

Committee on Government Procurement

CHECKLIST OF ISSUES FOR PROVISION OF INFORMATION RELATING TO ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT

Replies by Moldova

The following communication, dated 7 January 2002, has been received from the Permanent Mission of the Republic of Moldova with the request that it be circulated to the Parties.

I. LEGAL FRAMEWORK

1. Is there a single central law on procurement? If so, please specify?

The Law No. 66-XIII, dated 30.04.1997 on the procurement of goods, works and services for the needs of the state constitutes the legal framework regarding public procurements.

2. What are the other laws, regulations, decrees, administrative rulings, decisions, policy guidelines and other instruments governing government procurement? Please provide a summary of the subject areas dealt with by each of these instruments. Please also explain the main differences (if any) that exist between their application at the central and sub-central levels of government and at other types of entities.

Below there is a list of laws and regulations in force in the Republic of Moldova that are applied in the public procurements sphere:

- Law No. 1166-XIII, dated 30.04.1997 on procurement of goods, works and services for the state needs (Monitorul Oficial (the Official Gazette) No. 67-68/551, dated 16.10.1997);
- Resolution of the Government of the Republic of Moldova regarding the National Agency for Public Procurements No. 1217, dated 31.12.1997 (Monitorul Oficial No. 12-13/86, dated 19.02.1998);
- Resolution of the Republic of Moldova No. 595, dated 25.06.1999 regarding management and control over public procurement procedures (Monitorul Oficial No. 67-69/626, dated 01.07.1999);
- Resolution of the Government of the Republic of Moldova No. 1312, dated 28.12.2000 regarding estimation, homologation and procurement of literary-creative works, musical compositions and pieces of applied arts for the completion of the state collections (Monitorul Oficial No. 1-4/11, dated 11.01.2001);

- Resolution of the Government of the Republic of Moldova No. 711, dated 19.12.1996 regarding organization of auctions (tenders) for the design and execution of public investments (Monitorul Oficial No. 12, dated 20.02.1997);
- Resolution of the Government of the Republic of Moldova No. 832, dated 13.08.2001 regarding approval of the Regulation concerning procurement of goods and services based on a demand of price proposals (Monitorul Oficial No. 104-105, dated 24.08.2001);
- Regulation concerning contracts of procurement of goods and services for the state beneficiaries (public procurement contract), dated 17.11.1999 (Monitorul Oficial No. 1-4/2, dated 06.01.2000).

Participants to procurements are physical and legal persons from the Republic of Moldova and other countries, irrespective on their ownership form and legal organization status (suppliers (businessmen)) that carry out activity in the established way.

3. *To what extent will the provisions of the Agreement be applied directly or need to be transposed into the relevant law? In the event of direct application of the Agreement over conflicting provisions of domestic law, please indicate the relevant legal basis.*

Should an international treaty or an agreement, to which the Republic of Moldova is a party, specify differently than the domestic law, then the provisions of the international treaty, or agreement shall have predominance (Article 8 of the Constitution of the Republic of Moldova, dated 29.07.1994; Article 3, paragraph (2) of the Law No. 1166-XIII, dated 30.04.1997 on procurement of goods, works and services for the state needs).

II. SCOPE AND COVERAGE

4. *Please summarize the organization of the government in your country at each level.*

From an administrative point of view, the territory of the Republic of Moldova is organized into counties, towns and villages.

Certain settlements in the South part of the Republic constitute a territorial autonomous unit with a special status established based on an organic Law.

Certain forms and conditions of autonomy might be granted to a number of settlements located on the left bank of the Nistru river, in conformity to a special status established through an organic law.

Administrative organization of the territory of the Republic of Moldova is done at two levels: the villages (communes) and towns (municipalities) constitute the first level, while the counties, the Gagauz territorial autonomous unit and the Chisinau municipality constitute level two.

5. *Please list all central government entities (ministries, departments, agencies, etc.) procuring goods, services and construction services.*

The central public administration bodies entitled to carry out procurement of goods, works and services are the following:

- The Office of the President of the Republic of Moldova;

- The office of the Parliament of the Republic of Moldova, including the public bodies that fall under the leadership and control of the Parliament;
- The State Chancellery of the Republic of Moldova;
- Ministry of Foreign Affairs, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Domestic Affairs, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Agriculture and Processing Industry, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Defence, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Transportation and Communications, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Culture, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Ecology, Constructions and Territory Arrangement, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Finances, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Industry, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Education, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Justice, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Labour and Social Protection, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Health Protection, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Energy, including the public bodies that fall under the leadership and control of the Ministry;
- Ministry of Economy, including the public bodies that fall under the leadership and control of the Ministry;
- The Customs Department;

- The Department for Emergency Situations;
- Department of the Border troops;
- Standards and Metrology Department;
- Department of Privatization;
- Department of Youth and Sports;
- Statistics and Sociology Department;
- Academy of Sciences, including the public bodies that fall under the leadership and control of the Academy.

6. *What entities at the sub-central level of government (states, provinces, municipalities, etc.) procure goods and services?*

Local public administration bodies entitled to carry out procurement of goods, works and services are the following:

- County Councils, including the public bodies that fall under their leadership and control;
- Local Councils, including the public bodies that fall under their leadership and control;
- Municipal Councils, including the public bodies that fall under their leadership and control.

7. *Which are the enterprises owned or controlled by the government that are subject to the rules on government procurement? Which are the other entities or categories of entities (Annex 3-type entities) owned and controlled by the government that engage in procurement? Specify.*

In the Republic of Moldova the state enterprises, or the enterprises in which the state has the control package of shares, do not carry out procurements within the provisions of the Law No. 1166-XIII, dated 30.04.1997 on procurement of goods, works and services for the state needs. A possibility of this kind is envisaged, however, by the draft Law on Public Procurements, which establishes a new mechanism of the state procurements.

8. *Do entities listed in response to questions 5, 6 and 7 apply in their procurement the main law (if one exists), other legislation provided by the federal or central level of government or are they autonomous from federal or central government in their procurement rules and practices? Where any of these entities are not subject to the main procurement law, please list the entities concerned and indicate which laws, regulations, etc., they are subject to. How will your government ensure the implementation of the Agreement by such entities below the central/federal government level?*

In conformity to Article 1 of the Constitution of the Republic of Moldova, dated 29.07.1994, the Republic of Moldova is a unitary and undivided state. From this point of view, the public administration bodies carry out procurements within the provisions of the Law mentioned above.

9. *Are there any general exceptions from the scope of application of the national procurement rules, for instance for essential national defence or security reasons? Please provide details.*

The Law mentioned in Article 22 envisages the possibility to carry out special auctions with limited attendance in case that the object of procurement are arms or in case when the requested goods, works and services are necessary for the defence of the country and national security.

10. *Please provide available statistics on the procurement by government entities in your country in the last two years, including, to the extent available, a breakdown by entity and by categories of products and services.*

At the request of state beneficiaries, the National Agency for Public Procurements has organized and carried out the following events:

- in 1999 – the Agency carried out 75 auctions and of public procurement contracts were signed for a total amount of MDL 58,000,000 of the Republic of Moldova (R.M.);
- in 2000 - the Agency carried out 75 auctions and public procurement contracts were signed for a total amount of MDL 185,017,197 of the R.M. In parallel, procurement contracts have been approved and registered as a result of procurement procedures carried out through the request of price proposals (98 contracts for a total amount of MDL 33,522,808.2 of the R.M.) and from a single source – predominantly procurement of electricity, heat, gas and water supply (568 contracts for an amount of MDL 163,890,451.1 of the R.M.). Thus, contracts for a total amount of MDL 382,430,456.2i of the R.M. have been signed;
- During semester I of 2000 – The Agency carried out 78 auctions and signed contracts for a total amount of MDL 76,807,472 of the R.M. In parallel, procurement contracts have been approved and registered as a result of procurement procedures carried out through the request of price proposals (391 contracts for a total amount of MDL 38,571,896 of the R.M.) and from one and the same source (1,407 contracts for an amount of MDL 275,944,341 of the R.M.) Thus, contracts have been signed for a total amount of MDL 391,323,709 of the R.M.

III. NATIONAL TREATMENT AND NON-DISCRIMINATION

11. *Identify the specific provisions in the legislation which reflect the national treatment and non-discrimination commitments of Article III of the Agreement.*

Article 8 of the Law No. 1166-XIII, dated 30.04.1997 on procurement of goods, works and services for the state needs, envisages, among other things, the right of suppliers (businessmen) to participate to auctions irrespective of their citizenship.

12. *Please provide details of any provisions in national legislation according domestic supplies and suppliers treatment more favourable than that accorded to foreign supplies or suppliers or according supplies or suppliers of any country more favourable treatment than those of any other country.*

Protection ensuring measures:

- Bearing in mind the state interests and in conformity to the Law in force in the Republic of Moldova, Article 8 of the Law stipulates, as an exception, the possibility of the National Agency for Public Procurement to decide to narrow the range of participating suppliers (businessmen) in favour of the national ones.
- Article 38, paragraph (6) stipulates the following: *"The working group shall have the right during evaluation and comparison of proposals to apply, with the consent of the Procurement Agency, the preferential limit in favour of work proposals carried out by local businessmen, or in favour of indigenous goods proposals. This preferential limit shall not exceed 10% of the proposed price and shall be incorporated into the reports regarding the procurement procedure."*

13. *Please provide details of any provisions in national legislation allowing a locally established supplier to be treated less favourably than another locally established supplier on the basis of its degree of foreign affiliation or ownership or discriminating against locally established suppliers on the basis of the country of production of the good or service being supplied.*

The Law of the Republic of Moldova to be observed in the public procurement area does not include provisions that, based on certain criteria, would allow a local supplier to be treated in a less favourable way in comparison with another local supplier.

14. *Please specify to what extent, if at all, more favourable treatment is granted to any sectors of the economy, regions or specific categories of suppliers or supplies.*

All goods are treated in an equal way in the Republic of Moldova, irrespective on their region.

15. *Please specify any provisions requiring or allowing the use of offsets or measures with similar effect, such as domestic content, licensing of technology, investment, counter-trade or similar requirements in the qualification or selection of suppliers, products or services or in the evaluation of tenders and award of contracts.*

Article 6, paragraph (2) of the Law under consideration envisages in a particular way the following:

"In order to be admitted to the procurement procedure, a supplier (businessman) shall submit documents that certify the following:

- (a) management competence, experience, good reputation, availability of professional staff, financial status, technical capacity and other needed capacities for a qualitative execution of the procurement contract;
- (b) powers to sign procurement contracts;
- (c) business status (certificates proving that the supplier (businessman) is not undergoing a liquidation or a bankruptcy process, that his property is not under sequestration and his business activity is not suspended);

- (d) documents proving that taxes are paid in a regular way and so are other contributions and other obligatory payments due within the Law in force in the supplier's (businessman's) country;
- (e) documents confirming that no disciplinary, administrative or penal sanctions were applied towards the supplier (businessman) during the last five years in connection with his professional activity or in connection with the submission of misleading information made with the goal to sign procurement contracts."

IV. ELEMENTS SPECIFIC TO PROCUREMENT PROCEDURES

16. *Please provide a general description of your existing procurement methods and procedures, including the main procurement methods used and a brief description of each method, and the extent to which qualification of suppliers and open, selective and limited tendering for each level of government is used.*

The procurement procedures are the following:

(a) public auction – During this procedure proposals or applications for the preliminary selection are invited from all suppliers (businessmen) that wish to participate in the auction. In order to inform the potential participants the National Agency for Public Procurements publishes in advance the conditions for the participation in a public auction, so that the interested parties may prepare their proposals or applications for the preliminary selection. In case of procurement of goods and works the preferable procedure shall be the procedure of a public auction.

(b) the two stages auction – is carried out in the following situations:

- the National Agency for Public Procurements is supposed to carry out additional negotiations with the proposing agencies due to impossibility to formulate the detailed characteristics of the goods, works or to determine the peculiarities of services and to make optimum decisions regarding procurements;
- the contract is signed with the purpose to carry out investigations, experiments, surveys or elaborations with the exception of the case when a contract presupposes a production of goods in satisfactory quantities to ensure the commercial efficiency or the compensation of expenditures made for these activities.

During the first stage of the two stages auction procedure, in the tender documents the suppliers (businessmen) are proposed to submit their proposals without indicating the price. It is also requested that they submit information regarding the technical and qualitative characteristics, as well as other peculiarities of the goods, works and services. Also, in line with the contract clauses, they are requested to indicate data regarding professional, technical and qualification skills of suppliers (businessmen), depending on the case. During the first stage of the two stages auction procedure the Agency for Procurements has the right to carry out negotiations with any supplier (businessmen), provided that his/her proposal has not been rejected.

During the second stage of the two stages auction procedure the bidders participants to the first stage, whose proposals have not been rejected, submit their final proposals, indicating their prices. The Agency for Procurements may exclude or modify any provision initially included in the tender documents and may add new characteristics or criteria in conformity to this Law. Information concerning such an exclusion, amendment or completion in the tender documents shall be submitted to the bidders through an invitation to submit final proposals. A bidder that does not wish to submit a final proposal may abandon the bidding procedure without losing the right to withdraw the guarantee

of his proposal. The final proposals are subject to an evaluation and comparison in order to determine the winning one.

(c) the auction with limited participation – is applied in the following cases:

- whenever the goods, the works or the services have a complex or specialized character and are available to a limited number of suppliers (businessmen);
- whenever the value of the procurement contract is smaller than 12,500 minimum salaries, and the costs supported for the consideration and evaluation of a big number of proposals exceeds the costs of requested goods, works and services.

In case of an auction with limited participation, the Agency for Procurement attracts the preliminary selected proposals, in conformity to the request submitted by the suppliers (businessmen) who have got the demanded goods, works and services and ensures the sufficient number of participants for an effective competition.

The Agency for Procurement places in its publication information regarding the auction with limited participation.

(d) special auction with limited participation – such an auction is organized whenever the object of procurement are arms, goods, or works and services necessary for the defence of the country and for national security, or if it is necessary that secret or confidentiality be observed.

(e) the price proposal request – application of such a procedure is conditioned by the value of the procurement, which is not supposed to exceed 2,500 minimum salaries.

The price proposals are requested to a rational number of suppliers (businessmen), but no less than three. Whenever it happens that only two suppliers (businessmen) meet the qualification requirements to act as suppliers of goods, to do the works and to deliver the requested services, the request to submit price proposals shall be placed with these suppliers (businessmen). Whenever it happens that only one supplier (businessman) meets the qualification requirements to act as supplier of goods, to do the works and to deliver the requested services, the request to submit price proposals shall be placed with this supplier (businessman). Any supplier (businessman) requested to submit his price proposal shall be informed whether additionally to the costs for goods and services, the price is supposed to include costs for transportation, insurance, payment of customs duties and taxes.

A supplier (businessman) can submit one single price proposal, with no right to be changed. No negotiation between the Procurements Agency and the bidder shall take place concerning such an proposal.

The proposal that meets all requirements at the smallest price shall be considered the winning one.

(f) procurement from one single source - shall take place provided that:

- there is an urgent need of goods, works and services as a result of an emergency;
- there is only one single supplier (businessman) that has got the necessary goods, works or services, or only one single supplier (businessman) has got the priority rights over such requested goods, works or services and there is no other alternative;

- the working group responsible to do procurement of goods, equipment, technologies or services from a certain supplier (businessman) decides to make additional procurements from the same supplier (businessman), provided that their amount does not exceed 30 per cent of the initial procurements quantum;
- the contract with this supplier (businessman) is signed in order to carry out investigations, experiments, surveys or explorations, with the exception of cases when the contract presupposes production of goods in sufficient quantities to ensure their commercial efficiency or to recover costs for the sake of mentioned purposes;
- after having carried out the procurement procedure the Agency, after placing a bidding, received one single proposal, and the initiation of a new bidding procedure is not rational.

17. *Identify the provision in your country's legislation requiring non-discrimination as regards the qualification of suppliers in terms of Article VIII and selection of suppliers in terms of Article X. Indicate any exception to this requirement. What are the provisions ensuring non-discriminatory access of new suppliers to existing qualification lists?*

Article 6, paragraph (3) of the Law under consideration envisages that the suppliers' (businessmen') include qualifying data in the documents submitted for the preliminary qualification selection, if there exists one, in the auction documents and in other documents developed to attract proposals and that all suppliers (businessmen) are supposed to comply with this requirement. The procurement working group for a state beneficiary shall not establish additional criteria, requirements or procedures regarding qualification data. Neither shall it establish discriminating criteria, requirements or procedures with respect to a certain category of suppliers (businessmen). Regarding the preliminary selection procedure Article 7 stipulates that the preliminary selection is carried out based on non-discriminating principles.

18. *In situations where qualification procedures and selective tendering may be used, to what extent do entities allow suppliers to become qualified during the procurement process? To what extent do entities maintain permanent lists of suppliers?*

The public authorities carry out evaluation of the suppliers' (businessmen') qualification data based on criteria and methods indicated in the documents designed for the attraction of proposals, and in case of application of preliminary selection procedures the suppliers that have submitted applications are selected in conformity with the preliminary selection criteria included in the preliminary selection documents.

There exist no permanent lists of suppliers.

19. *What are the conditions and circumstances foreseen in your legislation allowing the use of the limited tendering method under Article XV of the Agreement? What measures exist in order to ensure that this method is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discriminating among foreign supplies/suppliers or in favour of domestic supplies/suppliers?*

The relevant Law envisages the following:

"Article 21. Auction with limited participation

(1) The Agency for Procurement may carry out procurements through the limited participation auctions provided that:

- (a) the goods, the works or the services with a complex or specialized character are available with a limited number of suppliers (businessmen);
- (b) the value of the procurement contract is smaller than 12,500 minimum salaries, and the costs to do consideration and evaluation of a big number of proposals will exceed the costs of requested goods, works and services.

(2) In case of an auction with limited participation, the Agency for Procurement attracts the preliminary selected proposals, in conformity to requirements, submitted by the suppliers (businessmen) who have got the requested goods, works and services and ensures the sufficient number of participants for an effective competition.

(3) The Agency for Procurement in its publication places information regarding the auction with limited participation.

Article 22. Special auction with limited participation

(1) Whenever the object of procurement are arms, goods, or works and services necessary for the defence of the country and for national security, or if it is necessary that secret or confidentiality be observed the National Agency for Procurement may carry out a special auction with limited participation.

(2) In carrying out this kind of auctions the Agency for Procurements is obliged to observe provisions of Article 21, provided that it keeps the secrecy or confidentiality of the information concerning the security and national defence."

20. *Article XIV of the Agreement allows for negotiation under certain conditions. Are entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?*

No negotiations shall take place between the Agency for Procurements and the state beneficiary working group on one hand and the bidder on the other hand regarding the made proposal.

21. *Article XI sets out the minimum time-periods for tendering and delivery. What are the rules and practices regarding time-periods in your legislation? Does the legislation reflect the various minimum time-periods as set out in the Agreement? If not, give information on any different time-periods which have been established in your national legislation.*

Article 32 of the Law envisages the following:

"(1) The Procurement Agency shall establish the place, the dead line date and hour of the term for the proposal submission. This term shall be at least 10 days long and shall start 45 days later the date of the tender documents issue.

(2) Should the Procurement Agency make explanations or amendments to the tender documents, or should it hold a meeting of suppliers (businessmen), the term for the proposals submission shall be prolonged, depending on the case, so that the suppliers (businessmen) have enough time to take into consideration the made explanation, modification or the stipulation of the meeting minutes.

(3) Before the term for the proposal submission expires, the Procurement Agency has the right, at its decision, to prolong this term.

(4) The notification regarding the term prolongation shall be immediately sent to each supplier (businessmen) to whom the Procurement Agency has sent the bidding documents.

(5) The written and signed proposal is submitted in a sealed envelope. In case of certain standard goods, in conformity to certain rules worked out by the Procurement Agency, it is also possible, to transmit a proposal via the fax. In this case the Agency shall issue at the request of the supplier (businessman) a receipt indicating the date and the hour of the proposal reception.

(6) The proposal received by the Procurement Agency later than the established deadline for the proposals submission shall not be open, and shall be returned back to the supplier (businessman) that had submitted it."

22. *Briefly describe the procedures for the submission, receipt and opening of tenders and awarding of contracts, in particular the procedures and conditions guaranteeing regularity of the openings and consistency with the non-discrimination provisions of the Agreement. How is the information on the proceedings related to the receipt, opening and evaluation of tenders maintained by entities?*

The National Agency for Public Procurements through a decree shall set up an auction committee, which shall include minimum five members. The membership of the committee shall include:

- ☐ the chairman of the committee who is usually the representative of the Agency;
- ☐ a representative appointed by the Ministry of Finances;
- ☐ a representative(s) of the working group(s) for procurements for a state beneficiary(ies), who shall carry out procurements;
- ☐ other representatives, as members of the auction committee, who shall be specialists with professional experience in the respective public procurement area.

The auction committee organizes the auction session during which the proposals are open. Proposal opening is done at a time set in the bidding documents in the presence of the auction committee members and representatives of the bidders.

During bids opening, the chairman of the auction committee announces the name, or depending on the case, the name of the bidders, the cost of bids, the proposals for alternative bids, including the main values and characteristics of the bids. Next, he reads the written notifications regarding amendments or withdrawals of bids, in cases in which there exist guarantees of participation. He also reads any other details that the auction committee considers necessary.

After bids opening and announcement of the bidders, the auction committee works out two copies of the minutes of the session. One copy is kept as records of the committee, where it states the data mentioned during bids opening. The minutes are read in the presence of participants, and then it is being signed by the members of the auction committee and by the bidders representatives.

Bids that have been withdrawn or submitted later than the established deadline shall be returned back to the respective bidders without being open.

In the case when procurements are supposed to be carried out by a single state beneficiary, the bids, after having been open in a public way, are submitted by the auction committee to the beneficiary procurement working group for their subsequent consideration, evaluation and comparison.

In the case when procurements are supposed to be carried out by two or more state beneficiaries the bids are being considered, evaluated and compared by the auction committee.

23. *Please identify the provisions in your legislation setting the parameters for the prescription of technical specifications by entities as part of the evaluation criteria.*

Article 23 of the Law under consideration:

"Characteristics of goods, works and services.

(1) The characteristics of goods, works and services requested by the working group need to represent an exact and complete description of the procured object.

(2) The characteristics shall meet the requirements set forward by the working group in respect to quality, efficiency, testing, security, dimensions, symbols, packaging, transportation way, marking, labelling, processes and methods of production of the procured object, as well as procedures of determination of its compliance with the tender documents.

(3) During editing of the technical specifications, designs, technical drawings and descriptions requested by the working group the following shall be fulfilled:

- (a) a physical description of requested goods, works and services shall be made, based on the technical and qualitative, objective and relevant characteristics;
- (b) should the physical description be impossible, or should the efficiency parameters be primordial, characteristics shall be made from the point of view of the exploitation of, or the efficiency of works and services;
- (c) in doing description of requested goods, works, and services one shall use characteristics, requirements, symbols and standard terms or international standards and the national standards recognized on an international level, as approved by the Department of Standards, Metrology and Technical Supervision.

(4) The technical specifications shall not make reference to a special commercial mark or to a firm, to a patent, chart or type of goods, works and services, and shall not indicate a concrete origin, a producer or a supplier. In cases when there exist no way to express in a sufficiently exact way the requirements put forward by a special procurement, but such a reference appears inevitable, the characteristics shall include the words "or the equivalent".

The Law of the Republic of Moldova applicable in the public procurement sphere does not specify the requirements concerning the protection of environment and security of employees, these requirements constituting exclusively the object of legal regulation covered by the Law on protection of environment and the Law on labour. Thus, during procurement operations, the subjects involved are supposed to ensure observation of these provisions.

24. *Identify the measures in national legislation ensuring that awards are made in accordance with the evaluation criteria and essential requirements specified in the tender documentation.*

Article 38 of the Law under consideration stipulates that the working group of the state beneficiary, by using methods and criteria specified in the bidding documents, considers, evaluates and compares the received bids in order to determine the winning bid. No other criteria than the ones indicated in the bidding documents shall be used. The results of the bids consideration, evaluation and comparison shall be submitted to the National Agency for Public Procurements for approval.

V. INFORMATION

25. *Article XIX:1 of the Agreement foresees the publication of laws, regulations, judicial decisions, administrative rulings of general application and procedures regarding government procurement. Please give the name of the relevant publication(s) and indicate the media used for this purpose. Please also provide, where available, the address of an Internet website where the legislation referred to in questions 1 and 2 can be found.*

The laws, the Parliament resolutions, the Presidential decrees, the Government resolutions and the normative acts of ministries and departments are published in the "Monitorul Oficial" (The Official Gazette).

26. *Article IX:1 of the Agreement foresees the publication of invitations to participate for all cases of intended procurement by entities. Please give the name of the relevant publication(s) and indicate the media to be used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.*

Invitations to participate to all types of procurements held by public authorities are published in the "Economicescoe Obozrenie" Bulletin of the National Agency for Public Procurements. The Internet is one of the tools used for this purpose.

27. *Please specify the types of information that your legislation requires to be included in notices of invitation to tender or in tender documentation, and identify the relevant provisions of your legislation.*

Invitation to the tender is made through the radio and is placed in the "Economicescoe Obozrenie" newspaper.

An invitation to participate to an auction shall include the following data:

- (a) the name and venue of the Procurement Agency;
- (b) the goods, quantity and place of their delivery; the works, the place of their application; the services and the place of their delivery;
- (c) the terms of the delivery of goods, deadline of completion of works and the schedule of service delivery;
- (d) criteria and way of evaluation of qualification data with respect to suppliers (businessmen);
- (e) a provision, which subsequently may not be changed, saying that the suppliers (businessmen) can participate to the procurement procedure irrespective on their citizenship or the provision saying that the range of participants is limited in conformity to Article 8, paragraph (1);
- (f) the way and the place where the tender documents may be obtained;
- (g) the fee (if there is one) for the tender documents;
- (h) the currency and the way to pay fees for the tender documents;
- (i) the language (or languages) used in the development of the tender documents;

- (j) place and terms of submission of bids.

An invitation to participate to the preliminary selection shall include the following information:

- (a) the way and place where the documents regarding the preliminary selection may be obtained;
- (b) the fee (if there is one) to be paid for the preliminary selection documents;
- (c) the currency and the way to do the payment of the fee for the preliminary selection documents;
- (d) the language (or languages) used in the development of the preliminary selection documents;
- (e) the place and the terms of the submission of the preliminary selection applications.

Conditions for the release of the action documents:

The Procurement Agency offers the auction documents to suppliers (businessmen) in conformity to provisions included in the invitation to participate to the auction. In case of the preliminary selection procedure the Agency offers a set of auction documents to each supplier (businessman) selected in advance, who has paid the fee for mentioned documents (if there is such a fee). The fee that the Agency is entitled to collect for the auction documents shall be established only based on expenditures supported for the printing of documents and their delivery to the supplier (businessmen).

The auction documents shall include the following:

- (a) guidelines concerning the preparation of bids;
- (b) criteria and ways used to evaluate the bidders' qualification data and to confirm these data;
- (c) requirements to be met by the documents or other information that is supposed to be submitted by the bidders in order to confirm their qualification data;
- (d) the technical and qualitative characteristics requested with respect to the goods, works and services; the amounts of goods; the related services; the place of development of works, the place of delivery of services; the terms of goods delivery, completion of works and service delivery;
- (e) criteria used to evaluate the winning bid, including any other preferential goods, their relative value;
- (f) the procurement contract clauses and the template of the contract that needs to be signed by the parties;
- (g) the respective declaration and description of the evaluation and the way of comparison of the alternative bids, whenever alternatives are admitted with respect to the characteristics of goods, works and services and the contract clauses or other requirements;

- (h) description of a part (parts) with respect to which bids may be submitted, if the suppliers (businessman) are allowed to submit bids for only a part of requested goods, works and services;
- (i) the way the price is calculated and expressed, including indications regarding the need that, additionally to the genuine cost of the goods, works and services, to also include other elements in the price, such as the transportation and insurance, payment of customs fees and taxes, etc.;
- (j) information about the currency (or currencies) used to calculate and express the price of the bid;
- (k) information about the language (or languages) of the bids;
- (l) the requirements put forward by the Procurement Agency towards the issuer and information regarding the form, amount and other basic conditions of the guarantee of the bid, the guarantee that is supposed to be submitted by the bidder and the requirements regarding the guarantee of the contract implementation by the supplier (businessman) that signs a procurement contract;
- (m) the notification regarding the possibility of the supplier (businessman) to modify or withdraw his bid before the expiration of the bids submission deadline without losing the right to withdraw the guarantee made for the respective bid;
- (n) the way, place, the deadline term and the hour of the bids submission term;
- (o) the way, in which the supplier (businessman) may request explanations in connection with the tender documents and the notification regarding the intention of the Agency to summon at a certain stage a meeting of the suppliers (businessmen);
- (p) the term of the bids validity;
- (q) the place, the date and the hour of the bids opening;
- (r) the procedure to be followed in the bids opening and consideration;
- (s) information about the currency to be used in the evaluation and comparison of bids or the exchange rate to be taken as equivalent for the price of the bids in a special currency, or the declaration regarding the fact that the applied exchange rate shall be the one published by a certain financial institution and valid at a certain date;
- (t) reference to this Law and to other normative acts concerning procurements; the lack of such a reference should not constitute grounds to advance claims to the Agency or to impose certain obligations on the Agency;
- (u) the name, surname, the function and the contact data of one or more decision-making factors or of the Agency employees entitled to communicate directly with the suppliers (businessmen);
- (v) the notification regarding the right to complain in connection with a certain action or a decision of the Agency or with a certain procurement procedure applied by the Agency;

- (w) the notification concerning the right of the working group to reject all bids in conformity to Article 12;
- (x) the necessary formalities, after a bid has been accepted, to sign the procurement contract, including, as the case may be, approval of a superior body and the presupposed term to obtain such an approval;
- (y) other requirements established by the Agency in conformity to present Law and other normative acts concerning procurements.

28. *Article IX:1 of the Agreement foresees publication of permanent lists of qualified suppliers by entities maintaining such lists. Please give the name of the relevant publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where such lists are published.*

The public bodies shall not develop permanent lists of qualified suppliers.

29. *Article XVIII:1 of the Agreement foresees the publication of details of contract award notices by entities. Please give the name of the relevant publication(s) and indicate the means to be used for this purpose. Please also provide, where available, the address of an Internet website where such notices are published.*

Public entities do not publish announcements regarding the award of the contract.

30. *Please specify the types of information that notices of contract awards should contain in your country and identify the relevant provisions in your legislation.*

The Procurement Agency, based on Article 14 of the Law on public procurements publishes a notification regarding signing a procurement contract within a 30-day period of time since its signing. The notification includes at least the name of the supplier (businessman) with whom the contract has been signed, the object of the contract, the price or the total value of the contract.

31. *Please specify the relevant provisions in your legislation enabling, as foreseen in Article XVIII:2, the provision of information to other Parties and unsuccessful tenderers regarding the reasons why a tender was not selected.*

In conformity to Article 40 of the Law on Procurements, the Procurement Agency, within a 3-day period of time since it has approved the winning bid, sends to the bidder a written communication informing him about the fact that his proposal has been accepted or has not been accepted.

VI. BID CHALLENGE PROCEDURES

32. *Please provide information on existing challenge procedures.*

Consideration, evaluation and comparison of bids is done by the working groups of the state beneficiary.

In order to facilitate the consideration, evaluation and comparison of the bids, the working group may request the bidder to submit explanations concerning the proposal. No modifications are allowed, including modifications of the price that might contribute to the fact that the proposal is brought into compliance with some requirements with which it didn't comply initially. The working group, during its consideration, shall correct only the arithmetic errors found in the proposal and shall immediately inform the bidder about them.

The working group has the right to consider the proposal complying with the requirements also in cases when a proposal contains insignificant deviations from the provisions of the tender documents, errors or omissions that might be corrected without affecting its essence. Any deviation of this kind shall be expressed, to the possible extent, in a quantitative way and shall be taken into consideration during evaluation and comparison of the bids.

A working group shall not accept a proposal in the following cases:

- (a) the bidder doesn't meet the qualification requirements;
- (b) the bidder does not accept to correct an arithmetic mistake;
- (c) the proposal does not meet the requirements included in the tender documents;
- (d) it was stated that corruption actions have been undertaken in this respect.

In order to determine the winning bid the working group evaluates and compares the received proposals using ways and criteria included in the tender documents. No criteria other than the ones contained in the tender documents shall be used. The results of consideration, evaluation and comparison of the proposals are submitted for approval to the Procurement Agency.

A proposal shall be considered a winning one provided that:

- (a) it is the bid that proposes the smallest price, while taking into consideration the preferential limits;
- (b) it is the proposal that has the smallest estimated value, should such a requirement be envisaged in the tender documents, determined based on the criteria listed below, that are to be considered via relative values, and if possible, via an equivalent magnitude of the cost:
 - the price of the proposal, taking into consideration any preferential limits;
 - operation, maintenance and repair costs; terms of the delivery of the goods, of the completion of the works and delivery of services; functional characteristics of goods and works; payment conditions and the guarantee of goods, works and services;
 - defence and national security treaty as priority issues.

In case that the prices of the proposals are expressed in two or more currencies, then in order to facilitate the evaluation and comparison of the proposals, the prices of all proposals shall be calculated in one single currency in line with the exchange rate established in the tender documents.

Should a bidder refuse to fulfil the request of the working group to confirm the second time the qualification data for the contract signing, then the proposal is rejected and a new proposal is selected out of the still valid proposals. At the same time, the working group with the consent of the Procurement Agency, has the right to reject all the other proposals.

Information regarding the consideration, evaluation and comparison of proposals shall not be disclosed to the bidders or to other persons officially uninvolved in these procedures or during the winning bid selection procedure.

33. *Are there specific provisions enabling access of foreign suppliers to challenge procedures?*

The Law of the Republic of Moldova applied in the public procurement area does not contain provisions that could allow the access of foreign suppliers to the proposals consideration procedure.

34. *To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so:*

- (i) *The time-limit to launch a complaint contained in the Agreement is "not less than 10 days" from the time when the basis of the complaint is known or reasonably should have been known. What are the limits in your domestic legislation?*

A supplier (businessman), that considers himself damaged or expects to be damaged as a result of the procurement procedure, shall have the right, within a 20-day period of time since the day when the supplier (businessman) started the action, period during which he learnt about circumstances that served as grounds for the appeal, to complain in connection with these actions or in connection with the decision of the Procurement Agency.

- (ii) *What body is responsible for the challenge procedures? Is this a "court" or an "impartial and independent review body"? If the latter:*

- *How are its members selected?*
- *Are its decisions subject to judicial review?*
- *If not, how will the requirements of paragraph 6 of Article XX be taken into account?*

In such cases the National Agency for Public Procurements shall be responsible for the resolution of the complaint.

- (iii) *What is the applicable law by reference to which the challenge body will examine complaints?*

The Law No. 1166-XIII, dated 30.04.1997 on the procurement of goods, works, services for the needs of the state is the relevant Law to be applied in the complaint settlement.

- (iv) *Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial opportunities?*

- *Do these measures include the possibility to suspend the procurement process? On what conditions?*

Submission of a complaint in the set terms brings about a suspension of the procurement procedures for seven days, provided that this is an essential complaint and contains a declaration that, once proved, confirms the following:

- (a) without undertaking such a suspension, the supplier (businessman) would suffer damages;
- (b) there is the possibility that such a complaint may be settled;
- (c) the suspension will not cause damages to parties involved in the procurement procedure.

In case of a procurement contract signing, a relevant complaint submission shall bring about the suspension of the contract execution for a 7-day period of time, provided that the complaint meets the requirements mentioned above. In order to ensure the rights of the supplier (businessman) that has submitted the complaint, or the one who has started an action, the Procurement Agency may prolong these terms of suspension, on condition that the suspension term does not exceed a 30-day period of time.

Suspension shall not be applied if the Procurement Agency considers that the public urgent interests require prolongation of procurements. The decision that proves the existence of such interests, and which is countersigned in the report regarding the procurement procedure, is definite, with the exception of cases appealed in the court.

- (v) *How do challenge procedures provide for correction of the Agreement? What types of compensation for loss or damages suffered can the challenge body order?*

The Law does not envisage compensation possibilities for the supported losses or damages. These will have to be defined (established) by the corresponding institution.

- (vi) *Give any available information on the time-periods for the stages of the challenge process, including to obtain interim measures and a final decision.*

The Procurement Agency shall establish the place, the deadline date and hour of the terms of the proposals submission. This term shall be no less than 10 days and shall start 45 days later than the date of tender documents release.

In case that the Procurement Agency makes explanations or makes modifications in the tender documents, or in case that the Agency holds a meeting with the suppliers (businessmen), the term of the bids submission is prolonged, as the case may be, so that the suppliers (businessmen) have enough time to take into consideration the explanation, the amendment or the provisions of the meeting minutes.

Before the term of the bids submission expires, the Procurement Agency has the right, at its decision, to prolong this term.

The notification regarding the prolongation of the term is immediately sent to each supplier (businessman), to whom the Procurement Agency had previously sent the tender documents.

The written and signed proposal is submitted in a sealed envelope. In case of certain standard goods, in conformity to certain rules worked out by the Procurement Agency, it is also possible, to transmit a proposal via the fax.

In this case, the Agency shall issue at the request of the supplier (businessman) a receipt indicating the date and the hour of the proposal receipt.

The proposal received by the Procurement Agency later than the established deadline for the proposals submission shall not be open, and shall be returned back to the supplier (businessman) that had submitted it.

- (vii) *What are the usual costs to conduct a challenge procedure? Are there possibilities foreseen to do so free of charge?*

The Law on public procurements envisages that the procedure of bid consideration is done for free.

VII. OTHER MATTERS

35. *To what extent is information technology being used in the process of government procurement? Are notices of invitations to tender and/or notices of contract awards published electronically? Please provide the address of such electronic publications.*

For publishing purposes and for the development of the documents the information technology is used. The announcement regarding the contract award is not published electronically.

36. *Is there a contact point in your country for responding to enquiries from suppliers, other governments and the wider public relating to laws, regulations and procedures and practices regarding government procurement at the central and/or sub-central level? Please provide the address.*

The contact address is:

Piața Marii Adunari Naționale 1,
National Agency of Public Procurements
E-mail: **anap@moldova.md**
