is different from the contract's provisions, the works are not completed or not executed at all.

The good performance guarantee is another problematic aspect. During the period under consideration, we identified a much larger number of contracts that do not provide for a good performance guarantee, although, according to the law, such a provision is mandatory for such contracts. Thus, high value contracts do not provide for a good performance guarantee, although it is an important remedy, before the judicial solution, for securing the execution of the contract or for compensation of certain losses, in case of failure to execute the contract. The Public Procurement Agency has an important role to play from this perspective, rejecting the registration of such contracts, but it is not obvious why it does not explore this possibility.

4. **Other infringements committed during the procurement procedures**

We specify below the infringements that are committed despite the existence of sufficient legal provisions.

One of them consists in writing either too vague, or too specific technical specifications, what may restrict the competition or mislead the participants in the tender.

[6] Except the audit by the Court of Accounts that cannot cover all the contracting authorities from the country.

The tendentious enforcement of certain legal provisions during the assessment of bids. The same legal provision is applied differently in relation to different participants in the procurement procedure or the same provision is applied differently in relation to the same business entity within two distinct procedures.

Chapter 1. Legal confusions

The period under consideration was characterised by an intense activity of implementation of the recently adopted regulatory framework.

The adopted legislative and regulatory frameworks are to a large extent good, nevertheless, during the monitoring process, we noticed certain gaps that will be specified below.

The new Law no. 131 on public procurements contains an article on the avoidance of the conflict of interest that is in fact very salutary. On the other hand, paragraph (2) of the respective article provides that: The natural person or the legal entity that took part in developing the tender documentation, as an economic operator, has the right to be a bidder, an associate bidder or a subcontractor exclusively if their involvement in drafting the tender documentation is not likely to distort the competition. This provision is very dangerous, while the syntagma *"exclusively if their involvement in drafting the tender documentation is not likely to distort the competition"* may be interpreted discretionarily, and by whom? Who shall establish if such an "involvement" distorts or not the competition? In our opinion, the individual or the company that developed the tender documentation may not take part in the respective procurement.

A case of "conflict of interest" occurred in our view in Bălți, where, according to our colleagues from the Association of Business Women, *one employee of the municipal enterprise "Bălți Directorate for Road Repairs and Construction" develops all the technical documentation for public procurement competitions launched by the local government for the repair of roads in Bălți municipality. Thus, the respective enterprise has an advantage over the other competitors, as it has more time to prepare the required dossier and, moreover, it probably adjusts the technical documentation to its needs, assesses the degree of road deterioration, etc.*[7] Our colleagues from Bălți reported this situation to the Public Procurement Agency that referred namely to the above-mentioned article, stating that there is no infringement.

The new law allows the participation of civil society representatives in the procurement working-groups, a modification that we appreciated in the very beginning. Nevertheless, after several months of monitoring since the entry into force of the new legal framework, we noticed certain drawbacks or high risk provisions. One of them concerns the Regulations on the activities of the procurement working-groups, adopted by Government Decree no. 667 of 27th of May 2016, providing that (paragraph 6): "The

[7] From the monitoring report of the Association of Business Women for the period May-September 2016

request specified in paragraph 5 shall contain **at least:** the name of the organisation, the name and the family name of its representative, a copy of the document confirming the mandate or the name and the family name of the natural person; the legal and postal address or the home address; the contact information, including the email; the procurement procedure for whose working-group is requested the acceptance." The syntagma "at least" proved to be a dangerous tool in the hands of the decision-makers within the respective authorities while deciding on the acceptance or non-acceptance to the working-group.

At the same time, although neither the law, nor the Regulations prohibit the participation of two representatives of the same association to the working group, certain authorities ungroundedly reject such requests.

A draft amendment to Law no. 131 was proposed by the Ministry of Finance and approved by the Government on 27th of April. It concerns to a large extent the modification of the way how the National Agency for Dispute Resolution shall be organised and operate, in line with the provisions of the Association Agreement, as an entity independent of the Government. The draft law also provides, in Article 73 that: "(2) The report on the public procurement procedure is a public document. The access of the persons to such an information may only be restricted if the information includes, in particular, technical or commercial secrets and confidential data about the bids." We suggested the concretisation of this paragraph in order to avoid the subjective assessment of the secrecy of certain information by the contracting authority. Thus, in the wording adopted by the Government, this paragraph was supplemented with the following syntagma "(...) according to the provisions of Law no. 171 of 06.07.1994 on the commercial secret or of Law no. 245 of 27.11.2008 on the State secret". This provision is a significant step towards ensuring the transparency of the public procurement process. The draft was adopted in the first reading, but we could not find the adopted version on the Parliament's website. At the same time, in certain cases, there is need for checking other documents from the procurement dossier (for example, the availability of documents alleged to be missing or deemed as inaccurate for disqualification of certain bidders, cross-checking the conditions proposed in the bid with the ones specified in the final contract, etc.). It is not clear how the information may be accessed in such cases. It would be good, if the law provided for the extended access to certain information, following the reasoned request from the interested persons.

Chapter 2. Transparency and Planning of Public Procurements

The organisations involved in project implementation continued to assess the degree of transparency of the contracting authorities subject to the monitoring in terms of planning of public procurements. Planning of public procurements and publication of the information about planning is one of the elements of procurement transparency. The new law did not bring considerable changes from the perspective of the clarification of procurement planning issues. Article 27 of Law no. 131 regulates thoroughly enough the issue of notice of intent. On the other hand, the issue of procurement plan is only occasionally tackled in the article that regulates the conclusion of a procurement contract (*Article 70: "The public procurement contract shall be concluded in compliance with public procurement procedures stipulated by the present law for the total yearly amount of money allocated for a procurement, based on the procurement plan and within the limits of the approved allocations"),* and when the tasks of the working-group are specified *(Article 14: "The working-group (...) shall develop yearly and quarterly public procurement plans").* Thus, although the law provides that the contract shall be concluded based on a procurement plan, this fact is not checked in practice and, as we will show below, an extremely small number of contracting authorities have procurement plans.

Taking into account that no notice of intent is published for procurements worth less than 400,000 lei – for goods and services, and 1,500,000 – for works, and low transparency procedures, such as low value procurements or requests for bids with no publication, are applied up to the sum of 150,000 lei – for goods and services and 200,000 lei – for works, a large share of procurements conducted by small contracting authorities can hardly be followed, just post-factum, after the publication of the list of awarded contracts.

As a result of the assessment, we found out that not more than 13 local authorities (out of 20) have developed a public procurement plan for the year 2016[8]. Only **8 *of them have published it on their websites.***

Among the central authorities subject to the monitoring, 5 out of 10 authorities have published their public procurement plan for the year 2016 (compared to 6 - in 2015) and ***6 of them (compared to 7 - in 2015)*** have such a plan.

[8] See Annex 1 for more details

The organisations that perform the monitoring activities informed the contracting authorities about the need for developing and publishing a public procurement plan. While in 2015, as a result of project activities, a number of authorities published the public procurement plans on their websites, it did not occur in 2016 and the authorities explain it by the late adoption of the national budget, what delayed the approval of the local budgets; or, the procurement plan is only approved after the budget is adopted. At the same time, several contracting authorities, after being notified of the requirement for publishing the procurement plan, have published it, but after a while it was not online anymore. The plan was published again after our telephone call[9]. Unfortunately, such situations give the impression that certain authorities intentionally fail to publish the procurement plans on the website.

The project's team continued the monitoring of the websites of the contracting authorities in order to establish if they contain a procurement column and to assess the topicality of its information. Compared to the previous monitoring period, a new authority subject to monitoring (the District Council of Orhei, in addition to the District Council of Telenești and Bălți municipality) created a procurement column on its website and started to publish the respective information. This was done at the insistence of the organisations in charge of monitoring at the local level.

The monitoring also checked if the announced procurement was stipulated in the procurement plan of the respective authority. As a result of the analysis, we found out that the largest share of procurements figured in the procurement plan of the authority, if such a plan was available. At the same time, a large number of authorities do not have a procurement plan, explaining that, because of the shortage of financial resources, they do not plan any procurements. Nevertheless, procurements were performed, although less that during the previous periods, and they remained out of the spotlight.

The access to the information from the procurement dossiers is another issue related to the transparency of procurements. The organisations in charge of monitoring requested to the contracting authorities the access to the procurement dossiers (or to some parts of the dossiers). At the local level, the organisations did not face any difficulties in terms of access to information. Despite a certain delay in providing the access to information, the contracting authorities have finally given the requested information.

Our colleagues who worked in Colonița faced a somewhat particular attitude. Based on the new law, the representatives of "Generația mea" PA have submitted 2 requests for acceptance to the procurement working-group. As a response to one of the requests, the mayor issued a decision allowing the

[9] For example, it was the case of the Directorate for Capital Constructions, Chișinău municipality.

acceptance to the working-group. When information about the submitted bids was further requested, the access to information was refused until the day when the bid assessment meeting took place. On that day, before the assessment meeting, they were proposed to examine and assess during 10 minutes the bids with the total value of nearly 1,5 million Lei. The representative of the association formulated a dissent in which were revealed the dubious situations and the abuse committed by the procurement working-group.

As for the second request, the mayor has NOT issued any decision for the acceptance to the working-group, what contravenes to the law.

In another situation, on 19th of September, "Generația Mea" PA submitted a request to the local government of Colonița asking for the acceptance of Mr. Valeriu Ciorbă to the working-group for the procedure of request for bids no. 1616-op/16, conducted on 22nd of September, the request being formulated in accordance with the provisions of paragraph 6 of the Regulations adopted by Government Decree no. 667 of 27th of May 2016. After having filed the request, the President of "Generația Mea" NGO was contacted by telephone by the lawyer of the local government of Colonița who asked for additional documents, such as a copy of the statute of "Generația Mea" NGO, a document to confirm the position and the mandate of Mr. Valeriu Ciorbă, a copy of the contract with Colonita.eu website. On the 20th of September, the local government of Colonița sent to "Generația Mea" NGO an email (the letter did not contain an official number, no date, stamp and signature), requesting a copy of the extract from the Register of legal entities or of the statute of "Generația Mea" PA. On the day of bid opening, Mr. Valeriu Ciorbă was not accepted as a member of the working-group. In addition to it, the request submitted by the NGO was not returned, contrarily to the provisions of the above-mentioned Regulations (paragraph 7: "If the request does not comply with the conditions specified in paragraph 6, the contracting authority shall return it for appropriate completion").[10]

With regard to this case, we submitted a letter to the Ministry of Finance and to the Public Procurement Agency to explain the situation and propose the modification of paragraph 6 of the Regulations under consideration. In our opinion, the respective Regulations should contain exhaustive provisions about the list of documents that shall be attached to the request and/or may be requested by the contracting authority. In the current wording, the Regulations provide that: "The request specified in paragraph 5 shall contain at least: the name of the organisation, the name and the family name of its representative, a copy of the document confirming the mandate or the name and the family name of the natural

[10] From the narrative report of "Generația Mea" Public Association for the period May-September 2016.

person; the legal and the postal address or the home address; the contact information, including the email address; the procurement procedure to whose working-group is requested the acceptance."

At the central level, the situation is even more difficult. Only 3 out of the 10 selected contracting authorities allowed the access to procurement dossiers. They are: the local government of Chișinău municipality, the General Directorate for Housing and the Agency for Land Relations and Cadastre (partly). It is worth being noted that a better collaboration could be established with the General Directorate for Housing, that was rather receptive to our requests and we did not face any difficulties in terms of access to the procurement dossiers (although no photographs or copies of the dossier's files were allowed, what contravenes to the law, in our opinion). In fact, none contracting authority allowed photographs of the dossier's content (at least selectively), what makes it difficult to analyse the dossiers, as making notes of the important issues using handwriting is very time-consuming and may be done exclusively in the premises of the contracting authority.

The other 7 contracting authorities at the central level refused the access to information, although Law no. 982 of 11.05.2000 on access to information provides that public institutions (providers of information) shall put at the disposal of the requester any official information, except the one with limited accessibility. Article 7 of this Law exhaustively specifies the official information with limited accessibility, and the procurement dossiers are not listed in this article. Paragraph (4) of the article provides that: *"No limitations to the freedom of information may be imposed, unless the information provider may prove that such a limitation is regulated by an organic law and it is necessary in a democratic society for the protection of the rights and legitimate interests of the person or for the protection of the national security, and that the damage caused to those rights and interests would be larger than the public interest in that kind of information".*

The legislation in the field of procurements does not prohibit the provision of information from the procurement dossiers, but, at the same time, it does not provide expressly for the compulsory provision of such an information and does not specify what information may or may not be provided.

Resolution no. 9 of 17.01.2008 for the approval of the Regulations for developing and storage of public procurement dossiers stipulates:

"Except the cases when the court requests it, the contracting authority shall not disclose the information about the qualification data of bidders, the price of the bid or the grounds for determining it, the brief specification of other essential condiitons of each bid and of the procurement contract, the summary of

the evaluation and of bid comparison (taking into account the application of the margin of preference), the summary of the requests for explanations concerning the pre-selection documents or tender documents, the summary of the responses to them, as well as the summary of all the modifications made to these documents, if their disclosure contravenes the legislation and the State interests, prejudices the legitimate commercial interests of the parties or hinders the loyal competition (point 12).”

The provision above is used the oftenest by the contracting authorities as a ground for their refusal to provide information. At the same time, other regulatory acts in the field of procurements contain different provisions, as, for example, Government Decree no. 763, whose point 26.1 of Annex 1 stipulates:

“The information about the examination, evaluation, comparison and post-qualification of the bids shall not be disclosed to the bidders or to other persons that are not officially involved in this process, until the registration of the contract in the established way.”

As it comes out from the above-mentioned provision, such a type of information may be provided to persons uninvolved in the procurement process after contract registration.

AGER filed lawsuits in court against the seven contracting authorities which refused to provide access to information in order to protect the right to information and take the public procurement sector out of the “secrecy”. Unfortunately, the concerned authorities intentionally procrastinate the proceedings, invoking each time a new reason for postponing the hearings. Nevertheless, we succeeded to reach a settlement agreement with the Agency of Medicines and to have access to the requested dossiers.

Chapter 3. The Conduct of Public Procurement Procedures

Planning and conducting the tender opening sessions

The organisations involved in the monitoring of public procurement procedures have also participated in tender opening sessions for public auctions. Such a fact enabled them to evaluate the compliance of the conduct of such meetings with the legal provisions. We found out that, from this perspective, the tender opening meetings are conducted, to a large extent, in accordance with the legal provisions.

Nevertheless, in quite frequent cases, the declarations of confidentiality and impartiality are missing, despite the requirement for having them signed before tender opening.

Writing and storage of tender documents

The attitude of the working-group members towards writing and storage of procurement dossiers is unsatisfactory. Or, the infringements revealed during the previous period have been even more frequent during the period under consideration, and some new deviations have also been remarked.

We detected multiple minutes signed "in blank" or minutes that do not contain the minimum of information requested by the law. There were cases of mismatch between the number of signatures of the working-group members on the bids and the number of signatures in the minutes of tender opening sessions.

We have also identified certain cases when the members of the working-group signed the minutes despite their absence at the meeting.

The information in procurement contracts is incomplete. Standard templates are used, being filled in very vaguely, and they often do not contain at least the name of the manager of the company who signs the contract. The information about the deadline for work execution, service provision or purchase of goods completely misses in all the contracts. There are no data about the warranty.[11]

Such an attitude towards the tender documentation is alarming, as it reveals the irresponsibility towards the procurement process itself.

The content of application documents

[11] From the monitoring report of "Hlina Victorion" Public Association

No frequent deviations from the legal requirements have been detected in terms of content of the calls for bids, as they contained all the requested elements. The time limits for bid submission were deemed legal within the procedures which were subject to monitoring, being assessed by the monitors as sufficient for the respective procurements, taking into account their particularities. At the same time, it is worth being noted that there were very rare cases of exceeding the minimal deadline for bid submission established by the law. Even for rather complex procurements, was established the minimal time limit stipulated by the law (20 days for open tenders, being sometimes reduced to 15 days).

The content of the calls for bids and of the connected documentation has deficiencies in terms of description of the goods or works. In several cases, the interested business entities submitted contestations concerning the description of goods/works and, as a result, the announcement published in the Public Procurement Bulletin was modified. Often, because of the lack of specific technical knowledge among the working-group members, the tender specifications do not list all the works to be executed or the list of works is incomplete or the quality of works is inappropriately specified, what results into contract modification or poor quality/non-completion of works.

For instance, our colleagues from the Centre for International Communication and Human Rights took part, as members of the working-group, in the final procedure for the procurement of thermal insulation works (technical floor, basement) of the premises of the Perinatal Centre of PMSI the District Hospital of Orhei. The procedure was conducted **for the sixth time** over the past two years. Previously, a contract with Magda LLC was signed for these works, but the company renounced the contract, invoking the fact that the works specified in the technical project did not comply with the on-site situation.

Frequently, it is not clear from the procurement dossier if the estimates of the works were checked / examined accordingly.

Many of our colleagues working at the local level found out that the estimates of the contracts are often made arbitrarily or depending on the amount of money owned by the contracting authority, not after a thorough market research. In Bălți, for example, a number of procurement procedures were cancelled, because the bids submitted by the business entities involved in the race for public money were by more than 15 % lower, than the estimated value of procurements.

An interesting situation was reported in Colonița:

“The request for bids no. 1985-op/15, local government of Colonita, street lightening. 10 companies were invited. 4 bids were submitted, all of them worth by 15% less than the estimated value. All the 4

bidders were requested an explanation for the abnormally low amount of the bid, and only one bidder replied. Thus, in the total number of 10 bids, the local government Colonița selected one bid worth by 15% less than the estimated value that was the winner.

The local government of Colonița selected the winner of the procedure. Afterwards, the procurement was cancelled by the PPA, because the value of all the bids was by at least 15% lower than the value of the works estimated by the contracting authority in the established way, according to Article 59, paragraph 1, point c) of the Law on public procurements no. 96 of 13.04.2007."[12]

Bid evaluation

In general, the post-factum analysis of the dossiers did not reveal any serious errors in bid evaluation, nevertheless, a preferential approach to some business entities was remarked in several dossiers. In Orhei, for example, the tender for the procurement of local road repair works (see Annex 2 for more details) "was a public auction divided into 6 lots. 2 lots with the largest amounts were won by GENESIS INTERNATIONAL LLC., but, what is interesting, the geographic location of the sites would not allow to work within a short period in parallel in all the four directions of the district - North, South, West and East, taking into account also the different distances and the large number of communities to be served. It is also very interesting that BEŞETE NICOLAE IC, an individual enterprise that, according to the data of the Licensing Chamber, holds a licence for building construction, not for road construction, was admitted to this tender and won the lot 4, although a distinct licence is required for road construction"[13].

Cases of conflict of interest

In addition to the above-mentioned case identified in Bălți, that is a conflict of interest in our opinion, but unfortunately is not seen as such by the legislation in force, we have also noticed a number of other quasi-legal cases.

In Telenești, 2 low value contracts were concluded between the Education Directorate and "Furculita Ecaterina" IC, Mrs Furculita Ecaterina being the Deputy President of the district. Similar cases are rather frequent. In fact, there is no direct conflict of interest, if the respective person is not a member of the

[12] From the narrative report of "Generația Mea" Public Association for the period May-September 2016.
[13] From the narrative report of "CIVIS" Public Association for the period May-September 2016.

working-group, but the question is to what extent she, as a Deputy President of the district, has an influence or may influence on the decisions of the working-group?[14]

Shortage of qualified staff

The shortage of qualified staff is a pressing problem faced by many contracting authorities. The tender books are drafted inaccurately, what is the reason for either the cancellation of the contract by the selected company, or for frequent amendments to the contracts or even for launching a new competition in order to "fill in" the gaps of the first procedure. A case illustrating the above-mentioned was reported by our colleagues from Bălți:

"Later, we discovered a new case of procurement splitting. On the 06th of July 2016, as a result of the publication in the Bulletin of Public Procurements no. 47 of 24.06.2016 of the request for bids no. 16/01481 for the purchase of works for capital renovation of the food unit in "Mihai Eminescu" theoretical lycee, in accordance with the requirements of the Directorate for Education, Youth and Sports (DEYS) of Bălţi municipality, the local government of Bălți conducted the tender. Later, the DEYS asked the working-group to conduct a new procedure for the procurement of renovation works fot another building of "Mihai Eminescu" theoretical lycee – the annex to the school canteen for primary grades of the institution. At the meeting, the head of the Public Procurement Service of Bălți municipality draw the attention of the representatives of Bălți Directorate for Education to the fact that the same institution is concerned - "Mihai Eminescu" theoretical lycee of Bălți - and that again works at the school canteen are requested, although in another building this time. The representatives of the Directorate replied that there is no problem, saying that they would change the CPV code and the Agency would not remark the problem.

As a result of the discussion, on 12th of August, at 10.00, was held the tender for the purchase of works at "The annex to the food unit of the primary school building of "Mihai Eminescu" theoretical lycee situated on Pushkin street, in accordance with the needs of the Directorate for Education, Youth and Sports of Bălți municipality".

We reported the case to the Public Procurement Agency and to the Ministry of Education. No official answer was given to our request to investigate the case so far.

[14] From the narrative report of "Concordia" Public Association for the period May-September 2016.

At the same time, the director of "Mihai Eminescu" theoretical lycee called me and asked to visit the construction site. The director explained to me on-site that certain works were not included in the project and they need additional financial resources for completing the works. On the other hand, the representatives of the Education Directorate said to him that they cannot allocate any supplementary resources, because they are under the monitoring of "Public Money Is My Money Too!" Project[15].

Chapter 4. The Implementation of Public Procurement Contracts

One of the least checked/evaluated stages of the procurement procedures is contract implementation itself. Therefore, the monitoring campaign also focussed on evaluation of the contracts from the perspective of their completion.

Establishing and stipulating the good performance guarantee are the first means for ensuring the contract execution, at least for contracts in which such provisions are mandatory. But, unfortunately, a large share of contracts which were subject to the analysis did not contain at least provisions for a good performance guarantee.

Most of delays in the execution of contract obligations were revealed in contracts for the performance of works. Here are some examples from the information provided by the organisations in charge of procurement monitoring at the local level:

- The local government of Inesti concluded a low value contract for the purchase of construction materials for current renovation of the mayoralty's premises. The materials were brought, but now they lack, and no renovation works were performed at the mayoralty. It is quite difficult to find out where they are now.[16]
- The local road renovation in the district of Orhei, where the executed works do not comply with the works specified in the tender books and in the contract. (See Annex 2).

The monitoring of the procurement procedures did not reveal any cases of penalties for delay applied to the contractors, if the delay was not the fault of the CA.

[15] A case reported by the Association of Business Women from Bălți, monitoring report for the period May-September 2016.
[16] The report of „Concordia" PA for the period May-September 2016.

Chapter 5. Journalistic Investigations

During the period June – September 2016, 13 journalistic investigations were published in the framework of the Project "Public Money Is My Money Too". The investigations were conducted by the team of the Centre for Journalistic Investigations, some articles being the result of the collaboration with journalists from "Ziarul de Gardă" and "Ziarul Național" newspapers. The articles were further disseminated by a number of national and regional/local publications, TV channels and radio stations, websites and news agencies.

Procurements like in "Codru" at the Parliament

Author: Mariana Rață

In the Republic of Moldova, the hotel services, dinners at restaurants and services provided to the official delegations, as well as the flight tickets for Government, Parliament and Presidency officials are most often purchased following the will of the heads of institutions, avoiding the traditional public procurement procedures.

More details : http://anticoruptie.md/ro/investigatii/achizitii-publice/achizitii-ca-n-codru-la-parlament

Contracts with the State in a time of crisis for firms affiliated to members of Parliament and ministers

Authors: Victor Moșneag and Nicolae Eșanu

A number of firms affiliated to members of Parliament and ministers have won about 150 contracts worth more than 35 million Lei with the State over the past one and a half years, a period when the public procurements passed through a crisis caused by the shortage of financial resources or the amendments to the legislation, leading to the suspension of auctions.

More details: http://anticoruptie.md/ro/investigatii/achizitii-publice/contracte-cu-statul-pe-timp-de-criza-pentru-firme-afiliate-deputatilor-si-ministrilor

How was the State "taken to the cleaners", being fleeced of 30 million Lei

Authors: Natalia Porubin and Elena Moldoveanu

Tons of equipment for which the State paid over 10 million Lei repose for many years in the storehouse of a business entity. The equipment was purchased for a wastewater treatment plant that the authorities of Criuleni attempt to build for nearly a decade. The destiny of this investment is still uncertain, taking into account that the equipment gets outdated and a part of the supply and distribution systems have already been deteriorated.

Meanwhile, the district council pays tens of thousands of Lei each year for storage of the equipment which might never be used.

More details: http://anticoruptie.md/ro/investigatii/achizitii-publice/cum-a-fost-curatat-statul-de-30-de-milioane-de-lei

Tens of millions for the Parliament in a time of crisis

Author: Raisa Lozinschi

Even in times of crisis, the authorities make expenditures to ensure the comfort of the members of Parliament. The State budget for this year allocated 83 million Lei for repair works in the Parliament's premises. Nearly 64 million Lei will be spent for the installation of ventilation and fire-fighting systems in three buildings of the Parliament. On the other hand, the Ministry of Finance has borrowed this year nearly seven billion Lei from the commercial banks of the Republic of Moldova in order to pay the pensions and the salaries to public sector employees.

More details: http://anticoruptie.md/ro/investigatii/achizitii-publice/zeci-de-milioane-pentru-parlament-pe-timp-de-criza

The landlord-councillor of Colonița and the scandal related to the village's land

Authors: Natalia Porubin and Elena Moldoveanu

Due to his mandate of local elected official, a councillor from Colonița became a landlord. Igor Luchian has recently become the owner of three plots of agricultural land sold by virtue of a local council's decision voted by him. Moreover, at the time, he was a member of the board for public auctions. The opposition councillors claim the return of the land to the village's ownership, accusing Luchian of conflict of interest. At the same time, the local government is accused of "selling" the land through various agreements to those who take advantage of changes in the law that allow the modification of the agricultural land use by a vote of the local council, not of the government, as it was until recently.

More details: http://anticoruptie.md/ro/investigatii/achizitii-publice/consilierul-mosier-de-la-colonita-si-scandalul-cu-terenurile-satului

Auctions "under the umbrella"

Author: Mariana Rață

A construction company whose co-founder is a senior specialist of the Public Procurement Agency from Anenii Noi wins auctions "on a conveyor belt" in this district. During not more than two years, from 2014 to present, Softconstruct, the company co-founded by Iacob Plămădeală, senior specialist at PPA of Anenii Noi, has signed 16 procurement contracts worth over three million Lei. The local authorities stated they were not aware of the connection between this public servant and the respective company.

More details: http://anticoruptie.md/ro/investigatii/achizitii-publice/licitatii-sub-umbrela

Ghimpu's partner, contracts of tens of millions with companies subordinated to the Liberal Party

Authors: Victor Moșneag and Nicolae Eșanu

Over the past three and a half years, Get Premium LLC, a company founded by Veaceslav Ceban, a business partner of the President of Liberal Party, Mihai Ghimpu, has won contracts of tens of millions Lei with institutions subordinated to this party. The legal address of this company is in the premises of the former headquarters of the Liberal Party, a building belonging to Eurosim, a company jointly owned by the above-mentioned, whose 34% of social capital is held by Ghimpu. Throughout the year 2015, the Moldovan Railways, an enterprise led at the time by the Liberal Iurie Topală, purchased petroleum products worth 60 million Lei to this business entity. The supplier for four other municipal enterprises that use fuels in their everyday work was Get Premium, a company that entered the market in 2013, becoming the "inheritor" of the contracts of millions with the State of another company owned by the partners of Ghimpu, Parstar Petrol, that practically disappeared after getting in the spotlight of the mass-media and of law enforcement authorities.

More details: http://anticoruptie.md/ro/investigatii/achizitii-publice/partenerul-lui-ghimpu-contracte-de-zeci-de-milioane-cu-intreprinderi-subordonate-pl-ului

A detrimental business to the capital city

Authors: Mariana Rață and Anastasia Nani

The land and non-residential buildings that are the public property of Chișinău municipality became a true godsend for different businesses entities or people close to the local public authority. Some of them managed to rent areas of hundreds of square meters at a price of just seven Lei per square meter, others - to privatize entire buildings for the price of a dorm room. Although the law provides expressly for holding public tenders for the lease and privatization of the buildings and of the land in the capital city, the authorities avoid the respective procedure. Thus, the management of public property, especially of the non-residential buildings and of the land, is the most detrimental activity to the municipality, with a high risk of corruption. An investigation conducted by

the Centre for Journalistic Investigations reveals how the municipal goods worth millions are leased, then transferred to private property at ridiculous prices

More details: http://anticoruptie.md/ro/investigatii/achizitii-publice/afacerea-paguboasa-a-capitalei

A road made using public money to the company of the minister Iurie Chirinciuc

Author: Julieta Savițchi

Just a few months after the inauguration of Iurie Chirinciuc as the Minister of Transport and Road Infrastructure, the road connecting the Sculeni-Ungheni highway and the premises of a company owned by him, Lefcons-agro LLC, was paved, what cost the State budget 8.5 million Lei. The works were executed by the company Rutador, whose name figured previously in several journalistic investigations, as well as in a report of the Court of Accounts. The authorities have selected the respective company without any tender. The decision-makers of the State Road Administration explained, inter alia, the failure to hold a competition by the fact that the respective decision was made at the time when the public procurement procedure was suspended. The experts, however, consider this situation is illegal and it should be sued by prosecutors.

More details: http://anticoruptie.md/ro/investigatii/achizitii-publice/drum-din-bani-publici-pana-la-firma-ministrului-iurie-chirinciuc

Schools with debts of millions on the eve of the school year

Authors: Elena Moldoveanu and Natalia Porubin

On the eve of the new school year, most schools in the district of Criuleni found themselves with debts of hundreds of thousands of Lei, and some of them – even with debts of millions, facing the risk of a lawsuit. The debts occurred after, three years ago, the district authorities approved a document that compelled the schools to replace all the doors and windows. The works were made in advance and the debt was to be paid throughout three years. As this period of time expired, the company claims the invested money, while the school managers say they cannot pay.

More details: http://anticoruptie.md/ro/investigatii/achizitii-publice/scoli-cu-datorii-de-milioane-in-prag-de-an-scolar

Endless auctions that nip in the bud a project worth eight million

Authors: Natalia Porubin and Elena Moldoveanu

The inhabitants of two villages of the district of Strășeni are at risk of muffing a project of eight million Lei, an amount intended for the construction of an aqueduct. The tender for selecting the company in charge of the works was already organised four times, each time being challenged by several companies. They disagree with their disqualification because their bids are lower than the project's value. On the other hand, the members of the procurement working-group state that the law does not allow the radical decrease by the bidders of the amounts specified by the planners. The process could be delayed further, because, since May when a new law on public procurements came into force, the appeals are examined by the courts.

More details: http://anticoruptie.md/ro/investigatii/achizitii-publice/licitatii-interminabile-care-ingroapa-din-fasa-un-proiect-de-opt-milioane

Modernisation and criminal suit at Moldova State University. A defrauded auction or an attempt of political retaliation?

Author: Victoria Dodon

A few years ago, Moldova State University (USM) and the construction company Lagmar-Impex LLC started a large investment aimed at the development of the infrastructure of this educational institution and the works were to be over in 2018. In accordance with the project, the company committed to renovate a number of student dormitories and an educational building. In exchange, USM conceded two plots of land in the heart of the capital city. Here, the company built a huge residential complex and sells apartments whose price starts from 444 Euros per square meter. One year ago, the "business" came in the spotlight of prosecutors and anticorruption officers. They suspect a fraud in the public auction for this investment project. But the suit is at a dead end. While the prosecutors say they are gathering further evidence, the rector of USM, the only accused person in this criminal case, is persuaded that this is in fact a political order.

More details: http://anticoruptie.md/ro/investigatii/achizitii-publice/modernizare-cu-dosar-penal-la-usm-licitatie-fraudata-sau-tentativa-de-rafuiala-politica

"Sick" procurements in healthcare sector

Authors: Mariana Rață and Anastasia Nani

The Agency of Medicines and Medical Devices announced a public tender for the procurement of the necessary medicines for hospitals in 2017, with planned expenditures of about 500 million Lei. An investigation of the Centre for Journalistic Investigations shows that, in previous years, a large share of the public money intended for healthcare procurements – nearly 800 million Lei - came on the accounts of seven companies. Four of them were included in 2015 in the ban list of the Public Procurement Agency, after the Moldovan medical institutions found

themselves in a crisis of medicines, caused, according to the authorities, by the boycott actions of these companies that delayed the supply of drugs. The respective companies have escaped penalties. Meanwhile, the Ministry of Health intends to establish a new institution, the Centre for centralized healthcare procurements, in charge of conducting all procurements in this field. But, in the opinion of former hospital managers, this new structure might complicate the situation even more.

More details: http://anticoruptie.md/ro/investigatii/achizitii-publice//achizitii-bolnave-in-sanatate

Conclusions and Recommendations

The third monitoring period has to a large extent confirmed the conclusions formulated in the previous two reports. In addition to it, certain legal gaps from the perspective of the new law and its subordinated acts have been noticed and reported to the concerned institutions.

As a result of the monitoring activity, the following conclusions may be drawn:

1. **The recently adopted legal framework contains certain gaps that might impede the civil society participation in the assessment of procurement procedures and other drawbacks that might distort the competition, admitting the conflict of interest**

We refer in particular to the salutary provision that we appreciated as a good one and that allows the participation of civil society representatives to the working groups in charge of procurements. Thus, according to the provisions of Article 13 of Law no. 131 of 03.07.2016 and paragraph 5 of the Regulations for the activities of the procurement working-groups, the contracting authorities shall mandatorily include the civil society representatives in the procurement working-groups, if a written request has been submitted two days before the time limit for bid submission. At the same time, the Regulations provide that: "The request stipulated in paragraph 5 *shall contain at least* the name of the organisation, the name and the family name of its representative, a copy of the document confirming the mandate or the name and the family name of the natural person; the legal and postal address or the home address; the contact information, including the email; the procurement procedure to whose working-group is requested the acceptance." Although this provision does not raise questions at first glance, in our monitoring practice, we faced a case that suggested to us that the syntagma "at least" is not the most appropriate, as the contracting authority may take advantage of it and request additional documents, delaying thus the acceptance of the proposed representative in the working-group, and sometimes it becomes too late to do it."

Unclarity concerning certain provisions related to the conflict of interest

Law no. 131 on public procurements contains an article (Article 74) about the avoidance of the conflict of interest, what is very salutary. On the other hand, paragraph (2) of the respective article provides that: The natural person or the legal entity that took part in developing the tender documentation, as an economic operator, has the right to be a bidder, an associate bidder or a subcontractor exclusively if their involvement in drafting the tender documentation is not likely to distort the competition. This

provision is very dangerous, while the syntagma "*exclusively if their involvement in drafting the tender documentation is not likely to distort the competition*" may be interpreted discretionarily, and by whom? Who shall establish if such an "involvement" distorts or not the competition? In our opinion, the individual or the company that developed the tender documentation may not take part in the respective procurement

2. **The legislation in the field of public procurements is in a continuous development process, but there are no tools to control its implementation**

A draft amendment to Law no. 131, approved in September by the Parliament[17], provides that the reports on the procurement procedures shall be public documents and that the interested persons may have access to them on request. Although the report itself is not always sufficient to assess the correctness of the conduct of a procurement procedure, this proposal is a step towards the procurement transparentisation and we look forwards its publication in the Official Journal in order to see what version was approved in final reading.

The Regulations on the activities of the procurement working-groups was endorsed by the Government. It provides for two essential, in our opinion, changes:

a) It describes the way how the civil society representatives shall participate to the working-groups;
b) It provides for the working-group's obligation to conduct the monitoring of public procurement contracts and develop quarterly/half-yearly and yearly reports on monitoring results. The reports shall mandatorily include information about the stage of execution of contract obligations, the non-execution causes, the submitted complaints and the applied penalties, notes about the quality of contract execution, etc. and they shall be published on the website of the contracting authority or, if not available, on the official website of the central authority to which it subordinates or of the second-level local public administration authority.

While the first change works relatively well, with some exceptions mentioned in the present report, the second one is salutary, but, in the lack of tools for the control on its implementation, it risks to remain an on paper clause, likewise the requirement for the development and publication of procurement plans.

3. **Imperfect monitoring of the enforcement of public procurement legislation**.

[17] http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3238/language/ro-RO/Default.aspx

In addition to the above-mentioned issues concerning the lack of any control on writing and publication of procurement plans, we have also identified other issues that the PPA should check and not admit at the registration of contracts. One of them is the registration of costly contracts that do not have a clause for good performance guarantee, despite the fact that such a provision is mandatory, according to the law.

In addition to it, while publishing the calls for bids or registering the procurement contracts, the Agency admits inaccurate technical specifications, as well as splitting of procurements.

An amendment proposed to Law no. 131, that we do not know yet if was or not accepted by the Parliament, provides for the elimination of the ex-ante control and contract registration functions of the PPA. In our opinion, such a modification is premature, as it would place the contracting authorities outside any control (except the civic control that is rather sporadic and covers a small number of contracts).

4. **Low capability and responsibility or the hidden interests of the contracting authorities have an negative influence of the use of public money**

Writing and storage of procurement dossiers is another issue deemed as problematic during the monitoring process. Signing "in blank" the tender opening minutes; lack of compulsory documents in the procurement dossier are the most frequent problems identified as a result of the monitoring.

The situations when the procurement contract contains provisions that are considerably different from the provisions of the winning bid should not be admitted.

One of the most important problems concerns the implementation of the procurement contract itself. From this perspective, it seems that, except the self-interest of the contracting authority and the goodwill of the business entity, there are no other efficient levers for the monitoring of the execution of contract provisions. As a result, there are cases when the practical implementation of the contract is different from the contract's provisions, the works are not completed or not executed at all.

A tendentious and/or selective application of the qualification criteria was identified in several cases subject to monitoring. Another matter of concern are the testimonies about the influence exerted by persons holding important State positions on the procurement working-groups.

Recommendations

Based on the findings of the present report, its authors propose the following recommendations at this stage:

Legislative and regulatory recommendations:

- Parliament of the Republic of Moldova shall modify Law no. 131, namely its Article 74, eliminating paragraph (2) that provides that a natural person or legal entity that took part in developing the tender documentation, as an economic operator, has the right to be a bidder, an associate bidder or a subcontractor exclusively if their involvement in drafting the tender documentation is not likely to distort the competition;
- the Ministry of Finance stall initiate the amendment of Government Decree no. 667 of 27th of May 2016 that provides (paragraph.6): "The request specified in paragraph 5 shall contain **at least:** the name of the organisation, the name and the family name of its representative, a copy of the document confirming the mandate or the name and the family name of the natural person; the legal and postal address or the home address; the contact information, including the email; the procurement procedure for whose working-group is requested the acceptance." The list of documents to be submitted shall be exhaustive and include the minimum of required documents in order not to cumber the participation of civil society in the procurement procedures";
- the Public Procurement Agency shall develop the required tools for monitoring of the implementation of the requirements for development and publication of the procurement plan by the CA, and reports on the monitoring of contract execution;
- Government Decree no. 188 of 03.04.2012 on the official Internet websites of public administration authorities shall be amended in order to add the obligation to set up columns on public procurements on the websites of public authorities; in addition to it, the scope of this Decree should be further extended to heighten it at the level of a law, covering thus the local public administration authorities which are not currently regulated by the above-mentioned document

Functional recommendations:

- PPA shall check more thoroughly the calls for bids, alongside with the contracts submitted for registration in order to identify and prevent or, if necessary, to penalise the cases of

establishment of inappropriate qualification criteria, splitting of procurements or failure to apply the good performance guarantee[18];

- the territorial offices of the State Treasury shall not admit the registration of low value contracts which exceed the threshold established by the legal provisions;
- training and capacity building activities for members of the working groups in charge of procurements shall be a priority for the PPA, but, taking into account the insufficient capacity of the PPA to respond fully to such a need, we recommend the identification of other solutions (for example, distance learning courses, in collaboration with the Academy of Public Administration).

[18] If the ex-ante control task of the Agency is maintained