

**ACCESSION OF MOLDOVA TO THE AGREEMENT ON
GOVERNMENT PROCUREMENT**

Moldova's Replies to Questions from Hong Kong, China Regarding Moldova's Replies to the
Checklist of Issues for Provision of Information Relating to Accession to the Agreement on
Government Procurement Contained in GPA/W/177

Question:

Moldova's reply to question 12 mentions that there are certain provisions in their domestic law that accord more favorable treatment to national suppliers. Please advise:

- *Under what circumstances would the National Agency for Public Procurement decide to narrow the range of participating supplies (businessmen) in favor of the national ones?*
- *How often are national suppliers favored pursuant to these provisions?*
- *How does the preferential limit under Article 38, paragraph (b) of the procurement law work in practice?*
- *Is there any intention to remove these discriminatory provisions?*

Answer:

- (a) The National Agency for Public Procurement can narrow the range of participating suppliers (businessmen) in favor to national ones only under some state interests and according to the existing law.
- (b) There have not been registered any cases of favor to national suppliers (businessmen) according to the provisions of Law No.1166-XIII dated 30.04.97 on procurement of goods, works and services for state needs (further- Law).
- (c) The preferential limit works as follows:
 - (i) First stage – inclusion in tender documents' content;
 - (ii) Second stage – the so-called application in the evaluation process of bids by the state institution's procurement working group, with the approval of the National Agency for Public Procurement, in favor of bids submitted by domestic suppliers (businessmen) or bids in respect of native goods. This preferential limit does not exceed 10 % of from the bid price.
- (d) At present, a new law regarding public procurement is being discussed. Thus, there is an intention to materialize situations involving the of limitation of suppliers (businessmen) to national ones.

Question:

We should be grateful if Moldova could explain how the situations for procurement from one single source (mentioned in Question 16(f)) and procurement through limited participation

(mentioned in question 19) are fully consistent with Article XV:1 of the GPA on Limited Tendering or Article XXIII on Exceptions.

Answer:

Limited tendering and one single source represent public procurement procedures, while Art. XVI.1 and XXIII of the Agreement on Government Procurement contain provisions that establish additional rules regarding the conditions that apply to public procurement. Therefore, situations where the procedures mentioned above are applied may be completed in accordance the mentioned articles.

Question:

Moldova's reply to question 17 states that the procurement working group shall not establish discriminating criteria, requirements or procedures with respect to a "certain" category of suppliers. Would Moldova clarify what this category of suppliers is, and whether discriminating criteria, requirements or procedures can be established for other categories of suppliers?

Answer:

The Law does not define the notion of "a certain category of suppliers (businessmen)". But, interpreting logically Art. 6, para. 3 of Law, this notion is intended to mean both national suppliers and foreign ones that belong to certain juridical systems. There cannot be established discriminating qualification requirements towards suppliers admitted to public procurement procedures.

Question:

The reply to question 21 mentions about the time-limit under Article 32(1) of Moldova's procurement law. Does the time-limit apply to all types of procurement procedures in Moldova? Besides, Article 32(5) of Moldova's procurement law allows a tenderer to submit a tender by fax. Is there any requirement that the tenderer has to confirm its fax by letter or a signed copy of the fax (see Article XIII.1 (a) of the GPA)?

Answer:

The time limit as foreseen in Art. 32 of Law is applicable to procurement procedures involving tenders. The Law does not foresee such time limits in relation to other public procurement procedures. Regarding confirmation by fax, Art. 9 of Law should be followed:

Communication aspect

Documents, decisions, notes and other notifications by the National Agency for Public Procurement or working group in communications with suppliers or vice versa must made on a form which enables the recording of communication's content.

Such communications can be facilitated through telecommunication means, which does not ensure the recording of their content provided the addressee will be provided with confirmation of the communications on a form, which ensures the recording.

Question:

Further to the reply to question 26, is there a web site for the publication of the procurement notices?

Answer:

The information regarding public procurement will be published by National Agency for Public Procurement on the web site: www.moldova.md

Question:

For question 27, the information to be contained in an invitation to participate is not as comprehensive as Article IX.6 of the GPA (for example, information on items (b), (d), (f) and (h) of Article IX.6 is not required). Does Moldova have any intention to improve the type of information to be included?

Answer:

The information from the invitation to tender is to be revised in the new law regarding public procurement.

Question:

It is noted from the answer to question 29 that Moldova's public entities do not publish announcements regarding the award of the contract. This seems to be inconsistent with Article XVIII.1 of the GPA. We would be grateful for Moldova's clarification.

Answer:

On the basis of art. 14 of the Law, the National Agency for Public Procurement publishes a notification regarding the award of public procurement contracts 30 days from the day they were signed. The notification includes at least the name of the supplier with whom the contract is being concluded, the name of the contract and the price or estimate of the price.

Question

Regarding the reply to question 31, we would be grateful if Moldova could clarify whether the Procurement Agency is ready to provide reasons for not selecting a tender upon request pursuant to Article XVIII.2 of the GPANSWER

Answer:

Art.46, par.1 of Law provides specifically:

Each supplier (businessman), which considers that he bore or is liable to bear damage as a result of a public procurement procedure, has the right to dispute actions or decisions of National Agency for Public Procurement.

Question:

Moldova's answer to question 32 appears more related to the selection procedures and criteria for successful bids rather than bid challenge procedures. We would be grateful if Moldova could supplement the required information in a revised reply. Furthermore, as mentioned in the second last paragraph of the answer, the Procurement Agency has the right to reject all the other tenders if the first bidder refuses to confirm the qualification data at the contract stage. This does not

appear to be consistent with Article XIII.4(b) of the GPA, which provides that a procuring entity should award a contract unless it is in the public interest for it not to do so. We would be grateful for Moldova's clarification.

Answer:

Art.38, par.8 of Law provides: "If the bidder does not execute the requirement of the working group as to confirm the second time qualification data for the awarding of contract, his bid is rejected and **there is chosen another winning bid from the rest remained**". The provision from the second part of the mentioned article ("simultaneously, the working group has the right to reject all the other bids, with the approval of National Agency for Public Procurement"), is interpreted with reference to Art.12 of Law, which provides that such an action is justified in absence of effective competition or if the bids do not correspond to the requirements established in the tender documents.

Question:

On question 33, are there any bid challenge procedures applicable to foreign supplies?

Answer:

The legislation of Republic of Moldova regarding public procurement does not regulate in a distinct way bid challenge procedures for foreign suppliers in relation to procurement procedures. These procedures, as a rule, are open to all suppliers (businessmen).

Question:

The answer to question 34(ii) says that the National Agency for Public Procurements shall be responsible for the resolution of the complaint. Since this National Agency is also involved in the procurement itself, how does this Agency maintain its independence and neutrality in the resolution of complaints?

Answer:

We consider that the examination of suppliers' complaints regarding public procurement procedures by National Agency for Public Procurement is absolutely legal and justified, because:

- (a) Firstly – actions or decisions are taken by National Agency for Public Procurement and it would be a paradox if there this body was not authority to revise its own actions or decisions.
- (b) Secondly – in case when the supplier is not satisfied with the decision, he has the right to sue. After such an action, the responsible authority loses the competence to resolve the complaint.

Question:

In the reply to question 34(v), it is stated that Moldova's law does not envisage compensation possibilities for the supported losses or damages. These will have to be defined (established) by the corresponding institution. Could Moldova elaborate more on the last sentence, in particular what is meant by the "corresponding institutions"?

Answer:

By the term of "adequate institutions" it is understood that this refers to the proper institution which was involved in the process of conducting the public procurements.

Question:

The answer to question 34(vi) does not relate to the question on the time-periods for the stages of the challenge process. We should be grateful for further information in this regard.

Answer:

Additionally, we refer to the following terms:

- (a) The period for bids – is at least 10 days and begins after 45 days from the date of tender documents' elaboration (art.32, par.1) of Law)
 - (b) Examination term, evaluation and comparison of bids – is established separately for each public procurement procedure.
 - (c) The term of notifying the acceptance of bid – is 3 days from the approval of the winning bid (art.40, par.1 of Law)
 - (d) The term of notifying the award of procurement contract, for the rest of participants to tender – is 10 days from the awarding (art.40, par.6 of Law).
-