

Certificates of conformity and quality required in sectoral procurement procedures

Certificates of conformity and quality are a typical issue in setting qualification and selection requirements in sectoral procurement. While contracting authorities whose procurements are regulated by Law No. 131/2015 have more experience in applying a transparent procurement mechanism, and often through their own mistakes have come to understand the difference between these acts and require them properly, in the case of contracting entities carrying out procurements under Law No. 74/2020 on procurement in the energy, water, transport and postal services sectors, there is still a multitude of procurements where problems arise due to the misunderstanding of these certificates. The same problem persists among economic operators specializing in economic activities related to the utilities sectors.

In this article we will analyse a few such cases and clarify the certificates in question.

First of all, the difference between these two acts is that the quality certificate is issued for a specific good, for example for car brand X with VIN (vehicle identification number) 1234239237 which is unique. This certificate confirms that the car meets the quality level set by the manufacturer. The manufacturer therefore decides what the quality level of its products is. If it is a manufacturer with a reputation for its quality goods, for example Mercedes-Benz, then such a certificate will be worth more. Potential buyers know that the Mercedes-Benz factory confirms the quality of the car produced. If it is a manufacturer less famous for quality and more famous for defects (we will not name names here so as not to denigrate), then the quality certificate issued by it will be worth less. Potential buyers do not even have high expectations of quality from the manufacturer.

Essentially, the quality certificate only confirms the manufacturer's commitment or promise that the good is "of good quality". However, what we include in the definition of 'quality' is not necessarily the same as what the manufacturer includes. In the absence of detailed regulations, a quality certificate can be issued for almost any good. In other words, when the contracting entity requests a quality certificate, it must specify exactly what it means by the term "quality". For example, in the case of a car, the contracting entity may indicate that the manufacturer (or possibly the distributor, if he so agrees) must confirm in the quality certificate that "the normal service life of the car is 25 years; the maximum total cost of repairing faults which may occur in the first 10 years is 30 thousand lei (~6494 USD); the normal service life of the engine is 1,000,000 km; etc."). As a result, all the quality requirements that the contracting entity requires can be required to be included in the quality certificate. In this way, in the event of a defect, even after 15 years, it is not the tenderer (who in the meantime may no longer exist) who can be held liable, but the manufacturer directly or, in the worst case, the local distributor (who, in the case of Mercedes-Benz, may have changed in the meantime).

The Certificate of Conformity in turn is a document issued by an entity other than the manufacturer. It meets the following conditions: it has a certification body, which is an independent institution; it has a laboratory or contracts with laboratories and directly verifies goods of a particular manufacturer's model. Finally, it determines whether or not the goods comply with certain national/international technical standards.

Article 2 of the Law No. 235/2011 on accreditation and conformity assessment activities regulates the notion of "certificate of conformity": "a document attesting that a duly identified product has undergone conformity assessment procedures and that, at the time of assessment, the product conforms to the applicable specified requirements".

And Article 73 para. (3) of the Law No. 74/2020 states: "(1) If the contracting entity requires the submission of certificates, issued by independent bodies, attesting that the economic operator complies with certain quality assurance standards, it must refer to quality assurance systems based on the relevant European standards series, certified by bodies complying with the European standards series on certification, or to relevant international standards issued by accredited bodies."

One example is the European emission standards for cars. In the Republic of Moldova they are not applicable, but contracting entities that care about the environment could apply them without any impediment ([ANSC Decision No. 03D-747-21 of 29.10.2021](#)). The highest standard is EURO-6. For light petrol cars, it requires that per 1 km driven, the car must emit substances in quantities less than or equal to: CO₂ - 1 g, HC - 0.1g, NMHC - 0.068 g, NO_x - 60 mg. The manufacturer who wishes to do so must apply to a certification body for a EURO-6 certificate of conformity. The certification body comes to the manufacturer's plant, randomly selects a few cars (depending on the rules of the certification body) and tests them, either in its own laboratory or in a subcontracted one. Specialized devices are installed at the laboratory to measure the amount of pollutants in the exhaust gases and indicate them in the test results. Depending on these results, the certification body issues or refuses to issue a EURO-6 certificate of conformity. The same scheme applies to other conformity standards, which exist internationally for almost every type of product.

Note, these tests cost a lot of money, i.e., manufacturers who undertake to carry them out have to increase the price of their products to compensate for the costs incurred on certification. That is why there is also a price difference between certified and non-certified products. This does not necessarily mean a difference in quality, however, if a product is properly certified it is much more likely to be of higher quality than a non-certified one. The lack of certification may be for the simple reason that the manufacturer knows that his good will not pass certification, and therefore does not subject it to this procedure, and then turns to consumers who focus on price rather than quality.

Another important aspect is that compliance standards differ from one country to another. In the EU there are EN certificates, in the former Soviet Union GOST certificates are used, in the Republic of Moldova - SM, internationally - ISO. Consequently, when a requirement to meet a conformity standard is imposed, the contracting entity must also indicate the expression "or equivalent" so as not to restrict competition. The expression given refers to other standards, but which confirm the same or higher technical parameters of the basic standard required. For example, while the EURO-6 standard sets certain requirements for exhaust pollutants in the EU, similar standards exist in other countries: in the US - Tier 2 or Tier 3, which is even stricter than EURO-6; in Mexico - EPA 10; in Brazil - Proconve L7; in China - China 6a or China 6b, which is already stricter than EURO-6. Manufacturers usually only certify products to national standards, but it would be too costly to certify them to the

standards in each market. At the same time, countries are trying to adopt similar quality regulations so as not to jeopardize international trade.

However, even in the absence of the words "or equivalent", the contracting authority is obliged under Article 73(2)(a) to ensure that the contract is awarded in accordance with the contract. (2) of Law 74/2020 to accept certifications equivalent to the one requested:

"(2) In accordance with the principle of mutual recognition, the contracting entity is obliged to accept equivalent certificates issued by bodies established in the Member States of the European Union. If the economic operator does not hold a quality certificate as requested by the contracting entity, the latter is obliged to accept any other certifications, presented by the economic operator concerned, insofar as they confirm that an adequate level of quality is ensured."

Although the rule given refers to quality certificates, it is to be applied by analogy to certificates of conformity. A reverse approach would contravene the principle of non-discrimination in sectoral procurement.

In practice, contracting entities confuse these acts and often do not formulate the qualification requirements of these acts correctly.

For example, for a purchase of concrete poles, Moldelectrica required the presentation of both the certificate of conformity and the quality certificate for the poles, without specifying the standards and technical requirements to be confirmed by these certificates. This created confusion among bidders, who proposed goods with different levels of conformity and quality, and a complaint was filed with the National Agency for the Settlement of Disputes (ANSC):

În partea criticilor contestatorului ce țin de certificatul de conformitate prezentat de către „Venador-Prim” SRL, analizând documentația de atribuire publicată de către autoritatea contractantă în cadrul procedurii de achiziție publică din litigiul, Agenția constată ca la pct. 20 subpct. 6 din anunțul de participare, este solicitată prezentarea obligatorie a „Certificat de conformitate a produselor oferite. Copie, confirmată prin aplicarea semnăturii electronice ”, iar la pct. 20 subpct. 7 al aceluiași document autoritatea contractantă a solicitat ca cerința obligatorie „Certificat de calitate. Copie, confirmată prin aplicarea semnăturii electronice”.

Prin urmare, reieșind din cerința entității contractante „Certificat de conformitate a produselor oferite”, și în lipsa indicării exprese a metodelor de încercare și a standardului de referință în documentația de atribuire, Agenția va aprecia ca neîntemeiate pretențiile contestatorului prin care susține că „ICȘP „IMACOMPROIECT” SRL, nu a fost acreditată cu dreptul de a efectua încercări prin metode mecanice pentru elementele din beton și beton armat, și urmează a concluziona că laboratorul acestei companii nu dispune de utilajul necesar pentru a efectua toate încercările de laborator necesare și a confirma pe deplin calitatea produsului, iar certificatul prezentat este unul incomplet și nu confirmă integral calitatea produsului”. Astfel, în cazul din speță „Venador-Prim” SRL a prezentat nemijlocit documentele confirmative, entitatea contractantă având posibilitatea să se asigure cu privire la îndeplinirea cerinței de către ofertant, pe de altă parte, contestatorul nu a argumentat/demonstrat că efectuarea încercărilor prin metoda statică pentru care este acreditat ICȘP „IMACOMPROIECT” nu ar fi suficientă pentru probarea calității și conformității stâlpilor ofertați de către „Venador-Prim” SRL, or conform certificatului de conformitate nr. OCpr-018 11A 1680-23 din 21.04.2023 acesta din urmă atestă îndeplinirea tuturor prevederilor privind evaluarea și verificarea constanței performanței specifice în anexa ZA a standardului SM EN 13369:2018 pentru care ICȘP „IMACOMPROIECT” este acreditat corespunzător.

[Decision No 03D-530-23 of 10.08.2023](#)

The same error was committed by BĂLȚI-GAZ SRL, in procurement procedure no. MD-1676529376370, for the purchase of cast iron couplings and adapters, where it requested a certificate, without specifying what kind of certificate and to which standards it refers:

Nr. d/o	Descrierea criteriului/cerinței	Mod de demonstrare a îndeplinirii criteriului/cerinței:	Nivelul minim/Obligativitatea
6	Asigurarea standardelor calității:	Documente și certificate emise de organisme independente, prin care se atestă faptul respectării anumitor standarde de asigurare a calității	Obligatoriu

As a result, the contracting entity decided that letters of recommendation and diplomas from public authorities would satisfy the requirement. Following an appeal, the ANSC found this approach to be wrong. However, the public authorities indicated are not independent certification bodies and even if a certain standard was not required, the tenderers had to confirm that they met at least one relevant quality standard:

Or, Agenția remarcă faptul că prin „certificate echivalente” se subînțelege un certificat care are aceeași valoare, produce aceleași efecte, în speță, ar confirma respectarea cerințelor stabilite în standardul de asigurare a calității, iar diplomele/recomandările prezentate nu conțin referințe cu privire la standarde internaționale sau naționale.

Prin urmare, Agenția constată că operatorul economic contestator nu a prezentat documente și certificate emise de organisme independente, prin care se atestă faptul respectării anumitor standarde de asigurare a calității așa cum a solicitat entitatea contractantă, or prezentarea diplomelor de onoare/merit sau recomandări din partea beneficiarilor nu presupune îndeplinirea cerinței solicitate. La caz, de asemenea, Agenția

[Decision No 03D-301-23 Date: 19.05.2023](#)

In another procedure organised by Chișinău-gaz" SRL for the purchase of paints and varnishes (MD-1680587072511), the contracting entity committed the same error by indicating that bidders must submit a certificate of conformity, without specifying the conformity requirements/standards to be met. The successful tenderer submitted a certificate issued in Turkey. The tenderer indicated that this certificate of conformity was not recognized in the territory of the Republic of Moldova. However, Art. 31 para. (1), (2), (3) and (4) of Law No. 235/2011 provides:

"(1) Certificates of conformity or test reports issued by notified conformity assessment bodies accredited by national accreditation bodies signatory to the Multilateral Recognition Agreement with the European Cooperation for Accreditation, issued for products imported from the Member States of the European Union, translated into Romanian and confirmed by the importer's signature, are recognized."

(2) Certificates of conformity or test reports issued by foreign conformity assessment bodies shall be recognized on the basis of bilateral agreements on mutual recognition of conformity assessment activities. Recognition of certificates of conformity shall be effected by the issue

of a new certificate of conformity by certification bodies accredited by the National Accreditation Centre.

(3) For the recognition of the certificate of conformity referred to in paragraph 1, the following shall apply (2), the applicant shall submit to the certification body accredited in the Republic of Moldova for the same field an application, the original or a copy, authenticated by the issuing organization, of the certificate of conformity of the country of origin of the product, as well as the original or a copy, authenticated by the issuing organization, of the test report on the tests carried out for the purpose of certification.

(4) The certification body referred to in paragraph 1 shall (3) shall carry out the identification (origin; organoleptic properties, where applicable; legality, quantity and marking) of the products and inform the applicant of the decision to issue the national certificate of conformity. In the case of a negative decision, the clear reasons for the refusal to recognize the certificate of conformity issued by a foreign conformity assessment body shall be given in writing."

Based on these provisions, if for placing on the market of the Republic of Moldova the appropriate certification of a good is required, then its certifications shall be subject to a recognition procedure (except when issued in Moldova or the EU). If the contracting authority wishes to require such recognition of certification even where national legislation does not require such certification, then this shall be expressly stated in the contract notice.

ANSC rejected the claim of the complainant because the notice of participation included no requirement and the economic operators must ensure that they comply with legislation when placing goods on the market:

În acest sens, nu pot fi reținute argumentele contestatorului susținute atât în textul contestației, cât și în cadrul ședinței deschise pentru examinarea contestației precum că " [...], Varox Comerț" S.R.L. a prezentat un certificat de conformitate cu standard turcesc, care trezește dubii, deoarece Turcia nu este stat membru al Uniunii Europene, iar certificatul prezentat nu confirmă omologarea tehnică europeană așa cum prevede Legea nr. 74 din 21 mai 2020 "privind achizițiile în sectoarele energiei, apei, transporturilor și serviciilor poștale". Astfel, considerăm că prin certificatul prezentat nu a fost asigurate standardele calității, condiție obligatorie solicitată de către unitatea

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contractantă.", întrucât având în vedere cerința entității contractante, nu se poate constata implicit că certificatul de conformitate prezentat de către SRL "Varox Comerț", pe de o parte, nu se raportează la sistemele de asigurare a calității, bazate pe seriile de standarde europene relevante, certificate de organisme conforme cu seriile de standarde europene privind certificarea, respectiv că nu ar asigura un nivel corespunzător al calității, iar pe de altă parte, că acesta nu ar acoperi cerința entității contractante, astfel cum a fost formulată de către entitatea contractantă în anunțul de participare.

Totodată, având în vedere că entitatea contractantă nu a solicitat prin documentația de atribuire corespunderea bunurilor anumitor standarde, iar contestatorul nu a adus probe în vederea demonstrării imposibilității plasării pe piață de către SRL „Varox Comerț” a bunurilor oferite, pretenția dată, odată ce nu a fost probată corespunzător, rămâne la nivel de presupunere, fapt ce impune respingerea acesteia. Cu toate acestea, Agenția menționează că la plasarea pe piață a diferitor bunuri, operatorii economici urmează să țină cont și să se asigure că respectă legislația relevantă a Republicii Moldova.

In another procurement procedure, for the purchase of steel pipes organised by S.A. "Termoelectrica", the tender notice required the submission of a certificate of conformity or quality, or a test report, but without specifying any specific standard, which again created confusion among economic operators, subsequently to the challenge:

Prin urmare, reieşind din interpretarea cerinţei din anunţul de participare „Certificatul de calitate/Certificatul de conformitate/Raport de încercări (sau actul ce confirmă calitatea bunurilor propuse la licitaţie)”, având în vedere că acestea au fost separate prin bară, Agenţia conchide că prezentarea oricărui din documentele nominalizate este suficient pentru a demonstra întrunirea cerinţei entităţii contractante, respectiv exclude necesitatea prezentării cumulative a actelor respective. La caz, având în vedere că operatorul economic „Mirzaghitov & Co” SRL a prezentat certificatele de conformitate, inclusiv certificate de calitate pentru partidele anterioare, se constată că pretenţiile contestatorului sunt neîntemeiate în considerarea cerinţei prenotate.

Astfel, având în vedere cele constatate, Agenţia va respinge contestaţia depusă de către „Metalica Zuev” SRL, în măsura în care pe de o parte, pretenţia contestatorului precum că, la oferta operatorului economic declarat câştigător s-ar atesta „lipsa unor certificate relevante” se întemeiază pe propria interpretare subiectivă a cerinţelor documentaţiei de atribuire, fapt ce nu poate fi imputat nici entităţii contractante şi nici ofertantului declarat câştigător, or în documentaţia de atribuire nu s-a indicat prezentarea obligatorie doar a certificatelor de calitate, iar pe de altă parte certificatele de calitate pentru bunurile oferite pot fi prezentate la livrarea propriu zisă a bunurilor ce fac obiectul procedurii.

[ANSC Decision No. 03D-255-23 of 02.05.2023](#)

The species analysed are summarised in the following table:

Nr. și data Deciziei ANSC	Nr. procedurii de achiziție	Obiectul achiziției	Denumirea Entității contractante	Denumirea contestatorului	Cerințele de calificare privind certificatele	Concluziile ANSC
Nr. 03D-530-2 3 din 10.08.202	MD-168389 1253676	Stâlpi din beton armat în asortiment	Î.S. „Moldelectrica”	„ARMO-BETON” SRL	„Certificat de conformitate a produselor oferite.” „Certificat de calitate”	Autoritatea contractantă nu a indicat expres metoda de încercare sau standardul de referință la care să se referă certificatul de conformitate. Respectiv, nu pot fi ridicate obiecții cu privire la un anumit certificat de conformitate prezentat.
Nr. 03D-301-2 3 din 19.05.2023	MD-167817 1986072	Servicii de investigație și de siguranță	„BĂLȚI-GĂZ” SRL	„Premium Security Group” SRL	Documente și certificate emise de organisme independente, prin care se atestă aptul respectării anumitor standarde de asigurare a calității	Chiar dacă nu s-a specificat standardul de conformitate aplicabil, doar scrisori de recomandare și diplome din partea unor autorități publice nu pot servi drept certificate de conformitate și respectiv, nu pot confirma îndeplinirea cerinței date.
Nr. 03D-355-2 3 din 13.06.2023	MD-168058 7072511	Achiziționarea vopselei și a lacurilor (repetat)	„Chișinău-gaz” SRL	„Manticora” SRL	Asigurarea standardelor calității: Declarație, referitor perioada de garanție a bunurilor - termen minim 12 de luni; Certificate de conformitate, pentru vopsea obligatoriu	Pe de-o parte, autoritatea contractantă nu face referință la un anumit standard de conformitate pentru a putea spune dacă cel prezentat de ofertant întrunește sau nu anumite cerințe tehnice. Pe de altă parte, chiar dacă respectivul certificat urmează a fi supus unei proceduri de recunoaștere, acest fapt urmează a fi respectat la etapa de executare a contractului, dacă acest lucru este cerut de legislație. În lipsa unei cerințe în acest sens în documentația de atribuire, nu poate fi cerută recunoașterea lui în Moldova.
Nr. 03D-255-2 3 din 02.05.2023	MD-167645 3884151	Achiziționarea jevilor de oțel pentru anul 2023 (repetat)	„Metalica Zuev” SRL	„Metalica Zuev” SRL	Certificatul de calitate/Certificatul de conformitate/Raport de încercări (sau actul ce confirmă calitatea bunurilor propuse la licitație)	Având în vedere că acestea au fost separate prin bară, Agenția conchide că prezentarea oricărui din documentele nominalizate este suficient pentru a demonstra întrunirea cerinței entității contractante, respectiv, exclude necesitatea prezentării cumulative a actelor respective.

In conclusion, these cases examined by the ANSC, as well as dozens of other procedures analyzed, reveal a formalistic approach on the part of contracting entities to setting qualification requirements, which concern conformity and/or quality certificates. Often, this requirement is imposed purely formally, without proper analysis of the effect it should have on the qualification of tenderers and the goods procured. Although these certificates are a very important document that can ensure a certain level of quality of the goods procured, contracting entities neglect to carry out a proper technical analysis of the given issue before launching the procurement. The term "conformity to quality standards" is very broad, and many existing standards are morally outdated and no longer ensure a quality appropriate to contemporary development. It is therefore the duty of contracting entities to study well the market for the goods they wish to purchase and to establish those standards of conformity or quality which best ensure the needs of the entity. And including requirements to submit certificates of conformity without reference to the relevant standards only misleads bidders and increases the likelihood of challenging procurement results.

Source: [Association for Efficient and Accountable Governance AGER](#)