

# Monitoring the procurement of construction works, rehabilitation, repairs of water and sewerage networks and related constructions carried out by "Apă-Canal Chisinau" JSC and identification of red flags

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The Joint Stock Company (S.A.) "Apă-Canal Chisinau" is a contracting entity that carries out procurement in the basis of Law 74/2020 on procurement in the energy, water, transportation and postal services sectors, a law that does not oblige contracting entities to carry out procurement in the online electronic procurement system SIA RSAP Mtender, in comparison with Law 131/2015, which obliges a contracting authority to carry out procurement in the electronic system. Thus, the "Apă-Canal Chisinau" conducted in 2022: 8 high-value and 4 low-value procurement procedures.

The first procurement procedure, organized by "Apă-Canal", which caught my attention, is the one for construction works, rehabilitation, repair of water and sewerage networks and related constructions "Apă-Canal Chisinau" in the radius of mun. Chisinau, with an estimated value of 5000000 MDL without VAT (MTender Public Portal (gov.md)).

The first procedure was organized on 24.03.2022, ( MTender Public Portal (gov.md)), in which only one offer was submitted, by Vegan-Com SRL, with the value of 854 725.74 MDL excluding VAT.

A red flag, in the organized procedure, refers to criteria that could favor certain economic agents, limiting competition. Thus, on 11.04.2022, "CES Construct" SRL, interested in the procurement procedure carried out, filed a complaint with the National Agency for the Settlement of Disputes (ANSC) regarding the tender documentation, where it expressed its disagreement with the criteria:

- Proof of ownership of the sounding equipment (laying by the inch closed method up to D=630mm);
- proof of the availability of site supervisors for the areas related to the works to be carried out: road construction: a) roads and runways, justifying that the given criteria would lead to a limitation of competition and



disqualification of inconvenient tenderers.

Astfel, contestatorul își exprimă dezacordul față de următoarele cerințe solicitate de către entitatea contractantă:

- Dovada deținerii utilajului de sonare (pozare prin metoda închisă până la D=630mm);
- Dovada disponibilității diriginților de șantier pentru domeniile aferente lucrărilor ce urmează a fi efectuate: Construcții rutiere: a) drumuri și piste de aviație.

"Apă-Canal" informed ANSC by letter no. 158 of 06.05.2022, (01/894/22 of 18.05.2022 ) about the fact that, by the Minutes No. 55 of 04.05.2022, it cancels the procurement procedure MD-1648112457306, regarding the procurement of "Construction works, rehabilitation, repair of water and sewerage networks and related constructions of S.A. "Apă-Canal Chisinau" în the radius of mun. Chisinau", for lack of competition. Respectively, the appeal was also rejected, remaining without object.

Controversial CES CONSTRUCT SRL	Entry Date 11.04.2022 / 17:12	Status Decizie adoptată
Objection to the Complaint Documentația de atribuire		
↳ 03D-234-22	19.05.2022 / 18:52	În vigoare
<i>Contestație respinsă, Ca rămasă fără obiect</i>		
Elements of Complaint DA		
URL <a href="https://elo.ansc.md/DownloadDocs/DownloadFileServlet?id=60474">https://elo.ansc.md/DownloadDocs/DownloadFileServlet?id=60474</a>		

Thus, a point of reflection that it highlights is the fact that only one economic operator submitted an offer, indicating a shortage of participants. This could indicate that the quality requirements imposed are perhaps too stringent or too narrow/limiting, which limited other operators in the market to submit bids. Another aspect to be considered is the possibility of splitting the procedure into lots to allow more economic operators, including smaller ones, to apply.

The second procurement procedure was initiated on 05.05.2022 (MTender Public Portal (gov.md)) which was canceled the next day due to omissions in preparation of the tender documentation and its publication.



The third procedure was published on 16.05.2022 ([MTender Public Portal \(gov.md\)](#)) and contains 2 changes compared to the previous procedure:

- the validity term of the contract was changed. Originally it was indicated until 31.12.2022, but it was extended for a period of 24 months. With the extension of the contract up to 2 years, a new point was also introduced, which stipulates that the works will be indexed taking into account the inflation rate of the previous year;
- a change was made in pun.15, subpun.8, in the requirement to confirm the ownership of the sonar equipment (closed method of surveying), the characteristic of D=630 mm being replaced with D=1200 mm. We can mention that the contracting entity also changed this requirement as a result of the challenge filed on the procedure launched on 11.04.2022 (which in the challenger's objection led to limiting competition and disqualification of inconvenient bidders).

In the given procedure 3 bids were submitted:

- Vegan - Com SRL with a bid of 1 187 214.10 MDL excluding VAT;
- Dmavend with a bid of 1 835 104.41 MDL excluding VAT;
- Naiman-Com SRL with the amount of 2 318 144.56 MDL excluding VAT.

Lotul					Numărul lotului
Lucrări de construcții, reabilitări, reparații a rețelilor de apă și canalizare precum și construcțiilor aferente al S.A. „Apă-Canal Chișinău” în raza mun. Chișinău					6f94c594-3366-4f87-8877-12dc83613e13
Ofertantul	Data de publicare	Ofertă inițială	Declaratie pe proprie răspundere	Documentele OE	
<b>Dmavend</b> Codul IDNO: MD-IDNO-1003611011448	30/05/2022 17:18	1 835 104.41 MDL fără TVA	<a href="#">MTender ESPD</a> Declaratie pe proprie răspundere		
<b>Vegan - Com</b> Codul IDNO: MD-IDNO-1012600031239	29/05/2022 23:34	1 187 214.10 MDL fără TVA	<a href="#">MTender ESPD</a> Declaratie pe proprie răspundere		
<b>Naiman-Com</b> Codul IDNO: MD-IDNO-1002600049545	30/05/2022 17:15	2 318 144.56 MDL fără TVA	<a href="#">MTender ESPD</a> Declaratie pe proprie răspundere		Activa Accesați

The contracting entity disqualified the first two bids, even though they offered the lowest prices. The reasons invoked by "Apa Canal" are: the company Dmavend did not provide the mandatory documentation and annexes that were required in the tender documentation. In the meantime, Vegan-Com did not comply in the requirement of point 15, subpoint 9, which required proof of the availability of site managers for the areas related to the works to be carried out, in particular in the following: road construction, roads and airstrips. The contracting entity awarded the bid submitted by Naiman-Com with the amount of 2 318 144.56 MDL excluding VAT.



A red flag may be the fact that in the third procedure conducted, the tender documentation was amended three times. The first amendment was made on 19.05.2022, and then twice on 23.05.2022. The second procedure carried out was canceled on 06.05.2022 due to omissions in documentation. Thus, from the cancellation of the procedure until the organization of a new procedure, 13 days elapsed, 9 of which were working days, where no significant changes were made. Thus, the interval was sufficient as this is the 3rd procedure organized, raising concerns about the competence of the contracting entity.

## Modificarea documentației de atribuire

Versiunea modificată	Data modificării
OCDS-B3WDP1-MD-1652698545870-EV-1652704578954-1653299831647	23.05.2022 / 13:59

Descrierea sferei de aplicare a modificărilor  
n/a

Argumentare sferei de aplicare a modificărilor  
General change of Contract Notice

Versiunea modificată	Data modificării
OCDS-B3WDP1-MD-1652698545870-EV-1652704578954-1652948849838	23.05.2022 / 12:57

Descrierea sferei de aplicare a modificărilor  
n/a

Argumentare sferei de aplicare a modificărilor  
General change of Contract Notice

Versiunea modificată	Data modificării
OCDS-B3WDP1-MD-1652698545870-EV-1652704578954-1652948376816	19.05.2022 / 11:27

Descrierea sferei de aplicare a modificărilor  
n/a

Argumentare sferei de aplicare a modificărilor  
General change of Contract Notice

Activ  
Accesat

A red-flag identified is that the procurement procedure has an estimated value of 5000000 MDL, excluding VAT, and the bids submitted are significantly lower than the estimated value of the procurement. Thus, the winning bid is lower by 53.6% than the contract value, and the lowest bid submitted by Vegan - Com SRL is lower by 76.23%, which represents a red flag by overestimating the value of the procurement (goods, services or works), which may aim to favor a certain economic operator and/or to obtain personal benefits, later, at the stage of awarding the contracts. This would be a point of reflection on the ability of the contracting entity to correctly assess the needs and budget of the procurement.



## Recommendations for S.A. "Apă-Canal Chişinău"

- ♦ Ensure quality and clarity of the tender documentation, clarify the requirements in the procurement documentation to avoid diverging interpretations and avoid restrictive criteria that may limit competition. Clear and fair requirements will stimulate the participation of a larger number of suppliers and ensure that the procurement process is transparent and that the entity's financial resources are used efficiently;
- ♦ In order to encourage the participation of a larger number of economic operators, the entity could consider splitting the procurement procedures into lots, so that smaller firms could also compete for certain parts of the contract. This would allow S.A. "Apă-Canal" to benefit from a wider variety of advantageous offers;
- ♦ carry out a more rigorous evaluation of the value of the contract in order to avoid overestimating (but on the other hand underestimating) it in order to reduce in the future significant divergences between the estimated value and the financial bids submitted by economic operators;
- ♦ to ensure efficient management of the procurement process, it should invest in internal capacity building, including through training of procurement staff. Well-trained staff will help to avoid the cancellation of procedures due to omissions in the execution and publication of documents or frequent changes to the contract notice.

