

Members of the National Platform for Public Procurement met for the second working session

The members of the National Platform for Public Procurement (NPPP), launched within the project "[Increasing the Integrity of Public Procurement](#)", met on Thursday, May 16, 2024 for their second working meeting. The meeting addressed the subject of challenges to procurement procedures that are frivolous or withdrawn by the complainants. The members of the NPPP outlined the problems generated by frivolous complaints and their impact on the process of awarding a public or sectoral procurement contract, while coming up with solutions and recommendations to overcome them.

Carolina Ungureanu, project manager and deputy director of IDIS "Viitorul", said at the beginning of the meeting that it is important for the Republic of Moldova to monitor public procurement for the efficient use of public money. Ungureanu emphasized the importance of analyzing the difficulties and problems in the public procurement sector to create recommendations that can be acted on by decision-makers.

Vladimir Arachelov, State Secretary at the Ministry of Finance, said that the NPPP is a platform to facilitate the work of the Ministry of Finance, but also a forum for the process of analysis and discussions with stakeholders in the field of public procurement. According to Vladimir Arachelov, it was agreed within the ministry that the analyses and studies, which are presented and discussed within the NPPP, will be further studied, so that when interventions are made in the regulatory framework, some proposals and recommendations will be taken up, especially since the authorities are currently in the process of implementing the National Program on Developing Public Procurement for 2023-2026.

"We have been interested in the subject of frivolous challenges for a long time. For several years we have been trying to intervene so that the complaints process is streamlined and so the National Agency for Settlement of Complaints (ANSC) carries handles complaints in an effective manner. There have been some attempts to change the regulatory framework, including in Parliament. We will also look at the results of today's study and see what elements can be introduced immediately or in the medium term in this process. We want this process not to jeopardize the right of economic operators to appeal. We want the number of participants per procedure to increase, but under conditions of efficiency and transparency. This work of yours relieves the Ministry of Finance of pressure and we thank IDIS "Viitorul" for undertaking this effort so that we have time to take action on the work already completed", said Vladimir Arachelov.

Diana Enachi, procurement monitoring coordinator at IDIS "Viitorul", presented a study of the evolution of procurement challenges in the last three years, in particular the challenges rejected as frivolous, the challenges withdrawn and the reasons for withdrawal in order to identify possible abusive challenges that have a negative impact on the procurement process. Enachi discussed how, based on the analysis carried out, conclusions have been drawn and some scenarios have been presented with solutions to help discourage the formulation of ill-intentioned contestations and make the process of contestation, and consequently the award of procurement contracts in compliance with the law, more efficient.

According to the study, in the Republic of Moldova, the body responsible for examining and resolving appeals is ANSC, which since 2016, when it was established and became operational, and until now, has adopted 5179 decisions following the examination and resolution of about 6276 appeals.

Diana Enachi also said that statistical data on appeals submitted show that in 2023, of the total number of appeals examined in substance by ANSC (654 decisions issued), half were rejected as frivolous (323). Thus, there was a downward trend for appeals admitted in full/partial (22%), and an upward trend for appeals rejected as frivolous (9.1%). Comparing the share of appeals admitted in part/full with those rejected as frivolous, there was a higher share of appeals admitted in part/full in 2021 (41%) and in 2022 (46%). However, in 2023 there was a higher proportion of appeals rejected as frivolous (50%).

Having analyzed the results of the appeals filed by the top 5 contestants, it was observed that every 4th appeal was withdrawn (25%), every 5th (20%) was rejected as frivolous, and more than half (55%) were admitted or partially admitted.

Regarding the identification of solutions, the study presented 4 possible scenarios with an outline of the advantages but also possible disadvantages and risks for each, as well as examples from the practice of some European countries: setting a deposit/guarantee when lodging a complaint; setting a mandatory fixed fee when lodging a complaint; setting a bank guarantee only for public tenders; or keeping the current policy which needs some improvements.

In order to improve the situation, the procurement monitoring coordinator proposed the full digitization of the process of submission and settlement of tenders, including those withdrawn; the development of the evaluation module in the MTender electronic system, the establishment of training programs for contracting authorities and economic operators to reduce procedures initiated with deviations from the legal framework. These solutions would contribute to reducing the number of challenges submitted in bad faith, which are subsequently rejected as unfounded, and would streamline the public and sectoral procurement process.

According to **Angela Nani**, Director General, Appeals Counsellor at ANSC, the fact that an appeal has been rejected as frivolous does not necessarily mean that it was filed with malicious intent. There have been cases where, in the course of the dispute resolution process, contracting authorities have remedied the admitted shortcomings cited by the finder. In other cases, the tender is rejected because it does not correspond to the tender documentation, the administrative act is not well-reasoned or an appeal is lodged. It is important to describe in detail the reasons for the rejection of tenders in order to reduce the number of appeals.

Discussing possible solutions for unfounded appeals, NPPP members listed the establishment of a bond or guarantee when filing an appeal as a way to reduce overburdening of ANSC staff, as well as the establishment of a mandatory fee when filing an appeal.

Some members of the NPPP did not support the idea of introducing bail or guarantees when filing a challenge, considering it premature and insufficiently argued at this stage, as unfounded challenges are not a systemic problem, but rather isolated cases. In the opinion

of other NPPP members, the security or guarantees would undermine the right of economic operators to challenge.

The mandatory fee for lodging an appeal was supported in order to make economic operators more responsible. Other NPPP members were of the opinion that unfounded challenges would not be as big a problem as withdrawn challenges, proposing that a ban list of operators withdrawing unfounded challenges should be established.

NPPP members were of the opinion that the challenges are rejected as unfounded for various reasons, including that economic operators are poorly informed about the legal framework for public procurement, but not because of malicious intent. One solution would be to train economic operators and contracting authorities to make both parties responsible for the procurement process. At the same time, it was mentioned that it would be necessary to modify and improve the Standard Documentation, to clearly inform the authorities/entities about the reasons for disqualification of the offer, and to develop the evaluation stage in the electronic system so that the additions to the offer declared successful as a result of clarifications are available to all tenderers.

[The Institute for Development and Social Initiatives \(IDIS\) "Viitorul"](#), in collaboration with the American organization [Partnership for Transparency \(PTF\)](#), launched the National Public Procurement Platform (NPPP) in December 2023, as part of the project "[Increasing the Integrity of Public Procurement](#)". The NPPP is to be a national discussion forum, a permanent communication and dialogue mechanism for all actors in the public procurement sector - policy, control, regulatory authorities, contracting authorities/entities, economic operators and civil society representatives. NPPP members represent authorities and organizations with an interest in the functioning and sustainability of the national public procurement system.

The mission of the NPPP is to improve the efficiency, transparency and integrity of the national public procurement system by addressing problems in the system, identifying solutions and proposing them as recommendations to be incorporated into policy by decision-makers.

At meetings, which are held quarterly, NPPP members discuss priority topics, adopt common positions on procurement issues and challenges, make recommendations and contribute to policy development and implementation of solutions to overcome challenges. The secretariat of the NPPP is provided by IDIS "Viitorul".

The project [Increasing the Integrity of Public Procurement](#) is implemented by the Institute for Development and Social Initiatives (IDIS) Viitorul, in partnership with the American organization Partnership for Transparency. The project aims to support public procurement reforms in Moldova that will increase transparency and fairness in public procurement by empowering citizens to hold relevant institutions accountable.

[IDIS Viitorul](#) is an independent think tank established in 1993 that combines social, political and economic research with strong advocacy components. The institution conducts applied monitoring research in several areas: economics, social policy, EU policies, regional development, and security and foreign policy risks.

[Partnership for Transparency \(PTF\)](#) is based in Washington, DC and its mission is to promote innovative civil society-led approaches to improving governance, increasing transparency, promoting the rule of law, and reducing

corruption in developing and emerging countries. Since 2000, PTF has supported over 250 projects aimed at promoting NGO involvement in decisions, processes, and laws that enforce transparency and accountability in public procurement.