

Risks in public procurement in the Republic of Moldova

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Abbreviations:

AAP - Public Procurement Agency
CA - Contracting Authority
AGER - Association for Efficient and Responsible Governance
ANSC - National Agency for the Settlement of Complaints
AO - Public Association
ASD - State Road Administration
ASP - Public Services Agency
AVM - Small Value Acquisition
BAP - Public Procurement Bulletin
EIB - European Investment Bank
EBRD - European Bank for Reconstruction and Development
CAPCS - Centre for Centralized Public Procurement in Healthcare
CC - Competition Council
CoA - Court of Accounts of the Republic of Moldova
CNA - National Anticorruption Center
CNAS - National Social Insurance House
CSE - Exceptional Situations Commission
COP - Request for Quotation
DCC - Capital Construction Directorate
DETS - Directorate of Education Youth and Sport
DÎTS - Directorate of Education, Youth and Sport
DGETS - Directorate General for Education, Youth and Sport
DGLCA - General Directorate for Housing and Urban Planning of mun. Chisinau
WG - Working Group
HG - Government Decision
ÎM - Municipal Enterprise
IMSP - Public Health Medical Institution
ICFS - Inspectorate of State Financial Control
OJEU - Official Journal of the European Union
LP - Public Tender
OE - Economic Operator
MEC - Ministry of Education and Research
NFP - Negotiation without Prior Publication of a Participation Notice
PA - Anti-Corruption Prosecutor's Office
PNDSAP - National Public Procurement Development Program for 2023 - 2026
SIA "RSAP" - Automated Information System "State Register of Public Procurement"
VAT - Value Added Tax
EU - European Union

Executive summary

This study was developed in the context of the implementation of the National Public Procurement System Development Program for 2023 - 2026 (PNDSAP). Its purpose is to support the implementation of sub-action 3.4.4. *Monitoring the correctness of the initiation and conduct of procurement procedures within Specific Objective 3. To create a comprehensive procurement system in order to achieve the objectives set out in the public policy documents, with a focus on social, environmental, innovation and performance aspects, including clarification of the roles of organizations at strategic, tactical and operational levels to avoid conflict of competence* part of the PNDSAP. Thus, the present study aims to identify risk indicators in public procurement in the Republic of Moldova, as well as possible actions that can be taken by the responsible institutions in order to minimize them.

Under the project "Increasing Procurement Integrity in Moldova", which was launched in September 2020 by IDIS Viitorul and Partnership for Transparency Fund (PTF) and will continue until June 2025, several civil society organizations were trained and capacitated to carry out procurement monitoring activities. Subsequently, several organizations have received grants to implement public procurement monitoring projects, including: AO Association for Efficient and Responsible Governance AGER, AO Parents in Solidarity, AO Media Project "With Meaning", AO Media Guard, ADO LEX XXI, Contact, Local Invest, AO Prospect, Transparency International Moldova, AO "Association of Independent Press" (API). Accordingly, this study is based on a set of findings identified by all these civil society organizations involved in public procurement monitoring in the period 2022 - 2024, and in order to observe how the situation in this sector has changed over the years, older procurement procedures were also analyzed.

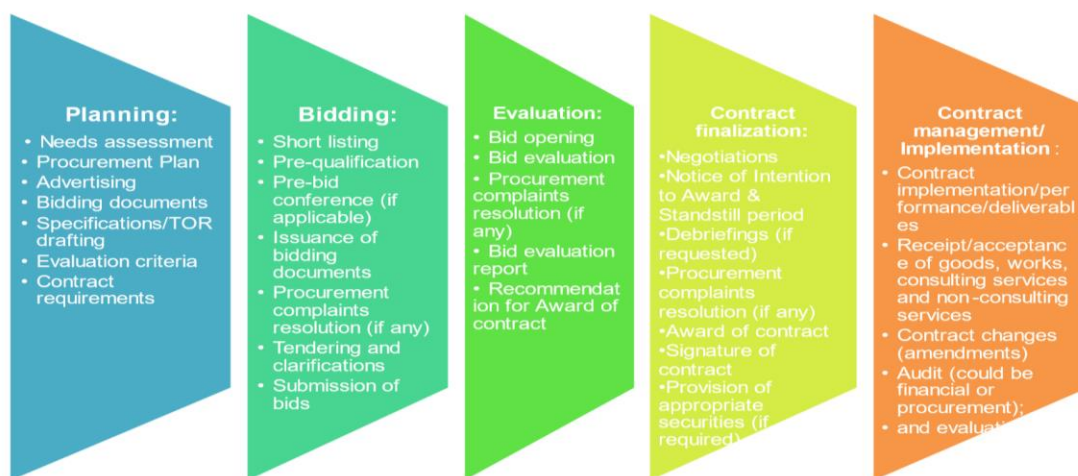
Taking into account the findings of the monitoring carried out by civil society organizations and investigative journalists in the period 2022-2024, conducted within the project implemented by IDIS Viitorul (Chisinau, Moldova) and Partnership for Transparency Fund (Washington, DC., USA), funded by the US Department of State, entitled "Strengthening Integrity in Public Procurement", the authors of the study identified several risk indicators in public procurement in the Republic of Moldova.

At the same time, the study was based on the analysis of public procurement procedures carried out under Law 131/2015 on public procurement, especially in cases of resonance, starting from the planning stage and up to the stage of contract implementation, where data are available. Data from the SIA RSAP system "MTender", the Public Procurement Agency page, decisions issued by the National Agency for the Settlement of Complaints, reports of the Court of Accounts, NAC, decisions of the Competition Council, the State Financial Control Inspectorate, as well as information collected over the years by the authors and contained in monitoring reports prepared by the authors and other civil society organizations and investigative journalists from the Republic of Moldova were used as sources of information.

Methodology

The authors of the study used the methodology of risk indicators in public procurement. For this purpose, the risk indicators formulated [in the OECD document](#) were superimposed with the risk indicators most frequently identified in public procurement carried out under Law 131/2015. The list was also supplemented with other risk indicators identified at national level, taking into account the related legal framework and the errors observed during the monitoring carried out by civil society or the institutions listed above. As a result of this exercise, 24 risk indicators have been identified, with characteristics for each stage of the procurement procedures, starting with the planning stage and ending with the contract implementation stage. The image below shows the whole procurement process:

Mapping the Procurement Process



Risk indicators at pre-tender and planning stage:

1. Circumventing the application of legislative provisions in the procurement process in the planning process
2. Incorrect selection of procedure type
3. Misapplication of the rules for calculating estimated value
4. Incorrect description of the subject of the procurement procedure
5. The qualification criteria do not respect the principles of equal treatment, proportionality and ensuring competition
6. Incorrect setting of assessment criteria
7. Initiation of procurement procedures in the absence of resources or certainty of resource allocation

Risk indicators at the tender stage of the procurement procedure:

1. Deadlines for submitting bids

2. Incorrect assessment of economic operators' qualifications, resulting in their disqualification
3. Incorrect evaluation of bids, resulting in the rejection of a qualified bidder or the rejection of a non-compliant bid
4. Modification of award criteria after the procurement procedure has been announced
5. Cancellation of a public procurement procedure without legal basis or without justification.

Risk indicators at contract award stage:

1. Failure to respect waiting periods before concluding procurement contracts
2. Failure to inform participants in the procedure about the results of the procedure and the contracting authority's decision
3. Failure to publish the award decision. Incomplete publication of information in the award decision or publication after the deadline
4. The conclusion of a contract which does not correspond to the commitments made by the economic operator declared the successful tenderer in its tender
5. Modifying the provisions of the contract during its execution, contrary to the legal provisions
6. Concluding additional agreements for additional services or goods without conducting a transparent procedure ensuring competition
7. Award of contracts to economic operators falling under the grounds for exclusion
8. Awarding contracts while ignoring findings in ANSC decisions.

Risk indicators at contract implementation stage:

1. Double billing for the same services
2. Fictitious invoicing/Invoices paid for services not performed
3. Fictitious bidder/participation with concerted bids in public procurement
4. Corruption/bribery for procurement officials

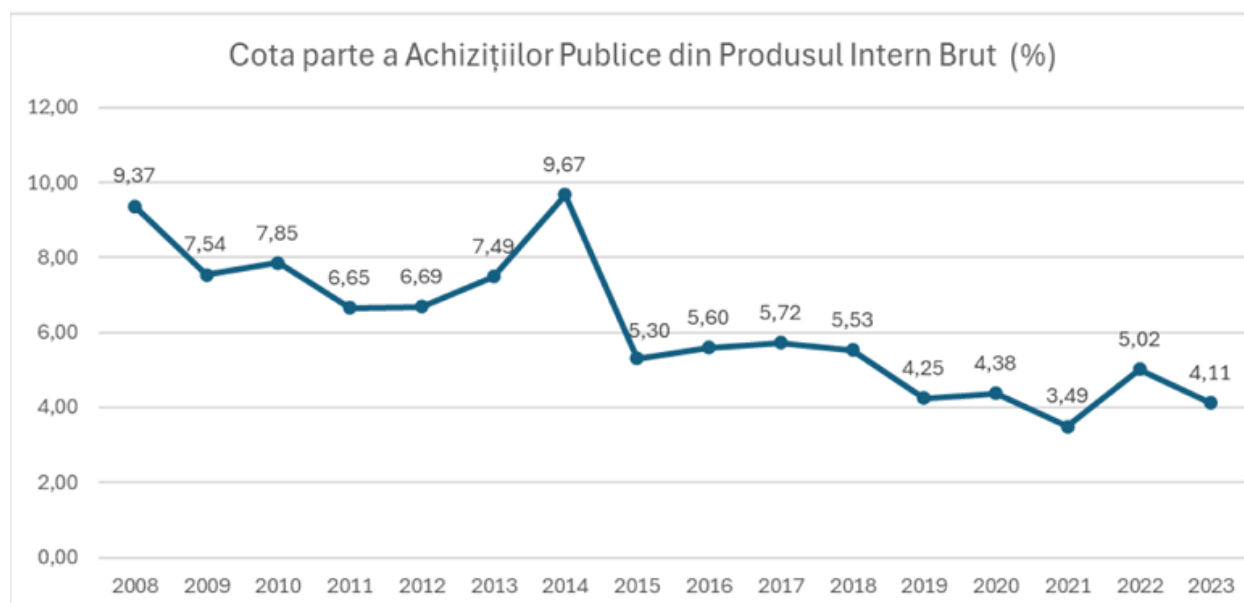
Each of these risk indicators was also analyzed through the prism of the relevant legal provisions, both in terms of whether the admission of circumstances falling under the risk indicators in themselves constitute violations, but also in terms of reasonable suspicion of committing corruption offenses. Concrete examples have also been provided for each risk indicator from public procurement procedures carried out from 2020 to date. The study provides 66 examples to substantiate the 24 risk indicators.

On the basis of the analysis and findings, the authors of the study highlighted a number of risks that the identified potential errors or violations pose to the overall development of public procurement in the Republic of Moldova, and as a result, a list of possible recommendations for action by the authorities was developed.

The study is prepared by the members of the Monitoring Coalition, Olga Diaconu and Maria Covalciuc, representatives of the Association for Efficient and Responsible Governance (AGER).

Introduction

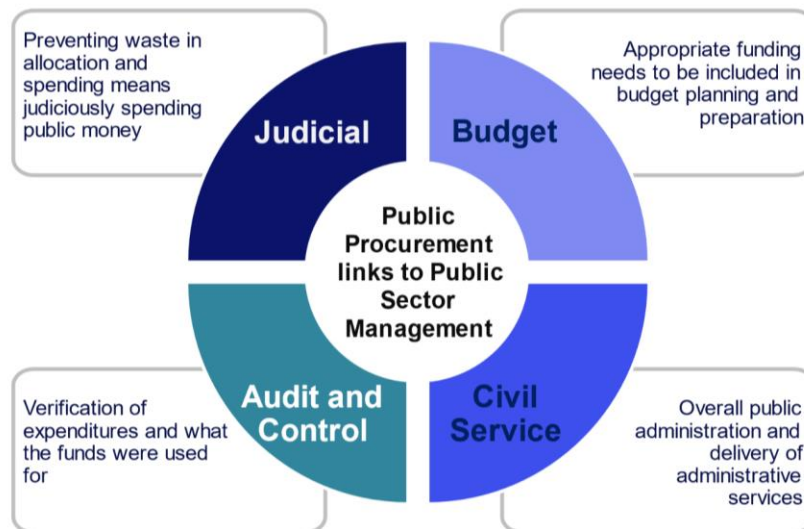
According to the statistics, the share of public procurement in GDP in 2023, as shown in the graph below, was 4.11%. And because we are talking about an amount of about 12 billion lei, we note, however, that the proper deployment and efficient use of public money is sometimes threatened by a number of risks in terms of their compliance with the provisions of the legal framework. The responsibility of decision-makers in this context is to identify, assess and monitor risks throughout the entire procurement cycle. ¹



The risk indicators in public procurement do not necessarily indicate a breach by the contracting authority or the economic operator participating in that procedure, however, they indicate that errors or even cases of non-compliance with legal provisions may follow. In general, public procurement is interconnected with the budgetary, audit, legal and public service systems, regardless of the subject of the procurement, and this feature has major consequences, as errors or irregularities that seem minor can have economic, environmental, social, etc. repercussions. This fact underlines the importance of government involvement in the correct identification of risk indicators, their evaluation and permanent monitoring. The development of a risk management strategy in public procurement is an imperative, yet it must be a logical consequence of an analysis of the system, the problems identified and the potential causes that lead to the inefficient use of public resources. The infographic below illustrates the link between public procurement and other sectors of public administration.

¹ *Managing risks in public procurement of goods, services and infrastructure*, OECD Public Governance Policy Papers, 2023

Other Public Sector Functions



Assessments by international organizations, such as the MAPS report by World Bank experts, as well as reports by the Court of Accounts, media investigations show that public procurement remains a sector vulnerable to corruption and fraud. Therefore, the efficient conduct of public procurement procedures, within a competitive, fair and transparent system, also becomes an indicator of the effective exercise of the public administration function, which should have as its general objective ensuring citizens' access to quality public services.

In order to anticipate the risks of fraud or corruption, it is first of all necessary to understand them. Understanding the particularities of each risk can guide the formulation of the necessary steps to detect them in time, as well as to take measures to exclude them or the actors that may jeopardize the correct and efficient conduct of a public procurement procedure.

In 2013, SIGMA developed a document entitled "Identifying and correcting the most common errors in public procurement"² in which they explained what we mean by "errors", how we can categorize them and what would be the most common errors in public procurement. Based on this document, we will also try to identify a list of risk indicators for the public procurement system in the Republic of Moldova.

Therefore, an essential aspect to be emphasized is the classification of errors, namely: significant (significant/material) and insignificant (insignificant/trivial), as their impact determines the outcome of the public procurement procedure. Therefore, significant errors are those that have a potential impact on the outcome of a procurement, in other words, the decision of the contracting authority could have been different if those errors had not been made. Non-significant errors are

² *Detecting and Correcting Common Errors in Public Procurement*, SIGMA, 2013

those which, in most cases, do not affect the outcome of the procedure (e.g. with or without those errors, the same tender would have been declared the successful tender).

Chronologically, risk indicators can be identified at each stage of the procedure: from the planning, to the award of the contract and even the implementation stage. Core indicators could be classified into 4 categories:

- Risk indicators at pre-tender and planning stage
- Risk indicators at the stage of the procurement procedure
- risk indicators at contract award stage
- Risk indicators at contract implementation stage

In the following chapters, we list the most common risk indicators at **each stage of the procedure**. At the same time, each chapter will list the risk indicators, identify examples, as well as a table containing possible consequences and recommendations for actions to be taken by the responsible institutions (Ministry of Finance, Public Procurement Agency, Court of Auditors, etc.) in order to eradicate or at least reduce their number. This information is also presented in tabular form at the end of each chapter.

Chapter I. Risk indicators at pre-tender and planning stage

The planning stage of public procurement has an essential role to play in ensuring the efficient use of public money and meeting the needs of citizens or equipping/ensuring the appropriate capacities of the authorities providing public services. This applies regardless of whether goods, services or works are being procured, but also regardless of the area in which public procurement contracts can be awarded, be it education, health, infrastructure, etc. However, this stage seems to be given minimal attention and is sometimes neglected, either due to a lack of specialized staff or because of other activities prioritized by contracting authorities. Thus, procurement procedures are launched late, in a hurry, with various errors, on the basis of miscalculations or without proper needs assessments, in order to 'not lose the money' allocated to be used by the end of the year. The problems are not slow in coming to light, either at the stage of the procurement procedure or already in the process of executing the works. Inadequate planning leads to a number of consequences, such as: appeals leading to the cancellation of procurement procedures; the money allocated cannot be used or negotiation procedures are launched "as a matter of urgency" without a call for tender; goods, services or works are purchased of inferior quality, at higher prices or not in line with the needs of the beneficiaries.

In the following, we provide examples and case studies related to the identified risk indicators.

1. Circumventing the application of legislative provisions in the procurement process

Public procurement legislation clearly establishes the institutions that are contracting authorities, therefore, if some of these public institutions conclude direct contracts without complying with the legal provisions, without conducting a transparent and competitive procedure, we can categorize it as a risk of corruption. Also in this category there are also cases when the contracting authority evades the application of legislative provisions, invoking an exception from the Public Procurement Law, when, in fact, the conditions for referring to that exception in the Law are not fully met. We can also include here also cases when a contracting authority concludes a public procurement contract opting for another (also competitive) procedure, but not the one foreseen by the legislator for the procurement (e.g. CA may conduct a public tender at national level, although the value threshold indicates that the notice should have been published in the EU Official Journal as well).

Although the Public Procurement Law is explicit about the institutions that are contracting authorities and the procedures to be followed, in practice, we still find situations where procurement is carried out with disregard of the legal framework. We have found that some contracting authorities have created their own rules of the game, others have tried to exploit legislative loopholes or have simply disregarded the legal provisions. There are also a number of exceptions to Law 131/2015 on public procurement that are frequently applied. Many of the public procurements falling under these exceptions, although the formalities to consider them legal are fulfilled, are subject to suspicions or we have identified indicators of risk of corruption or inefficient use of public money.

Example 1. City Hall mun. Chisinau, contracted the economic operator who renovated the pedestrian street Eugen Doga, outside a public procurement contract. Although it had initially

carried out a tender procedure in the Mtender system, it was canceled due to alleged serious errors affecting the procedure. Subsequently, the contract was directly awarded, without regard to public procurement law or other applicable rules, to the economic operator that had offered the highest price in the tender procedure. The project, according to officials from the City Hall of mun. Chisinau, was initiated in partnership with the Turkish Cooperation Agency TIKA, but the renovation decision was not consulted with the city's residents, the final costs of the works were not communicated (Public Procurement Monitoring Report April - September 2023)³.

Example 2. Some of the pedestrian underpasses in mun. Chisinau have been repaired by private economic agents, at their own expense, in the absence of procurement procedures, expert appraisals for the resistance of the underpass, execution projects or specifications, and without the municipality being able to verify the compliance with the legal provisions regarding the quality of construction and the harmlessness of the materials used. Both the mayor general and the city hall's subdivisions strictly concealed the names of the economic operators who contributed to the repair works, as well as the amounts they contributed and what works they carried out (AGER report on the monitoring of public procurement for the period October 2021 - May 2022)⁴. On this subject, an investigation was carried out by Ziarul de Gardă⁵. Although it could be argued that there would have been no damage to the public budget, these conditions of execution of the works present high risks in terms of construction quality. And companies that carry out works for free usually seek to obtain advantages from the local public authority, such as illicit building permits, which can indirectly damage the public budget.

Example 3. An investigation⁶ published by Moldova Curată reveals a case in which the lighting works were started before the signing of the public procurement contract in Cozești. At that time, the ANSC was examining an appeal. The ANSC annulled the award decision, but the city hall awarded the contract to "Euro VL Construct" SRL. Another economic agent, who contested the decision, as well as a local councillor, declared that the works were executed before the contract was signed by "Euro VL Construct" SRL.

Example 4. A form of circumvention of Law 131/2015 has been practiced for several years by the Ministry of Education and Research (MEC), which has adopted a regulation, by internal order, establishing its own rules for textbook procurement, which is an internal act, and clearly inferior to laws or government decisions. According to the Regulation on the selection and procurement of school textbooks⁷, the working group is not involved and does not participate in the quality assessment part of the textbooks. The members of the working group, at least the civil society representatives in it, do not have access to the samples of textbooks, to the documents issued by the National Council for Textbook Approval in the process of textbook quality assessment, nor do they know the identity of the involved assessors. The Regulation on Textbook Procurement and Selection excludes ANSC from assessing appeals on the results of textbook quality assessment. The regulation adopted in 2022 perpetuates a situation established by an older regulation, approved

³ [Public procurement monitoring report \(April - September 2023\)](#)

⁴ [AGER public procurement monitoring report for the period October 2021 - May 2022](#)

⁵ [Chisinau, "electoral construction site" with criminal firms and 100 million from the state budget](#)

⁶ [Illumination in Cozești](#)

⁷ [Regulation on the selection and purchase of school textbooks adopted by Order No. 300 of 29.04.2022](#)

by Internal Order No. 143/2017, with subsequent amendments made by MECC Order No. 458/2020, which was not published in the Official Gazette⁸. About it, the Court of Accounts had found that it was contrary to the law by Court of Accounts Decision No. 73 of December 22, 2020 on the report on the compliance audit of public procurement within the Ministry of Education, Culture and Research and some subordinated entities⁹. About these problems, reported to the year 2024, wrote AO "Parents in Solidarity" in an article published on the website¹⁰.

Example 5. The exceptions provided for in Article 5 of Law 131/2015, which refer to cases in which the authorities are not obliged to apply the provisions of this law, are widely exploited in the Republic of Moldova to circumvent the application of legal procedures. The ambiguity of the provisions on exceptions led the Mayor General of the capital city to submit representations to the Committee on Economy, Budget and Financing of the Parliament of the Republic of Moldova¹¹ to carry out the planned procurement of 100 buses outside the Mtender system through direct negotiations conducted by the M.E. "Urban Bus Park", after the open tender procedure No. ocds-b3wdp1-MD-1595492839263¹² of 2020 failed. At that time, Law 74/2020 on procurement in the utilities sector had not entered into force, i.e. it seemed a favorable moment to take advantage of this legislative vacuum. In the end, the procurement of the 100 buses was carried out on the basis of Law 131/2015, through an open tender procedure (open tender no. ocds-b3wdp1-MD-1614258987702)¹³¹⁴. This exception had been previously accepted by ANSC in 2019, in another bus procurement procedure carried out by ÎM "Urban Bus Park", which denied its own competence. In that case, the ANSC did not take into account the fact that ÎM "Parcul Urban de Autobusze" had drawn up the tender documentation in accordance with the provisions of Law 131/2015 and had expressly specified that the ANSC had the competence to examine the contestations. This contradicted the previous practice of the ANSC in 2017, when the ANSC examined a challenge on a similar case in a procurement by the same contracting authority.

Example 6. The failure to publish public procurement procedures exceeding the thresholds set by Law 131/2015 in the Official Journal of the European Union (OJEU) can be considered as another situation of non-application of legal provisions. In 2020, the State Road Administration (ASD) did not publish in the OJEU several public procurement procedures, the value of which exceeded the threshold indicated in Law 131/2015, and the cumulative amount of which exceeded 4 billion lei, according to the notices of intent. These circumstances served as grounds for filing appeals. It should be noted that, until that time, contracting authorities did not publish procurement procedures in OJEU, citing lack of access. The State Road Administration does not publish procurement procedures exceeding the estimated value of 90 million lei in the OJEU.

⁸ [Public Procurement Monitoring Report \(April 2021 - September 2021\)](#)

⁹ [73 of December 22, 2020 on the report on the compliance audit of public procurement within the Ministry of Education, Culture and Research and some subordinated entities](#)

¹⁰ [New textbooks for students: how the evaluation procedure works, what criteria must be met and how the winners are chosen](#)

¹¹ https://www.chisinau.md/ro/ion-ceban-solicita-pozitia-parlamentului-privind-negocierile-directe-dintre-muni-20292_245202.html

¹² <https://mtender.gov.md/tenders/ocds-b3wdp1-MD-1595492839263?tab=contract-notice>

¹³ <https://mtender.gov.md/tenders/ocds-b3wdp1-MD-1614258987702?tab=contract-notice>

¹⁴ [Public Procurement Monitoring Report \(April 2021 - September 2021\)](#)

Example 7. Non-publication in the OJEU served as grounds for the annulment of the procurement procedure for blankets with personalization technologies for identity documents in the national system of passports, driving licenses and registration certificates (tender no. [ocds-b3wdp1-MD-1619699719304](#)). The estimated value of the purchase amounted to 498 356 856,92 lei excluding VAT. This procurement was included in the procurement plan a few days before Easter, on April 26, 2021, and initiated 3 days later. The procurement notice was published in the Official Journal of the European Union with a delay of about 2 weeks. Subsequently, this was one of the grounds for canceling the procurement procedure.

2. *Incorrect selection of procedure type*

As far as European legislation is concerned, there are two basic types of procedures: open and restricted procedures, which are widely used and the decision to opt for one of them is left to the discretion of the contracting authority. All other types of procedures can only be used under certain specific conditions/circumstances, such as urgency, force majeure, or if there is only one economic operator able to deliver what the contracting authority requires. Similarly, in the case of public procurement legislation of the Republic of Moldova, contracting authorities can most often use open or restricted tender, request for quotations, and, less often, respecting all the conditions stipulated by the legislator, they can opt for procedures such as: negotiation with/without publication of a contract notice, solutions competition, competitive dialog, innovation partnership, etc.

The contracting authority's decision not to respect certain rules on the correct choice of the type of procedure is also an indicator of risk and even an error, which can only be remedied by declaring the signed contract null and void and announcing a new procurement procedure.

The monitoring of public procurement highlights frequent abuses by contracting authorities in the use of the negotiated procedure without prior publication of a contract notice. The public procurement procedure Negotiation Without Prior Publication of a Contract Award Notice (NFP) is provided for in the Law and Regulation as an exceptional tool in cases where competitive and transparent procedures have been used and no suitable tender has been submitted, it is strictly necessary, for reasons of extreme urgency due to unforeseeable events, or the subject matter of the procurement is exceptional and there is no alternative on the market.

Example 8. The faulty application of the procedure for the procurement of educational services for the realization of the state order for the training of specialized cadres by the Ministry of Education and Research (MEC) was highlighted in a monitoring report of the AO "Parents in Solidarity"¹⁵. In 2022, the Procurement Plan included two procedures with this object, whose combined value exceeded 1.5 billion lei.

For both procedures mentioned, it was indicated in the procurement plan that they would be carried out through low-value contracts, which raises some questions about the correctness of the choice of the type of procedure and the way in which the procurement procedure was carried out. In previous years, these procurements were carried out through negotiations without prior publication of notices for participation (NFP). From another article on the AO "Parents in

¹⁵ [Report on the monitoring of purchases made by MEC and nine subordinated institutions](#)

Solidarity" website¹⁶ , we learn that in 2022, the value of educational services procurement amounted to - for secondary technical vocational education - 525 million lei; for post-secondary technical vocational education - 406 million lei; for higher education - 713 million lei. Despite the considerable amount, these were reported as low-value purchases.

Example 9. The flexibility mechanisms regulated by special provisions, in the context of the pandemic crisis and the war in the neighboring country, superimposed with the abusive and biased use of the NFP procedure by some contracting authorities, led to a significant increase in NFP procedures in the period 2020 - 2022, compared to 2019 when the least NFP procedures, contracts, including additional agreements, were used: year 2019 - 497 procedures; year 2020 - 601; year 2021 - 888; and year 2022 - 1070 procedures, respectively. The increase in the number of NFP procedures was reflected in the [AGER Public Procurement Monitoring Report \(November 2022 - April 2023\)](#). The same report shows that in the year 2022, DETSs in Chisinau, signed 37 contracts through NFP procedures and four amendment agreements, totaling 48 176 126 lei, which is more than 6.7 times more than in 2021, when nine contracts were signed through NFP procedures, totaling 7 109 738.05 lei.

Example 10. Cases of unjustified recourse to the NFP or the signing of contracts before formalization of some procedures were reflected in the investigations of the AO "With Media Sense". One such investigation concerns the organization of the events "European Moldova" and the European Political Community Summit¹⁷ . Another investigation concerns the conduct of NFP procedures in the procurement of cochlear implants¹⁸ .

Example 11. On 13.04.2023, M Regia EXDRUPO concluded four contracts through NFP for the purchase of asphalt concrete, while a tender for a framework agreement was in progress. The **first bid**, initiated on February 7, 2023, under No. [ocds-b3wdp1-MD-1675769685488](#), was canceled because none of the bids were allegedly compliant. **The second tender**, with no. [ocds-b3wdp1-MD-1679640569587](#), was initiated on March 24, 2023. Contracts through NFP were concluded with four economic operators whose bids had been declared non-compliant by the decision of 23.03.23, in procedure no. [ocds-b3wdp1-MD-1675769685488](#).

3. Misapplication of the rules for calculating estimated value

This category includes risks such as:

- Underestimating the value of the contract in order to be able to apply other, more specific, less transparent rules than those laid down by law. E.g. if the value of the contract requires the contracting authority to publish a notice in the Official Journal of the European Union and it decides to publish only at national level, thus restricting the participation of foreign companies. Also, by underestimating the real value of the future contract, the contracting authority may opt for less transparent procedures, e.g. several low-value purchases instead of a Request for Quotation (COP) procedure or conducting COP instead of an open tender (COP with shorter deadlines). As a consequence, the budget allocated may also be insufficient, fewer bids, if we are

¹⁶ [Ministry of Education and Research purchases of educational services: considerable value, low transparency](#)

¹⁷ [European Moldova ignoring public procurement law](#)

¹⁸ [Why can't I hear?](#)

- talking about low-value purchases (AVMs), as well as a possible cancellation of the procedure and the need to announce a repeat procedure.
- overestimating the value of the contract or calculating the estimated value without consulting the market, which may result in tenders with a much higher value than the actual market value, which will undermine the efficient use of public money, as the contracting authority spends excessive amounts for goods, services or works that have a real price lower than the estimated one.
 - The artificial division of contracts, and consequently the application of less transparent and competitive types of procedures. Although e.g. splitting into lots is allowed and even encouraged in the context of supporting small and medium-sized enterprises under existing policies and rules, splitting a procedure in order to avoid more transparent procedures is nevertheless a violation of public procurement law.

Example 12. The Centre for Centralized Public Procurement in Health (CAPCS) was accused of underestimating the value of purchases of medicines through the framework agreement procedure. Although framework agreements are concluded for a period of 3 years and the prices of medicines vary from year to year, CAPCS took the current prices as a benchmark. When examining a challenge in the procedure for the conclusion of the framework agreement "Procurement of medicines necessary for the realization of the National Pituitary Insufficiency/Pituitary Dwarfism Program for the year 2025-2027", repeated 1, no. [ocds-b3wdp1-MD-1717076163001](#), the contracting authority was accused of not having made a study of the current situation, not having taken into account the introduction of new fees, the increase in inflation and currency fluctuations, the fact that fees/prices (transportation, manufacturer, raw material) may vary significantly in the next 2-3 years, and the fact that the Agency for Medicines and Medical Devices has increased the tariffs for the authorization of medicines.

Example 13. CAPCS has also been accused of underpricing ambulance purchases. Four procurement procedures were canceled in 2023. The economic operators repeatedly claimed, both through the clarification mechanism and in the consultation meetings, that the prices estimated by the contracting authority did not correspond to the market and asked for an increase. As a result, after several canceled procedures, CAPCS agreed to remove some ambulance specifications that were not necessary or relevant in order to obtain ambulances at lower prices. However, the contracting authority also canceled the fourth tender on the grounds that additional financial resources had been identified and decided to launch a fifth and subsequently a sixth tender with different specifications. This time too, claims were raised through contestations that the estimated value was too low to procure the ambulances with the established technical specifications according to EN1789 standards.

Example 14. A case of overestimation, which came to the attention of the press, concerns the contract on the procurement of works for the construction of the access road from the state border crossing Leova - Bumbăta to the national road G99, bypassing the city of Leova. Leova, concluded as a result of a negotiated procedure without prior publication of a tender notice, in September 2022. The amount of the contract was 275 788 245,21 lei, including VAT, for 3,59 km of the road. On this case, the Anti-Corruption Prosecutor's Office (PA) filed a criminal case. According to a PA press release, "*The object of the investigation is to verify the legality of the process of contracting the*

design and construction of the Leova-Bumbăta access road, the correctness of the price for the contracted services, as well as the damages caused".

Example 15. The overestimation of the price for lunches for vulnerable persons in a contract of the Directorate of Social Assistance, Health and Family Protection Balti was reported in an investigation by AO "ADO Lex 21"¹⁹. The cost-benefit analysis was often inadequate, leading to uncertainty about the justification of the prices paid and the efficiency of the use of public funds. The high price of the hot lunch offered by SRL "Crasteia - Aurica" in the framework of food services for socially vulnerable people was considered unjustified in comparison with the prices charged in other similar services in the country, which are on average 50% lower than the price offered by SRL Crasteia - Aurica.

Example 16. Examples of overestimation of the value of purchases can also be found in the Transparency International Moldova report²⁰. For the procurement procedure for the purchase of promotional materials for the promotion of the enterprise and the streamlining of communication with the public, initiated by the "Autosalubritate" MMI, an amount of 1 500 000 lei, excluding VAT, was initially planned. After some changes in the procurement plan, the amount was reduced to 400 000 lei excluding VAT. After submission of the bids, the procedure was canceled on the grounds that 'the need for the services in question has disappeared'. Transparency International Moldova emphasized the following: *"Even if the idea to improve the corporate image of the enterprise is welcome, the planned expenses for the elaboration of such a manual seem exaggerated, as the market prices for such documents were not sufficiently consulted. For example, in the tenders for the preparation of visibility/rebranding manuals initiated by some Moldovan NGOs (Independent Journalism Center, School of Journalism), the bids of economic operators were much more modest (from 3000 to 5000 EUR)".*

Example 17. From an article published by AO "Parents in Solidarity", we learn about the division of public procurement contracts at the Directorate of Education, Youth and Sport Center (DETS Centru) in the period July - December 2023²¹. DETS Centru reported the realization of 218 low-value procurement contracts with a total value of 17.01 million lei (including VAT) in the mentioned period. A detailed examination of the procedures reported by DETS Centru for the period July - December 2023 revealed that approximately 44% of the total amount of RON 17.01 million was distributed through direct contracts to 9 economic agents. Each of these economic agents was contracted by DETS Centru from 3 to 8 times, totaling 43 low-value contracts. The vast majority of the contracts mentioned in the above table (38 out of 43) were realized for the purpose of purchasing various types of repair works and only 5 procedures were for the purchase of goods.

In another material²², AO "Parents in Solidarity" comes back with further details, and even with an infographic, regarding the low-value purchases of DETS Centru. The mentioned infographic shows

¹⁹ [Anomalies in public procurement for social welfare services: a case study on the social welfare canteen operated by the Crasteia-Aurica restaurant, financed by DGASSPF Balti](#)

²⁰ [Monitoring report on public procurement carried out by the City Hall of mun. Chisinau, some subdivisions and municipal enterprises](#)

²¹ [Suspicious purchases: how DETS Center divides millions among chosen firms](#)

²² ["Families" of favorite companies supported by the money of the Directorate of Education, Youth and Sport Centre](#)

us that the most favored were the economic agents "Trust New" SRL and "Lis Company" SRL, which were "fed" with public money from DETS Centru practically every month, from August to December 2023. Both mentioned companies are managed by the same person and have the same legal address. At the same address there is another company - "PROIDEVI" SRL, managed by a person with the same surname. This company also obtained two procurement contracts in the same period. The director of the company "PROIDEVI" SRL previously held the position of accountant at DETS Buiucani, and was sentenced to 3 years in prison with a 3-year suspended conditional sentence and a fine of two hundred thousand lei for acts of corruption in the public procurement process. This case of awarding to a group of affiliated companies about 2.5 million lei through 16 direct contracts in a period of only 5 months is an eloquent example of the division of public procurement contracts.

Example 18. Another case of splitting at MEC in order to apply the low-value procurement procedure was highlighted in a report by AO "Parents in Solidarity"²³. In the Procurement Plan for 2022, the authority planned to carry out several low-value purchases of event organization services:

- Services for the organization of the show dedicated to the Professional Day of Education Workers - 350 000 lei;
- Organization of the cultural event "Sports Gala 2021" - 175 000 lei;
- Organization of the cultural event "Youth Gala 2022" - 99 000 lei;
- Services for the organization and holding of the Science Day celebration in the Republic of Moldova - 250 000 lei.

These 4 procurement procedures, all planned to be carried out through low-value contracts, would have been carried out through a single transparent procedure with 4 lots, one for each event.

4. Incorrect description of the subject matter of the procurement procedure

This indicator includes the adjustment of technical specifications so that only one economic operator can provide the goods or services requested by the contracting authority. The correct description of the subject-matter of the procurement is therefore important to ensure competition and to prevent the creation of unjustified obstacles for other economic operators. The technical specifications should therefore be formulated in an exhaustive manner, using terms which are as comprehensive as possible, but taking into account the requirements, as well as the circumstances, which may have an impact on the outcome of the procedure.

In the national context, Law 131/2015 provides in Article 37 the rules on the description of goods, works and services, clearly stimulating that:

(6) The technical specifications shall not refer to a specific trademark or to a specific economic operator, patent, design or type of goods, works and services, or to a specific origin, or to a specific manufacturer or economic operator. Where there is no sufficiently precise way of stating the requirements in relation to the purchase, and such reference is unavoidable, the characteristics shall include the words 'or equivalent'.

²³ [Report on the monitoring of purchases made by MEC and nine subordinated institutions](#)

Moreover, in paragraph 9, the legislator included the following provision:

(9) The technical specifications must afford any tenderer equal access to the tendering procedure and must not have the effect of introducing unjustified obstacles liable to restrict competition between economic operators.

However, adjusted technical specifications are quite difficult to identify, but even more difficult is to prove the intention of the contracting authority to restrict competition in this way. However, we have quite a few cases monitored and reported by civil society, and not only civil society, in this respect, which demonstrate that this is a common practice in public procurement in the Republic of Moldova. Another tool which is often used by economic operators who observe such incorrect practices is to lodge an appeal against the tender documents. Only in this way, the National Agency for the Settlement of Complaints (ANSC) can intervene and oblige the contracting authority to make the necessary changes in the tender documentation so as to ensure competition. Some examples of such practices will be analyzed in the following chapters.

Example 19. An investigation published by AO "ADO LEX 21"²⁴ uncovers narrow specifications in the procedures "Procurement of portable computers (laptops)" and "Procurement of multifunctional printers", carried out by the Ministry of Labor and Social Protection of the Republic of Moldova in 2023. ADO Lex XXI monitors found that these technical specifications described in detail the parameters of the Xerox® VersaLink® C7130 printer.

Example 20. AO "Părinți Solidari" reports about adjusted specifications within the procurement procedure no. [ocds-b3wdp1-MD-1647244647104](#) for the purchase of a new 7+1 (repeated) minibus with an estimated value of 750 000 lei. The contracting authority National Agency for Quality Assurance in Education and Research developed the specifications with very precise technical parameters:

- 2.2 TDCi engine displacement;
- fuels - diesel;
- 6-speed manual gearbox,
- traction - front,
- engine power 125 hp,
- Fuel consumption: urban 8.8L/100 km, extra-urban 6.5L/100 km,
- mixed 7.4L/100km;
- car dimensions: length 4972, width 2290/1986, height 1976- 2022.

These parameters corresponded exactly to the characteristics of the Ford Tourneo Custom.

Example 21. In the procurement procedure no. [ocds-b3wdp1-MD-1712320196589](#), the Directorate of Education, Youth and Sport (DETS) of sect. Botanica indicated the trademarks for several paint positions such as "Coloriks Enamel, PF-115, Gama Color, Premium Universal, Luminos, Euroton Max, Gardener", as well as "Country of Moldov manufacturer in the tender documentation. For other lots, the contracting authority has indicated the trademarks "Snejka, Clasic, Caparol, Knauf, Superfarba, Savana, Email Universal", as well as "Country of Moldovan manufacturer". The indication of the expression "or equivalent" in front of one of these trade marks

²⁴ [Opacities and technical shortcomings in public procurement procedures for laptops and printers at the Ministry of Labor and Social Protection of the Republic of Moldova](#)

is not acceptable, since the goods in question are not goods for which technical requirements could not be formulated. On the other hand, the indication of trade marks to the effect that 'equivalent' products will be accepted excludes manufacturers whose parameters might vary, even if those parameters have no relevance to the needs of the contracting authority procuring the goods.

Example 22. In a tender procedure conducted by the N. Testimițanu State University of Medicine and Pharmacy, no. [ocds-b3wdp1-MD-1708518574081](#), the tender documentation stated that the following was accepted: "Universal primer primer, for processing interior and exterior surfaces before painting, type Supraton Extra or equivalent; drying time 4-5 hours; minimum packaging 10 kg/bucket". The tender documentation was challenged on the grounds that these requirements corresponded to only one manufacturer. In the monitoring process, we found that many contracting authorities procuring paints and other chemical products do not take into account the minimum legal standards, which refer to the content of volatile organic compounds. This can also be blamed in this case on the control authorities, which are supposed to prevent the placing on the market of goods that do not meet the minimum standards laid down in the legislation. However, this does not absolve contracting authorities from the obligation not to purchase goods which do not comply with minimum quality standards.

Example 23. In CAPCS' 2023 ambulance procurement procedures, we identified unclear technical specifications. The tender documentation specified that the goods were to comply with European standard EN1789. The majority of economic operators interpreted the requirement to mean that they would also hold the relevant certifications. Obtaining the certifications involves complex testing by accredited laboratories and is costly. However, during the challenge hearings, representatives of the contracting authority stated that they considered it acceptable to submit other documents that would confirm that the ambulances met these standards, namely a certificate issued by the Romanian Vehicle Register based on tests carried out in 2010 and 2014, which referred to other ambulance models.²⁵ In this way, the Romanian economic operator 'Deltamed' was favored which, not bearing the costs for the testing and certification of ambulances, was put in a preferential situation in relation to other economic operators.

Several cases of restrictive specifications in health procurement have been described in the AGER Public Procurement Monitoring Report of October 2022²⁶ , as well as in the CAPC report "Centralized Public Procurement in Health and Public Procurement in Education in the Municipality of Chisinau"²⁷ .

5. The qualification criteria do not respect the principles of equal treatment, proportionality and ensuring competition

Both the European Directive and national legislation contain clear provisions on the obligation of the contracting authority to establish requirements that will guarantee equal access to a procurement procedure for all economic operators. In fact, the qualification criteria should be limited to an assessment of whether or not the grounds for exclusion have been met, as well as an

²⁵ [CAPC monitoring report "Centralized public procurement in health and public procurement in education in Chisinau municipality"](#)

²⁶ [AGER public procurement monitoring report from October 2022](#)

²⁷ [Centralized public procurement in health and public procurement in education in Chisinau municipality](#)

assessment of the capacity (financial, economic, technical) of the economic operator to deliver the goods, services or works requested by the CA.

In the document elaborated by the SIGMA team, the following qualification criteria have been formulated, which are considered illegitimate, according to the European Court of Justice, and which should be avoided by contracting authorities when elaborating the tender documentation:

- Preferential selection of economic operators active in the region/area where the works to be procured are to be carried out;
- Participation in the procurement procedure is limited to bidders (state-owned enterprises) in which the state owns the majority share;
- Including requirements to prove that the designer is a member of the association of architects in the country of the contracting authority;
- Excluding bidders on the grounds that they benefit from public subsidies;
- Inclusion of the requirement that the tenderer has, at the time of tendering, an office open to the public in the region/area where the service is to be provided.

As regards these errors, it is important that they are noticed by economic operators before the opening of the tenders, and lodging a challenge might be the appropriate solution to oblige the contracting authority to remedy the admitted error.

In the case of the Republic of Moldova, a considerable number of tenders are rejected as unfounded precisely because the tender documentation is challenged when the results of the evaluation of the tenders have already been announced, which shows that tenderers do not always thoroughly analyze the requirements formulated by the contracting authority. Invoking discriminatory treatment after the receipt of the award decision, by referring to aspects of the tender documentation, can no longer have any effect at this stage. At the same time, we note that economic operators are not always aware of the legal provisions referring to their right to lodge a challenge.

Therefore, not taking the right attitude at the right time can lead to distortion of competition and awarding the procurement contract to a "favored" bidder.

Example 24. As regards the preferential award of contracts to economic agents with state/municipal capital, we can bring the example of subdivisions of mun. Chisinau. The municipal subdivisions conclude contracts with municipal enterprises through NFPs, amounting to tens or hundreds of millions of lei, without complying with the conditions stipulated by the legislation for the application of these non-competitive procedures, as reported in the AGER report²⁸. In the year 2023, the General Directorate of Housing and Urban Planning of mun. Chisinau (DGLCA) had planned to spend 63.49% of its budget, which amounted to 329 785 904 lei, excluding VAT, through NFPs concluded with municipal enterprises.

Example 25. The Ministry of Culture carried out the tender procedure for the conclusion of the framework agreement for the purchase of services for the rental of professional technical equipment necessary for the organization of cultural and artistic events, No. [ocds-b3wdp1-MD-](#)

²⁸ [Public Procurement Monitoring Report \(November 2022 - April 2023\)](#)

1714116916538. In order to demonstrate the ability to carry out the professional activity, it has stipulated the following conditions, which we consider restrictive:

- The provision of the services required by the tender documentation must be included in the Extract from the Register of Legal Entities;

The legislation of the Republic of Moldova does not prohibit economic agents from carrying out activities that are not included in the Extract from the Register of Legal Entities. Any activities may be carried out, except those prohibited by law. Some activities require a license, but the services contracted by the Ministry of Culture are not among those for which licenses would be required.

- Registration of the economic operator in the list of producers of products subject to extended producer responsibility regulations, according to the Regulation on waste electrical and electronic equipment, approved by GD no. 212/2018.

An economic operator that has procured its own electronic equipment necessary for the organization of the equipment, and offers event organization services, cannot qualify as a "producer" of electrical and electronic equipment under the Regulation. The requirement that such an economic operator be listed as a manufacturer of products subject to the extended producer responsibility regulations is disproportionate and unjustified.

For the demonstration of economic and financial capacity, the requirement has been established:

- Presentation of the certificate on the absence or existence of arrears to the national public budget, issued by the State Tax Service.

As from January 1, 2024, the need to submit the certificate on the absence or existence of arrears to the public budget has been eliminated, on the grounds that the data can be accessed by the contracting authority from databases available online.

Example 26. We identified several restrictive conditions in the asphalt concrete procurement procedures carried out by the MMI "Regia Exdrupo" in the period 2022-2024. The type of the procedure was in some cases open tender and in others framework agreement. Restrictive conditions include:

- Conditions on minimum production capacity of economic operators - minimum 800 tons within 12 hours. This requirement gives the possibility to participate only to very large companies and eliminates those with lower production capacity from the competition. This requirement could be justified when massive capital construction works are carried out. However, these procedures are foreseen both for capital works and for routine repair works, where the quantity required is relatively small, and where smaller companies could also participate.
- Delivery time of 24 hours from the time the beneficiary requests the goods, including overnight. This delivery time is abusive, especially if the contracting authority needs large quantities of asphalt concrete for capital works. On the one hand, it is unbelievable that the contracting authority would decide to carry out substantial construction work only 24 hours in advance, so that it could not inform economic operators of the need for materials in advance. On the other hand, even companies with large production capacity might be unable to deliver large quantities on such tight terms because they are engaged in other

large contracts. The risk arises that certain favored economic operators may know of the need earlier, so that only they can ensure delivery on these terms. Equally, a potential favored economic operator may be "forgiven" for being late without consequences.

- Minimum 2-year warranty period for asphalt concrete mixtures delivered. On the one hand, this period of 2 years does not reflect a need on the part of the contracting authority, since it does not propose to procure asphalt mixes to be stored for a period of 1-2 years. On the other hand, if the contracting authority is concerned about the quality of the asphalt mixes delivered, it should set higher conformity/quality standards. The 2-year guarantee period for goods is not relevant in this respect.

Example 27. In tender procedure No. [ocds-b3wdp1-MD-1683013582938](#) for the procurement of works for the reconstruction of Penitentiary No. 5 - Cahul, the National Administration of Penitentiaries indicated as a qualification requirement the submission of a "Deed attesting the exit, confirmed by the signature of the representative of the contracting authority and the participating economic operator". This is an on-site visit, confirmed by a document issued by the contracting authority, which any tenderer had to submit when submitting his tender, otherwise his tender would be disqualified. Although such a visit is advisable, it cannot be compulsory. Such a tool could be used to prevent an economic operator from participating in a tender, should the contracting authority refuse to provide such confirmation.

Example 28. In the medical field we also identified numerous cases of restrictive conditions. About half a year ago CAPCS started to apply the framework agreement procedure for some purchases of medicines, devices and other medical supplies. However, the new procedures for concluding framework agreements appear to contain more restrictive requirements:

- *The obligation of the successful tenderer to provide toolkits free of charge to beneficiaries for the goods delivered.*

The tender documentation for the open tender for the conclusion of the framework agreement - Procurement of endoprostheses for the years 2025-2027, No. [ocds-b3wdp1-MD-1714654372203](#), requires the tenderer to provide free of charge, through loan contracts, sets of instruments for each lot. According to the tender notice, the economic operator shall offer a minimum of one set of instruments per institution for every 50 prostheses. We consider this to be a restrictive requirement which severely limits competition.

The situation is similar in the tender for the purchase of Tests for laboratory examination technology of blood/blood components donors and donated blood/blood components at the first stage of sorting and at the second stage of sorting, for the implementation of the National Program "Transfusion Safety and Self-Security of the Country with Blood Products" for the years 2025-2027, No. [ocds-b3wdp1-MD-1717759541261](#). Paragraph 16 of the tender notice provides as qualification requirements for devices offered free of charge (which are not themselves the subject of the procurement).

- *Tender deposit for the conclusion of the framework agreement upon submission of the tender in Mtender*

For the open tender on the conclusion of the framework agreement - Purchase of cochlear implants required by IMSP Institute of Mother and Child and IMSP Republican Clinical Hospital "Timofei Moşneaga" for the year 2024-2027, No. [ocds-b3wdp1-MD-1703865437303](#), initiated on December 29, 2023, the contracting authority has provided for the obligation of bidders to submit a bid security for the conclusion of the framework agreement of 2%. This is a deposit that will be uploaded into the Mtender system with the submission of the tender and returned after the signing of the framework agreement. At the re-bidding stage, economic operators will lodge further guarantees for their bids, based on the value of those bids. Thus, an economic operator interested in concluding a framework agreement for the maximum quantity of devices for one or more lots will have to lodge a security equal to 2% of the value of its tender/bids. The situation is similar for other procurement procedures initiated by CAPCS.

The tender guarantee at the stage of the conclusion of the framework agreement is an abuse on the part of the contracting authority, which does nothing more than restrict the participation of economic operators, especially small and medium-sized ones, in the tender procedure. On the other hand, it does not provide any kind of assurance to the contracting authority, as long as it is to be returned when the framework agreement is concluded.

- *Restrictive sample submission requirements*

Restrictive sample submission requirements we identified in the solicitation for the procurement of valvular and vascular prostheses, including consumables for the years 2025-2027, No. [ocds-b3wdp1-MD-1717169951211](#). Paragraph 12 of the tender notice requires economic operators to submit samples (specimens) within 10 days of the request of the contracting authority. The suitability/non-suitability of the samples will be assessed by "clinical testing" by the final beneficiaries, whose letters will be considered as evidence. We deduce that the beneficiaries assume the right to arbitrarily accept or disqualify tenders on the basis of the "pass/fail" assessment of the samples. It is not clear what is meant by the method of "clinical testing", but it seems that this will be reduced to visual examination of the samples, without the beneficiaries explaining the conclusions. Another way of assessing samples is "laboratory testing", as there are no accredited laboratories in Moldova.

Example 29. The AO "ADO Lex XXI" has written about other cases of restrictive requirements in an investigation on the maintenance services of the application system for the financial system of the National Social Insurance Fund (CNAS), purchased by CNAS²⁹. Following a challenge, ANSC considered as restrictive the requirement imposed by the contracting authority regarding the demonstration of experience only in the "MCloud" space of the specialized staff required for the implementation of the contract, and, both in the point of view and during the open hearing to examine the challenge, the representative of the beneficiary did not justify this excessive requirement in a pertinent manner. The requirement to demonstrate experience exclusively in the public sector was also considered excessive.

²⁹ [Procurement of maintenance services for the application system for the CNAS financial system for 2024](#)

6. Incorrect application of evaluation criteria

It should be noted at the outset that, once chosen, the evaluation/award criterion (or its elements) for the selected contract must be known to any economic operator interested in submitting a tender. The contracting authority often confuses the elements used for an award criterion with the qualification criteria, a situation considered illegal by the European Court of Justice. An error that can be committed by the CA is to include ambiguous elements/factors that are not understood in the same way by all participants in the procedure.

As in the case of qualification criteria that do not respect equal, proportionate treatment, economic operators must be vigilant and lodge a challenge (or at least alert the contracting authority or ask for clarification) so that the error can be remedied in due course. If the evaluation criterion is not correctly applied, the results of the procedure are also prejudiced, leading to the cancellation of the procedure and the announcement of a new procurement procedure.

Example 30. In the period 2022 - 2023, the M.M. Regia Exdrupo conducted several tenders for the conclusion of framework agreements for the purchase of asphalt concrete. The tender announcements state that *"the lowest price for each individual lot position will be applied as the evaluation criterion (When the same price is submitted by several economic operators, the operator with the longest warranty period will be procured)"*. We consider that the guarantee period in this case is irrelevant and restrictive both as a qualification requirement and as an additional evaluation criterion. From the clarification section for procedure no. [ocds-b3wdp1-MD-1675769685488](#) of 2023, we note the dissatisfaction of one economic operator, who accuses the contracting authority of passing the obligation of the guarantee for works to the seller of the goods and requests the exclusion of this requirement. He explains that the performance of the final product, i.e. the works, depends both on compliance with the production process and on compliance with the commissioning process. The contracting authority's replies were very vague. Reference is made to the guarantee of the works and to the previous negative experiences of the municipal enterprise.

Given the national context and the mistakes made by national contracting authorities, we identify a number of other risk indicators that require attention:

7. Initiation of procurement procedures in the absence of resources or certainty of resource allocation

In addition to the two errors analyzed above, namely: overestimation or underestimation of the estimated value, in the case of the Republic of Moldova, we identify another error that refers to the initiation of public procurement procedures in a situation where the contracting authority is not sure whether resources will be allocated in the following years, but sets a deadline for execution of several years. Under national law, financial resources are allocated annually, on the basis of available funds. Therefore, if such funds are not available in the coming years (or the subject of the procurement is no longer a priority for decision-makers), the work is stopped. A direct consequence of this error is that work already carried out can no longer be completed, or requires additional costs (due to inflation or other factors), additional agreements, all of which are borne by

the taxpayer. Obviously, while the work is stopped, degradation occurs, or adjustments to contracts are necessary, with the additional costs being borne by the taxpayer.

Example 31. One of the infamous programs that has remained in the memory of the people of the Moldovan localities was the one financed from the National Ecological Fund for the construction of sewage networks, sewage treatment plants and aqueducts and other essential projects. Projects initiated in 2013-2016 and even earlier are still not finalized due to the peculiarities of disbursement of money in these projects. There was a lack of financial coverage for the initiated projects, and only modest amounts, insufficient for the planned works, were provided annually. In the AGER report on monitoring public procurement November 2022 - April 2023, 12 such projects in the municipalities of the Republic of Moldova, initiated since 2013, whose execution deadline was extended to the end of 2022 due to lack of necessary financial resources, were given as an example.

Example 32. Capital Construction Department (DCC) of mun. Chisinau initiates large-scale projects, which are meant to stagnate for years. The execution term set for the construction works of the swimming pool of the "Natalia Gheorghiu Gheorghiu" Theoretical High School, purchased by the "Capital Constructions Department of mun. Chisinau", was 5 years. It is estimated that the sources will be allocated in smaller installments for 5 years. A contract was concluded with "KVM Cons" SRL, in the amount of 24 957 175,44 lei, including VAT, on 22.02.2021. An adjustment and increase of almost 3 million lei followed in 2022. In August 2022, when the works could have already been completed, if the contracting authority had set reasonable execution terms and had allocated the necessary resources, the contract was terminated in connection with the massive price increase for construction materials. Shortly after, the contracting authority launched a new tender procedure and the contract for the remaining works was awarded to the same economic operator. The amount of the new contract was 36 231 806,41 lei including VAT. We come to the conclusion that a project planned to be executed over a period of 5 years ended up costing the municipal budget 43 521 457,7 lei, i.e. 18 564 282,3 million more than the amount of the original contract, due to the extension over a long period of time, during which there were also substantial price increases.

Example 33. In 2016, the DCC also initiated the reconstruction of the "Valea Morilor" reservoir. The initial value of the contract was 54 million lei. The contracting authority continued to increase the contract value by 3.2 million lei in 2018 and by 305 707 lei in 2019. In 2022, the contract was adjusted for inflation by almost 2.9 million lei and by 5.8 million lei in 2023. In this case, the allocation of financial resources in small installments over a long period of time in the context of inflation causes the process to be delayed, which caused the contract to increase by almost 12 million lei. The situation is similar in the Bâc river cleaning project. The contract was signed in 2018 for 34,135,50.20 lei, including VAT, with a 22-month execution period. Since then, additional agreements are concluded every year to adjust the value for inflation by millions of lei.

Recommendations:

To eradicate or at least minimize the frequency of the risk indicators listed above requires the involvement of several institutions, starting from the contracting authority and ending with the institutions responsible for policy development in the field, but also those responsible for monitoring the efficiency of public budget spending. Therefore, the set of actions to be taken in these cases includes:

- permanent monitoring and rigorous control by control institutions (Court of Accounts, State Financial Control Inspectorate, etc.).
- conducting periodic compliance and performance audits
- drafting and approving the new Regulation on the certification of procurement specialists
- regular training of staff involved in the conduct of public procurement procedures in order to improve the process of planning procedures, market consultation, correct preparation of annual procurement plans, etc.
- ensuring an internal check (within the contracting authority) before the contract notice is published (in order to identify possible errors or breaches of legislation)

Stage of the public procurement procedure	Risk/error indicator	Consequences	Actions
Pre-tender and planning stage of the public procurement procedure	Circumventing the application of legislative provisions in the procurement process	<p>infringement of the legislation in force</p> <p>inefficient procurement, damaged public budgets</p> <p>low transparency in the use of public money</p> <p>civil society has extremely weak monitoring mechanisms</p>	<p>- permanent monitoring by control institutions</p> <p>- training of staff involved in carrying out public procurement procedures (possible with the entry into force of the Regulation on the certification of specialists)</p>
	Incorrect selection of procedure type	<p>cancel the future contract</p> <p>delay in organizing a new procedure</p> <p>low competition (if a less transparent type of procedure has</p>	<p>improving the planning process (involving experts where necessary)</p> <p>rigorous control by the competent institutions (CC, GPA)</p> <p>periodic audit (compliance</p>

		been selected)	and performance) of public procurement procedures
	Misapplication of the rules for calculating estimated value	lost time excessive costs unacceptable offers split purchases and restrict competition	market consultation rigorous control by the relevant institutions (CC, GPA) on cases of split procurement training on strategic planning and market consultation periodic audit (compliance and performance) of public procurement procedures
	Incorrect description of the subject matter of the procurement procedure	small number of participants, distorted competition procurement of inappropriate goods/services/work budget spent inefficiently appeals lodged which will delay the procedure	market consultation thorough analysis and clear description of the need organizing training on how to draw up specifications and technical specifications that do not restrict competition ensuring an internal control before the contract notice is published analyze clarification requests from the EOs in the electronic system in order to be able to modify the award document in due time periodic audit (compliance and performance) of public procurement procedures
	The qualification criteria do not respect the principles of equal treatment, proportionality and ensuring competition	appeals lodged delays in procedures	training specialists responsible for carrying out public procurement procedures periodic audit (compliance and performance) of public procurement procedures

	Incorrect application of assessment criteria	appeals lodged selection of non-compliant tenders the procedure being delayed	internal control prior to the announcement of the LG Procurement Award Decision training specialists responsible for carrying out public procurement procedures periodic audit (compliance and performance) of public procurement procedures
	Initiation of procurement procedures in the absence of resources or certainty of resource allocation	stopping work for lack of resources in the coming years damage the public budget by starting work that may not be completed low number of bids (participants will not want to take on such responsibilities, as prices for the work offered may increase over several years)	planning procurement procedures in accordance with the availability of financial resources of the CA improving and streamlining internal control to avoid launching procedures without having financial resources available the proper preparation of annual procurement plans periodic audit (compliance and performance) of public procurement procedures

Chapter II. Risk indicators at the tender stage of the procurement procedure

1. *Deadlines for submitting bids*

An error that can be identified at this stage is the setting of deadlines for the receipt of tenders shorter than those stipulated in the legislation. With the launch of the Mtender electronic system, at least for the Request for Quotation or open tender procedures, this error is impossible, since the minimum deadline is set automatically and the contracting authority cannot select a shorter period to favor an economic operator, but only a longer one, if it deems necessary.

The situation is different, however, in the case of negotiated procedures without prior publication of a contract notice, with cases where the deadline for submitting a tender was very short, which also affected the number of economic operators submitting tenders.

Example 34. Contracting authorities are frequently accused of setting too tight deadlines for the submission of bids, depending on the complexity of the procurement procedures. The largest tender procedures initiated at military camp No 136, Băcioi, had an estimated value of almost 90 million lei, excluding VAT (more precisely 88 million lei and 82,5 million lei). According to the Law on Public Procurement, starting from the amount of 90 million lei for works, contracting authorities are obliged to publish notices of intent, participation and award notices in the OJEU. Art. 47 para. (3) of the same law also provides for a period of at least 35 days between the date of publication in the Public Procurement Bulletin (BAP) and the deadline for submission of tenders. In these cases, as the procurement procedure was under 90 million lei, it was not published in the OJEU and the respective provisions on the deadline for submission of bids did not apply.

Example 35. In the year 2022, the Commission for Emergency Situations (CSE) adopted an ad-hoc Regulation for a fast-track procurement of 250,000 passport blankets, secure holographic laminate for them, software including its maintenance services for making and customizing passport blankets as per the current technology. The regulation allowed only 2 days for the submission of tenders. Under these circumstances, only the economic operator UAB "Garsu Pasaulis", which already had a contract with the Public Services Agency (ASP), which was about to expire and which had served as grounds for the opening of a criminal case³⁰.

The reason was a shortage of stock, made worse by the war in the neighboring country. Although a contract had been put out to tender, deliveries were not expected for several months. Eight months earlier, ASP had canceled a tender because of suspicions of fraud. At the time, there was only enough stock for a few months, and by delaying the start of a new procedure by 8 months, there would have been an imminent shortage of blankets, even in the absence of the war in Ukraine.

2. Incorrect assessment of economic operators' qualifications, resulting in their disqualification

The process of evaluating tenders in public procurement procedures is a decisive stage, therefore the contracting authority must exercise due diligence and check that the tenders submitted are eligible and that they meet the qualification and selection criteria. A risk indicator that may be encountered at this stage is the erroneous disqualification of tenderers or the acceptance of non-compliant tenders. If it considers that some documents are unclear or incomplete, it may ask for clarification, but, of necessity, respecting the principle of equal treatment.

In Law 131/2015, Article 17, para. (4) it is specified that *If the information or documents submitted by the tenderer/candidate are incomplete or erroneous, the contracting authority shall request the tenderer/candidate concerned to supplement, clarify or complete the relevant information or documents, **respecting the principles of transparency and equal treatment.*** And only if the tenderer fails to clarify or complete the requested information or documents (within the deadline set by the CA), the CA may disqualify it.

³⁰ [Public Procurement Monitoring Report \(June 2022 - October 2022\)](#)

Example 36. Frequently, unfounded rejection of bids occurs when the contracting authority indicates unclear or contradictory requirements. An example is the public procurement procedure No. [ocds-b3wdp1-MD-1634043960543](#) of 18.11.2021, concerning the procurement of "Reconstruction and modernization of the street lighting system in s. Sireți and construction of a PV station with the capacity of 20 kW". Here the contracting authority, the City Hall of s. Sireți indicated in the document entitled "technical specifications - photovoltaic park" that the required PV panels should have a capacity of 20 kw, but in the specifications it indicated that they should be 300kw. The tenderer "ZEPTO" SRL proposed 300 kW panels, in compliance with the specifications, and the contracting authority rejected its offer without asking for clarification.

3. *Incorrect evaluation of bids, resulting in the rejection of a qualified bidder or the rejection of a non-compliant bid*

Any tender submitted in a public procurement procedure must be evaluated in accordance with the requirements set out in the tender documentation. If a tender does not meet the requirements formulated by the contracting authority, it must be rejected. However, there are cases where the contracting authority includes abusive requirements, which also affects the objectivity of the evaluation process. In this context it is obvious that non-compliant tenders should not be rejected immediately.

In the Republic of Moldova, bidders who consider that the contracting authority has not fairly evaluated the bids submitted in the procedure may lodge a complaint with the National Agency for the Settlement of Complaints and, if the complaint is admitted, the ANSC will order the re-evaluation of the bids and the selection of a compliant bid.

Example 37. In June 2022, the General Directorate of Public Transportation and Roads of mun. Chisinau (currently the General Directorate of Urban Mobility) signed with "Grandbudservice SRL Ukraine branch Vulcănești" a contract for the purchase of works for the repair of the road bridge located on Mihai Viteazul Street, mun. Chisinau, in the amount of 108 030 402.31 lei with VAT. The contract was awarded as a result of the open tender [ocds-b3wdp1-MD-1644616176810](#), after 4 other unsuccessful procurement procedures. AGER wrote in the procurement monitoring report of October 2022³¹, that the bid submitted by this bidder was non-compliant for the following reasons:

- *The documents submitted do not prove the declared turnover*
- *The tenderer did not prove the availability of the necessary equipment*
- *The successful tenderer did not demonstrate sufficient similar experience.*

The deadline for execution of the works set in the tender documentation was 24 months from the date of obtaining the permit documents for the start of works. Two years after the signing of the contract, the expenses incurred between 2022 and 2024 amounted to 49 930 200 lei, including VAT, less than 50% of the total amount of the contract. We believe that the procrastination of the works is due, at least in part, also to the low capacity of the economic operator and the CA's ignorance of this aspect.

³¹ Public Procurement Monitoring Report (June 2022 - October 2022)

Example 38. Moldova Curată documented a case in which an economic agent, created on the same day the procurement procedure was launched, was awarded a contract for the purchase of a truck for waste disposal by the Vadul lui Voda Communal-Location Authority³². The economic operator "Reliacentre" SRL proposed a truck with a capacity of 12 m², but did not indicate the exact model, the delivery term, and the guarantee that it could offer for the truck's operation was one year, while the contracting authority requested 2 years. The representatives of the contracting authority claimed that there was no agreement between the working group and the economic agent and that the selection was guided by the "lowest price" principle. As a result of a decision of the ANSC, the award decision was annulled and another tender was awarded.

4. Modification of award criteria after the procurement procedure has been announced

The award criterion selected and mentioned in the award documentation must also be the one applied. Sometimes the contracting authority needs to take into account new circumstances that may impact on the elements of the chosen award criterion or needs to correct an omission. In this context, SIGMA experts distinguish between *material* and *non-material* changes. A change can be considered material if it has repercussions on the identity of the economic operators, e.g. those changes that influence the tenderer's decision to participate in that procedure. Non-material changes, on the other hand, are usually allowed, but require an appropriate extension of the deadline for submission of tenders.

Modification of any element of the award criterion selected by the contracting authority is not desirable. If such a need arises after the deadline for the submission of tenders has expired, i.e. in the tender evaluation process, the contracting authority must announce a new procedure.

Example 39. The Municipal Puppet Theatre "Guguță" set the evaluation criterion "lowest price" in the tender procedure for the price quotations for the roof repair works, No. ocds-b3wdp1-MD-1690372531346. Thirteen tenders were submitted to the procedure. Although the bids were opened at 16.00, in less than two hours, at 17.45, the ninth-placed bid, submitted by the economic operator Resacons-STR, was declared the winner. For all other bids, the contracting authority took only a few minutes to analyze the bids, after which it rejected the bid on the pretext that it did not meet the requirements or was abnormally low, then opened the next one, up to Resacons-STR. In justifying its decision, the contracting authority stated: *'The decisive factor in the decision was the 25 years' experience in the sector, having been on the market since 1998, the price is not very low and corresponds to the value for money'*. We conclude that the contracting authority, when evaluating the tenders, was guided by rules other than those laid down in the tender documents.

5. Cancellation of a public procurement procedure without legal basis or without justification

The decision to cancel a public procurement procedure, particularly in the case of procedures launched with the publication of a contract notice, must be a reasoned one. The reasoning behind this idea lies in the effort, time and resources invested by an economic operator to participate in a public procurement. There are reasons why a contracting authority might take such a decision, e.g.

³² [Suspected bias in the tender for the purchase of a truck for waste disposal in Vadul lui Voda](#)

if it has become aware of an anti-competitive agreement between certain tenderers or if the contracting authority itself has committed certain errors which make it impossible to proceed.

In national legislation, Article 71 of Law 131/2015 provides for the situations when the contracting authority, on its own initiative, cancels the public procurement contract award procedure before the date of transmission of the communication on the result of the public procurement procedure. After the date of transmission of this communication, the procedure shall be annulled only by the National Agency for the Settlement of Disputes. Paragraph 4(4) of the same Article also stipulates that the contracting authority is obliged to inform the participants, no later than three days after the date of the annulment of the procedure, of the termination of the obligations they have undertaken by submitting their tenders and of the reason for the annulment.

AGER's public procurement monitoring report of April 2023³³ talks about the tendency of some contracting authorities to abuse Art. 71 para. (1) lit. g) of Law no. 131/2015. AGER monitors had come to the conclusion that, in just the first two months of 2023, ANSC had issued precisely ten decisions on the given rule and, in all cases, the Agency decided or maintained the annulment of the procurement on the basis of the given rule. In addition to these ten decisions, there are certainly also cases in which the annulment of the procurement under the given rule was not challenged at the ANSC.

Example 40. A case reported by Transparency International Moldova³⁴ refers to the purchase of IT equipment worth 1 800 000 lei, excluding VAT, by the City Hall of mun. Chisinau. Fourteen bids were received. However, the procurement procedure was canceled under Art. 71 para. (1) lit. g), "procedure annulled on the grounds of serious deviations from the legal provisions affecting the outcome of the tender procedure." On 21.06.23, Rapid Link SRL submitted a complaint to ANSC regarding the annulment without legal grounds of the procurement procedure. According to ANSC Decision No. 03D-465-23 of 18.07.2023 on the settlement of the appeal lodged by Rapid Link SRL, "the reason invoked by the City Council is not based on a legal argument and cannot constitute grounds for annulment of the public procurement procedure". Moreover, "...the contracting authority has not argued and has not indicated the factual circumstances underlying this decision, which can be categorized as grounds for annulment under Art. 71 para. (1) lit. g) of Law no. 131/2015, and the indication of a formal ground for the annulment of the public procurement procedure is considered as a lack of diligence of the authority in relation to the obligations it has according to the regulatory framework in the field of public procurement".

Example 41. An example of abusive annulment is the procurement of works for the capital repair of the roof and landscaping of the IP in the village of Sturzovca, Glodeni r. no. [ocds-b3wdp1-MD-1663070362400](#). After the ANSC twice annulled the decisions to award the procurement contract to the economic operator „Juris-Activ" S.R.L., the contracting authority canceled the procurement procedure, citing the non-allocation of financial means. ANSC maintained the annulment decision of 06.01.2023. Shortly after, however, on 14.02.2023, another procurement procedure was

³³ [Public Procurement Monitoring Report November 2022 - April 2023](#)

³⁴ [Monitoring report on public procurement carried out by the City Hall of mun. Chisinau, some subdivisions and municipal enterprises](#)

initiated with the same subject, the works being included in a single lot, unlike the first procurement procedure.

Recommendations:

For this stage of the procurement procedure, in order to eradicate or, at least, minimize the frequency of the risk indicators listed above, the set of actions to be taken in these cases includes:

- training of staff in the working groups of contracting authorities on the tender evaluation process (in particular, selection of award criteria elements, avoiding confusion between qualification and selection criteria and award criteria elements, etc.)
- ensuring the completion of Declarations of Impartiality and Confidentiality (for each procedure) and the resolution of conflicts of interest prior to the evaluation of tenders, where necessary
- detailed analysis of the causes and identification of potential solutions for continuing the procedure (e.g. re-evaluation of bids, if possible and if there are still qualified bids)

Stage of the public procurement procedure	Risk/error indicator	Consequences	Actions
Stage of the public procurement procedure	Deadlines for submitting bids	small number of participants reduced competition failure to meet delivery deadlines challenges submitted by EOs intending to participate	improving the planning process market consultation activities periodic audit (compliance and performance) of public procurement procedures
	Incorrect assessment of economic operators' qualifications, resulting in their disqualification	appeals lodged Incorrect/subjective assessment and delay in the procedure	improving the evaluation process by training the responsible LG members ensuring that all WG members declare conflicts of interest (not just formally, by signing the Declaration of Confidentiality) and mitigate them where they have been detected periodic audit (compliance and performance) of public

			procurement procedures
	Incorrect evaluation of bids, resulting in the rejection of a qualified bidder or the rejection of a non-compliant bid	appeals lodged Incorrect/subjective assessment and delay in the procedure	improving the evaluation process by training the responsible LG members ensuring that all WG members declare conflicts of interest (not just formally by signing the Declaration of Confidentiality) and mitigate them where they have been detected
	Modification of award criteria after the procurement procedure has been announced	the need to cancel the procedure (if insufficient time is provided to prepare the tender according to the new evaluation criteria) the need to extend the deadline for the submission of bids to allow sufficient time for the EO to prepare their bids according to the new criteria	ensuring that the chosen new award criterion (or elements thereof) are measurable and appropriate training LG members not to confuse the qualification and selection criteria with the elements of the award criteria
Cancellation of a public procurement procedure without legal basis or without justification	appeals lodged the procedure being delayed inability to sign a contract and meet the needs of the CA the need to identify new bidders non-utilization of allocated financial resources	detailed analysis of the causes and identification of potential solutions for continuing the procedure (e.g. re-evaluation of bids, if possible and if there are still qualified bids) improving the planning process for public procurement procedures periodic audit (compliance and performance) of public procurement procedures	

Chapter III. Risk indicators at contract award stage

1. *Failure to respect waiting periods before concluding procurement contracts*

It is mandatory to respect the waiting periods before signing a public procurement contract, so that tenderers who have submitted unsuccessful bids in the procedure can challenge the contracting authority's decision, thus preventing the contract from being awarded on the basis of an erroneous decision. Infringement of this provision entails the contract being declared null and void (Art. 32, para. (2)).

However, according to the experts who drafted the document [Detecting and Correcting the Most Common Errors in Public Procurement](#), there are aspects that influence the decision to declare a contract null and void, e.g. The non-respect of waiting periods is sometimes insufficient to declare a contract null and void, unless there are other errors (such as: the selection of a non-compliant bid or if the rejected bidder has no possibility to challenge (if there is a lack of interest), and therefore loses the chance to win the contract).

Example 42. The public entity „Asociatia de Gospodărire a Spațiilor Verzi” concluded a public procurement contract with the economic operator Eximotor SA, as a result of the procurement procedure no. ocde-b3wdp1-MD-1683979466261, initiated on May 13, 2023, without respecting the waiting period, provided by Law 131/2015 on public procurement. Subsequently, the contracting authority tried to put pressure on the National Agency for the Settlement of Complaints (ANSC) to consider as late a complaint submitted within the waiting period. These reproaches were made to the contracting authority, by ANSC advisors at the meeting held on 16.06.2023³⁵.

2. *Failure to inform participants in the procedure about the results of the procedure and the contracting authority's decision*

The obligation to inform the participants in a public procurement procedure is imperative as it guarantees them the right to challenge the contracting authority's decision if they disagree with it. At the same time, as part of the communication, the contracting authority has the obligation to inform the rejected candidates of the reasons for the respective decision, with detailed arguments, on the basis of which their offer was deemed unacceptable or non-compliant (Article 31 of Law 131/2015). The failure to comply with these provisions, together with the failure to comply with the deadlines, is a significant error that jeopardizes the fairness and efficiency of the entire procurement process.

In order to avoid delays in the procedures, it is in the contracting authority's interest to communicate the results of the procedure as quickly as possible to allow economic operators to contest if they consider that they have been incorrectly evaluated.

Example 43. In the procedure for the request for quotations No. [ocde-b3wdp1-MD-1715325850390](#), the City Hall of Hîjdieni, r-nul Criuleni notified the bidders about the results of the evaluation, indicating only that the bidder "Drumuri Balti" SA was awarded the contract on the

³⁵ [Public procurement monitoring report \(April - September 2023\)](#)

basis of the criterion "best value for money". The contracting authority circumvented the above-mentioned provisions and failed to inform the tenderer of the specific reasons for the rejection of its tender. However, no remedial measures were imposed in so far as, following the submission of the complaint, the contracting authority provided information on the reasons for the rejection of the tenderer's bid.

Example 44. In tender procedure no. [ocds-b3wdp1-MD-1713785608917](#), the Zubresti Town Hall informed a bidder about the results of the evaluation of the bids in the following way: 'you have been disqualified, as you obtained 99% in the evaluation of the bid on the basis of the best value for money criteria'. As a result of the examination of a contestation, ANSC determined that, in the absence of information on how the scores for the bids were awarded, the information provided cannot be considered as complete and, respectively, does not comply with the principle of transparency, as stipulated in Article 7 letter b) of Law no. 131/2015. In this case too, no remedial measures were applied, considering that, at that stage, it was found that the inadequate information did not prevent the challenger from applying the remedy by filing the appeal in this regard.

3. Failure to publish the award decision. Incomplete publication of information in the award decision or publication after the deadline

While European legislation requires the contracting authority to publish the decision on the award of the public procurement contract in the OJEU, national legislation provides for sending it to the GPA no later than the date of the information on the results of the award procedure (Art. 69, para. (10)). Although the electronic public procurement system allows for its publication so that it is visible to any citizen, most contracting authorities nevertheless only send it to the GPA, without attaching it to the system when selecting the successful tenderer.

Even if its non-publication does not have as significant an impact as the non-publication of the contract notice, its importance cannot be neglected, as it guarantees the transparency of the procurement process.

Failure to include certain information in the award decision is also a risk indicator, as it prevents economic operators, responsible public institutions in the field, such as the Court of Auditors, for example, from exercising monitoring actions. Although it represents an error, its impact on the finalized procedure is minimal, therefore the error can be considered formal rather than substantial.

In the Republic of Moldova, given the fact that the award decision is submitted to the GPA, which subsequently publishes the information on the conclusion of the contract on the institution's website, it is difficult to quantify how many such errors, by omitting relevant information, have been committed, since the document is not a public document, unless the contracting authority decides to publish it also in the MTender system.

If in the case of transparent procedures, this error can be considered a formal one, in the case of procedures such as NFP, for example, the omission of relevant information already has a substantial impact, or in this document, the contracting authority is obliged to justify its decision

to opt for that type of procedure. But, as mentioned earlier, since these documents are not always public, it is difficult to understand how often such an error is committed by contracting authorities in the Republic of Moldova. It is, however, an important risk indicator which the representatives of the Court of Auditors must take into account when they decide to audit the procurement procedures carried out by a contracting authority, or the State Financial Control Inspectorate, which are also responsible for analyzing the efficiency of the spending of public money.

Award decisions are submitted for publication in the BAP by contracting authorities. They have the possibility to place the decisions in the Mtender system as well, but as a general rule they do not have to do so. Award decisions are published in the BAP, which appears as pdf documents a few times a month. As there is no interconnection between Mtender or other data sources with the BAP, it is impossible to assess the proportion of award decisions that end up being published.

Also, award decisions may be published several months after the conclusion of procurement contracts, which means that in order to identify an award decision that relates to a specific contract, we would have to open and check all published BAPs from the date of conclusion of the contract and an indefinite number of months after that. Frequently, decisions cannot be identified in the PAB until 3-4 months or more after the conclusion of the contracts, a delay which may be due either to the contracting authority or to the procuring agency's delay in processing the data. This makes it difficult to monitor the publication of award decisions.

With reference to the completeness of the information in award decisions, we frequently note that some of them contain insufficient justification for the evaluation of tenders. However, it is difficult to estimate the incidence of such cases, as even access to award decisions, even published, is not easy.

4. The conclusion of a contract which does not correspond to the commitments made by the economic operator declared the successful tenderer in its tender

The terms of the procurement contract must represent the commitments made by the economic operator in the tender submitted in the public procurement procedure. If the contracting authority accepts the inclusion of other delivery deadlines, e.g. other than those specified in the tender documents or in the tender of the economic operator declared the successful tenderer, or other provisions considered more advantageous to the successful tenderer, the principle of equal treatment may be considered to have been infringed. There are also unforeseen circumstances which may influence the performance of the contract and may make it necessary to sign additional agreements, but these must be justified.

In the Republic of Moldova, the model contract amendment notice contains a section on the data to be amended. So, if the contracting authority decides to modify the following:

- Reducing the contract value
- Increase in contract value
- Changing the time limit for execution/ delivery/ performance
- Change of validity
- Contract termination

it must also indicate the legal basis and describe the circumstances that made the modification necessary. But since this document is not a public document, but only submitted to the Public Procurement Agency, the reasoning behind the decision is often not known to third parties. Only information about these changes appears on the GPA website.

Procurement contracts are not published in full on any public platform. Information on the number and date of procurement contracts and other adjustments to the contract are published on the GPA page, but not the text of the contracts. Even if we have the possibility to request them from the contracting authorities, most of the time they do not help us to identify breaches of contractual commitments, because the text of the contracts is the one in the tender documentation. The obtaining of more advantageous facilities or conditions by the economic operator executing a procurement contract is often camouflaged by additional agreements to that contract, which increase/smaller the value of the contract, extend the execution period, etc. Contract amendment notices contain formal information and insufficient justification of the circumstances that made the amendments necessary. Even so, the analysis of the addendum agreements involves browsing the BAP in pdf format, published several months after the addendum agreements were actually concluded.

Receipt of goods/services/works delivered, nor invoicing information, does not appear in the Mtender system, although the original concept envisaged e-invoicing. The lack of this information reduces the possibility of identifying situations where contracting authorities overlook breaches of public procurement contracts.

5. Modifying the provisions of the contract during its execution, contrary to the legal provisions

Substantial alteration of the provisions of the contract is prohibited, this rule refers to aspects which make the provisions of the new contract differ considerably from the original one. Such modifications may be:

- involves additional financial benefits for the bidder
- goods, services or works not initially included in the specifications
- the situation where another participant in the procedure should have been declared the winner, if these conditions/modifications had been announced from the outset

Example 45. In one case, reflected in the Public Procurement Monitoring Report (April - September 2023)³⁶, there is a discussion about the radical amendment of the contract for the procurement of works for the "Rural Park" landscaping in the village of Braviceni. The initial value of the contract amounted to 7 585 157,43 lei, including VAT, and during the execution of the works it became necessary to exclude a number of works amounting to 3 593 146,93 lei and at the same time to include other unforeseen works amounting to 3 587 858,20 lei. Several non-conformities served as grounds for the amendment. For example, the area to be paved was initially 2300 m2 according to the project, but according to the specifications it was 1445m2. Also missing was the project for the external lighting, the concreting work and the installation of the cable protection tube for the lanterns, etc.

³⁶ [Public procurement monitoring report \(April - September 2023\)](#)

Example 46. The investigation of AO "ADO Lex 21" on the capital repair works of sidewalks in mun. Balti³⁷ reveals a case in which the City Hall of mun. Balti City Hall accepted a request to extend the deadline for execution of some capital repair works, after the deadline for execution of some lots had already expired. The document issued by the AAP states that "...the request for extension of the execution term until May 1, 2023, as well as the extension of the validity of the contract until the end of 2023 is groundless". The basis invoked was the provisions of Art. 76 para. (3) and para. (5) of Law no. 131/2015 on Public Procurement, "it is forbidden to modify any element of the concluded public procurement contract or to introduce new elements if such actions are likely to change the conditions of the tender that constituted the basis for its request and to increase its value".

Example 47. An example of an increase of a contract, contrary to the legal provisions, refers to the construction of an annex with a height of P+2E in the public institution LT "Hyperion" in the town of Hyperion. Durlleşti. During the execution of the contract, for several months, the contractor prepared 26 undated findings of fact, which noted non-conformities in the project and in the local estimates and the need for adjustments. These were forwarded to the mayor of the locality with a request for payment of 197 000 lei. In August of 2022, the mayor of the locality tried to put pressure on the local councilors to vote on the locality's budget for the same year, which included the money for the contract increase. Initially, they refused to vote, on the grounds that they were not provided with the estimates of expenditure from which they could see what works had been included. We noted that **it was not made clear in the statements of findings which works were excluded and which works were replaced, which leaves room for fraudulent agreements between the signatories of the statements of findings, as it was not clear the value of the works excluded in relation to the value of the works included.** Eventually, the contract amount was increased at the end of December 2022.

Example 48. Another case concerns the public procurement contract for the renovation of the Summer Theater in mun. Chisinau. The works were also halted on several occasions by the contractor "Consit Pro" SRL, which repeatedly asked for the contract to be increased and the execution deadline to be extended. These circumstances, as well as the unsatisfactory execution of some of the works, led the contracting authority, the 'Parks, Culture and Leisure Directorate', to terminate the contract and to request the inclusion of the economic operator on the banned list. Subsequently, the municipal authorities dismissed the director of the company and appointed another one. On the instructions of the new director, the decision to terminate the contract and to request the inclusion of the economic operator on the banned list was annulled.

The increase requested by the economic operator exceeded the amount of 15% - the limit stipulated by Law 131/2015, respectively the contracting authority did not accept this increase. After the insistence of the economic operator, who warned to stop the works, the parties concluded an agreement to increase the contractor's contract by the amount of 731 136.11 lei, including VAT (14.74%), on 20.04.2022. Some works were also excluded. Among the excluded works was the execution of the spectators' seating slats in the spectators' hall made of raw hardwood of 100 x 30 mm section. The Authority had previously refused to amend the works contract in accordance with

³⁷ [Where is the sidewalk on Mihail Sadoveanu Street, or how does Balti City Hall manage to circumvent the regulatory framework of the Republic of Moldova?](#)

these minutes. However, the value of the works contract was not reduced by the exclusion of the work on the seat backs.

Twelve days after the decision to exclude the execution of the works for the execution of the wooden spats for the benches of the Summer Theater, the contracting authority initiated a tender procedure for the installation of the wooden spats for the benches, with an estimated value of 963 888 lei, excluding VAT. The deadline for the execution of the works for the installation of the wooden spats was set until 25.12.2022. There is no mention in the tender documentation that the seating speteaks would be installed at the Summer Theater. However, from the tender specifications we note that the technical specifications fully correspond to those to be installed at the Summer Theater.

6. Concluding additional agreements for additional services or goods without conducting a transparent procedure ensuring competition

The legislation allows, in specifically determined cases, the conclusion of additional agreements to adjust the value of contracts by an amount not exceeding 15% of the value of the initial contract. This is a lever frequently used by contracting authorities and economic operators to increase the value of the contract, without justifying the need to do so. Often, these adjustments take place after an economic operator had offered a very attractive price in the tender procedure and thus won the contract.

Example 49. In an investigation carried out by "Moldova Curată"³⁸, we find information about contracts concluded at low prices, and then increased by the Colonița Town Hall with the economic operator "Comod Construct" SRL, within the European Village Program. A local councillor from the locality stated that "this is in fact a scheme whereby a company deliberately bids a low price in order to win the tender and then concludes additional agreements".

Example 50. In the AGER public procurement monitoring report November 2022 - April 2023³⁹ we find a situation where the City Hall of the city of Rezina had to increase the value of a contract by 602 371.01 lei, including VAT, which is 14.3% of the initial contract value, because "...the project documentation is from 2010 and since then until now there have been some changes. This speaks of poor planning or, the contracting authority was supposed to update the project documentation before initiating the procurement procedure.

Analyzing the national context, we identify two more risk indicators at this stage:

7. Award of contracts to economic operators falling under the grounds for exclusion

Although Article 19 of Law 131/2015 foresees the situations when a contracting authority is obliged to exclude any bidder from the public procurement procedure, the monitoring carried out by civil society and not only civil society has identified cases when economic operators included in

³⁸ [Additional contracts at the limit of legality in Colonița Town Hall](#)

³⁹ [AGER Public Procurement Monitoring Report November 2022 - April 2023](#)

the Prohibition List or those for which the Competition Council found anti-competitive agreements continue to win public procurement contracts.

The grounds for exclusion under the Public Procurement Act are frequently avoided by some economic operators and contracting authorities. These grounds include the inclusion of economic operators on a banned list or involvement in actions that distort competition.

Some of the economic operators included in the banned list have obtained court rulings suspending the execution of the GPA's decisions to include them in the banned list until the final judgment. Throughout this period, they successfully participate and win public procurement contracts. Due to the delay in the examination of the cases in the courts, the suspension of execution in most cases has no effect.

As regards exclusion from public procurement procedures for actions distorting competition, AGER has carried out an analysis which shows that several economic operators, for which the Competition Council has found that anti-competitive agreements have been concluded, are not hindered in obtaining public procurement contracts⁴⁰.

Example 51. In tender procedure no. ocds-b3wdp1-MD-1706096489214, concerning the purchase of construction works at Military Camp No 136, Băcioi, the Agency for Resources Assurance and Property Management awarded the tender submitted by "Verilaproiect" SRL. It was only after an appeal was lodged, invoking the existence of a decision of the Competition Council finding that 'Verilaproiect' SRL had entered into an anti-competitive agreement, that the contracting authority annulled the award decision and appointed another tenderer as the winner. The contracting authority also did not accept the bids of this economic operator for other tenders for the purchase of construction works for the same objective on the same ground of exclusion.

Example 52. Another example is that of the economic operator "Vanro-Con" SRL which, although sanctioned by the Competition Council for concluding an anti-competitive agreement, obtained 30 procurement contracts worth 7 961 291,59 lei from the education directorates of mun. Chisinau, during the effective period of the decision. The economic operator "Bioprotect" LLC, which was sanctioned by the decision of the Competition Council No. DA-22/20-09 of 26.03.2021 for concluding anticompetitive agreements, concluded after the sanctioning procurement contracts and agreements on increasing the value of previous contracts, which appear on the GPA page. Also economic operators such as "BTS PRO" SRL, "Liftmontaj" SRL and "Tehnicomplex" SRL, fined for refusing to submit to the inspection by the Competition Council in the framework of investigations related to the conclusion of agreements aimed at distortion of competition, continued to obtain procurement contracts.

8. Awarding contracts while ignoring findings in ANSC decisions

Article 86 of Law 131/2015 on Public Procurement provides in paragraph (11) the following:

⁴⁰ [Competition Council Decisions 2021 - 2023](#)

The decision of the National Agency for Dispute Settlement is binding on the parties. A public procurement contract concluded in disregard of the decision of the National Agency for the Settlement of Disputes shall be null and void.

However, some contracting authorities ignore the ANSC's decision and award the contract, repeatedly, to an unqualified bidder or to a bid that did not comply with the ANSC's decision. Although the ANSC's decision can be challenged in court, the persistence of some contracting authorities in awarding public procurement contracts to the same bidders is detrimental to the public budget, as by the time a court decision is issued, contracts are often already executed.

Ignoring binding ANSC decisions is frequently practiced by some contracting authorities. In the absence of mechanisms to oblige contracting authorities to comply with ANSC decisions, the problem of non-compliance persists.

Example 53. A case of abusive conduct on the part of a contracting authority, which generated a large number of protests, was the procurement procedure for the capital repair works at the Theoretical High School „Grigore Vieru”, No. ocds-b3wdp1-MD-1646983111782, carried out by the Briceni Directorate of Education, Youth and Sport (DÎTS Briceni). In the framework of this procurement procedure, six protests were submitted by the economic operator „Casabella Group” S.R.L., of which five were admitted and one was rejected as late. Some of the challenges concerned the disregard of previous ANSC decisions by the contracting authority. In the described case, the conduct of the members of the working group of DÎTS Briceni is illegal, considering that they repeatedly and ostentatiously violated the binding decisions of ANSC.

Example 54. In the procurement procedure ocds-b3wdp1-MD-1675924149439, carried out by IP LT „Waldorf”, there are signs of favoring the economic agent Muzcafe Plus SRL. Initially, on 06.03.2023 the high school „Waldorf” declared the winning bid Muzcafe Plus's offer on *Food services for children of the educational institution IP LT „Waldorf”*, and the economic agent Adolescence-RC challenged the decision. ANSC by Decision No. 03D-203-23 of 10.04.2023 ordered remedial measures. IP LT „Waldorf” disregarded ANSC's decision and on 19.04.2023 declared Muzcafe Plus the winner again, but following Adolescence-RC's appeal, by Decision No. 03D-203-23 of 10.04.2023 ANSC found the bid of Muzcafe Plus unacceptable. As a result, „Waldorf” declared Adolescence-RC's bid as the winner, but did not sign the contract, invoking the pretext that Muzcafe Plus had lodged a protest. This, however, was rejected by the ANSC as not being of interest by Decision No. 03D-368-23 of 16.06.2023. Even following this decision, „Waldorf” did not conclude the contract with Adolescence-RC, arguing that there were two weeks left in June and that the services during this period should be performed by Muzcafe Plus, stating that they would conclude the service contract with Adolescence-RC starting in September. At the same time, Muzcafe Plus also filed another complaint with the ANSC, which was rejected as untimely by Decision No. 03D-425-23 of 05.07.2023.⁴¹

Example 55. Cases of ignoring ANSC decisions were also identified in an investigation by Moldova Curată⁴². In this case, in October 2023, ANSC issued a decision annulling the decision awarding the

⁴¹ [Public procurement monitoring report \(April - September 2023\)](#)

⁴² [Illumination in Cozești](#)

public procurement contract and obliging the municipality of Grigorăuca to re-evaluate the offer of "Energoled" Ltd. The Agency's decision states that before deciding to reject the offer, the contracting authority was to request the justification of the apparently abnormally low price and, consequently, to actually examine the justification submitted by the economic operator. The contracting authority disregarded the provisions of the ANSC and repeatedly awarded the contract to the company 'Euro VL Construct', without requesting the necessary justifications from 'Energoled' SRL.

Recommendations:

For this stage of the procurement procedure, in order to eradicate or at least minimize the frequency of the risk indicators listed above, the set of actions to be taken in these cases includes:

- training staff in the working groups of the contracting authorities on the legal provisions relating to the award stage of public procurement contracts (compliance with the time-limits, publication of the award decision, informing economic operators, etc.)
- rejecting ineligible bids and informing other responsible institutions about false information provided by the EO participating in the procedure
- publication of the award decision in the MTender system, specifying the reasons why one tender was selected and others rejected
- internal control review of the award decision prior to contract signature (with a view to identifying conflicts of interest or collusion between the EO and some members of the LG)
- rejecting non-compliant tenders and informing other responsible institutions about false information provided by the EO participating in the procedure
- training the staff responsible for public procurement in negotiating the provisions of the procurement contract
- annulment/termination of contracts if they contain provisions that do not correspond to the commitments made by the winning tenderer
- control by the Court of Auditors, GPA of contracting authorities that have concluded contracts with economic operators falling under the grounds for exclusion (based on civil society reports or press information). Regular audit (compliance and performance) of public procurement procedures.

Stage of the public procurement procedure	Risk/error indicator	Consequences	Actions
Award stage of public procurement	Failure to respect waiting periods before concluding procurement contracts	appeals lodged annul the signed contract	training staff responsible for carrying out public procurement verification of information on the submission of a complaint to ANSC on that procedure periodic audit (compliance and performance) of public

			procurement procedures
	Failure to inform participants in the procedure about the results of the procedure and the contracting authority's decision	appeals lodged reduced transparency	publication of the award decision in the MTender system, stating the reasons why one tender was selected and others rejected training staff responsible for carrying out public procurement periodic audit (compliance and performance) of public procurement procedures
	Failure to publish the award decision	lack of transparency of the procedure appeals lodged	publication of the award decision in the MTender system, stating the reasons why one tender was selected and others rejected training staff responsible for carrying out public procurement periodic audit (compliance and performance) of public procurement procedures
	Incomplete publication of information in the award decision or publication after the deadline	lack of transparency of the procedure challenges by other participants who have not been correctly and fully informed	the publication in the MTender system of the award decision, including the reasons why one tender was selected and others rejected training staff responsible for carrying out public procurement periodic audit (compliance and performance) of public procurement procedures
	The conclusion of a contract which does not correspond to the commitments undertaken by the economic operator	failure to respect the 'value for money' principle CA needs are not met, final consumers/benefici	improving the evaluation process by training LG members annulment/termination of contracts if they contain provisions that do not

	declared the winner and included in its tender	<p>aries do not have access to efficient goods, services, works</p> <p>favoritism and discouraging other bidders</p>	<p>correspond to the commitments made by the winning tenderer</p> <p>internal control review of the award decision prior to contract signature (in order to identify conflicts of interest or collusion between the EO and some members of the LG)</p> <p>periodic audit (compliance and performance) of public procurement procedures</p>
	Modifying the provisions of the contract during its execution, contrary to the legal provisions	<p>court action distorting the relationship between EO and CA</p> <p>failure to perform the contract properly</p>	<p>negotiating the provisions of the procurement contract before signing it</p> <p>ensuring effective procurement planning within the institution</p> <p>justification of any changes to the procurement contract</p> <p>training staff responsible for public procurement in negotiating the provisions of the procurement contract</p> <p>periodic audit (compliance and performance) of public procurement procedures</p>
	Concluding additional agreements for additional services or goods without conducting a transparent procedure ensuring competition	<p>distortion of competition</p> <p>Risks of fraud, as additional agreements are concluded under conditions of reduced transparency;</p> <p>The risk of favoring the economic operator, which could be put in a more favorable</p>	<p>Ensuring effective control by the GPA and competent control bodies</p> <p>periodic audit (compliance and performance) of public procurement procedures</p>

		situation than its competitors by these agreements.	
	Award of contracts to economic operators falling under the grounds for exclusion	<p>distortion of competition by awarding contracts to ineligible tenderers</p> <p>delays in the procedure due to challenges by other participants</p>	<p>training LG members on the evaluation of tenders in public procurement procedures</p> <p>making WG members responsible for thoroughly checking the declarations of EOs in the DUAЕ and the Prohibited List</p> <p>rejecting ineligible bids and informing other responsible institutions about false information provided by the EO participating in the procedure</p> <p>control by the Court of Auditors, GPA of the contracting authorities that have concluded such contracts (based on reports or press information) periodic audit (compliance and performance) of public procurement procedures</p>
	Awarding contracts while ignoring findings in ANSC decisions	<p>declaring the contract null and void for failure to comply with the law</p> <p>court action</p> <p>prejudicing the public budget by awarding the contract to a tenderer who has</p>	<p>training LG members on the evaluation of tenders in public procurement procedures</p> <p>control by the Court of Auditors, GPA of the contracting authorities that have concluded such contracts (based on reports or press information)</p>

		submitted a non-compliant tender	<p>the annulment/termination of contracts concluded while ignoring the findings of ANSC decisions</p> <p>introducing sanctions for non-compliance with ANSC decisions, applicable to the members of the working group and/or the head of the institution, in the Contravention and/or Criminal Code</p> <p>blocking financial resources for contracts concluded in violation of ANSC decisions</p>
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Chapter IV. Risk indicators at contract implementation stage

1. *Double billing for the same services*

As is clear from the name of the risk indicator, this error involves the issuing of two invoices for the same goods, services or works rendered, which is detrimental to the budget of the Contracting Authority.

Example 56. In the monitoring process, AO "Părinți Solidari" uncovered a possible double invoicing scheme for the same services. On 19 July 2023, the Directorate-General for Education, Youth and Sport (DGETS) concluded two low-value contracts for the provision of services for the organization and running of the "Summer School for Young People":

- ["Accommodation services and rental of conference halls for the organization and holding of the Summer School for young people"](#), in the amount of 149 962,50 MDL, excluding VAT, "Odiseu" SRL.
- ["Catering services for the organization and holding of the Summer School for young people"](#), in the amount of exactly 150 000 MDL, with "Davalia" SRL.

The economic agents with which contracts have been concluded are founded and managed by the same person - Resetnic Tatiana and have the same legal address.

The analysis of these purchases revealed that in these procedures, breakfast for 125 participants was included in the accommodation services (first contract). Another breakfast of 40 lei for 180 persons was included in the second contract. Thus, breakfast was paid twice for 125 persons,

amounting to 20 000 lei (125 persons x 40 lei x 4 days). The [common photograph of](#) the participants of the event shows about 60 persons, which is less than half of the total of 140 paid accommodation places and 180 meals, both services being paid for four days.

Example 57. Another example discovered by AO "Parents in Solidarity" refers to the procurement procedures carried out by the General Directorate of Education, Youth and Sport of Chisinau (DGETS) for the organization of the event "Chisinau Youth Fest", 2nd edition. The suspicion of double invoicing arises in connection with the signing of two contracts with identical amounts for the same service - *Services for the organization of cultural and artistic events* and *Services for the organization of cultural events for the social cultural program*. The first contract, was concluded with a real company - GNB MANAGEMENT SRL, which carries out economic activity. The second contract was signed with a Public Association "European Youth Council", which is practically unknown. In recent years the Association has not submitted statistical reports on its activity. Both entities have as founder and administrator Alexandru Mantea and have their legal address in the Free International University of Moldova (ULIM).

Example 58. The AO "ADO Lex 21" exposed reasonable suspicions of possible fraud in the procurement of petroleum products by the City Hall of mun. Balti. In an investigation⁴³ on this subject, there is talk about exorbitant quantities of fuel procured by this authority. According to the monitors' estimates, the Balti City Hall purchased petroleum products (gasoline and diesel) enough to travel from Moldova to Antarctica 108 times. The Association's requests for information on the number of vehicles, the number of personnel using them, as well as the costs of procuring parts, repairing and washing the vehicles were refused by the City Hall of the mun. Balti.

2. **Fictitious invoicing/Invoices paid for services not performed**

As in the case of the error analyzed above, fictitious invoicing is often an intentional error that damages the budget of a contracting authority. As the MTender system is not interfaced with e-invoicing, it is difficult to detect such cases or to prove that invoices have been paid and the work has not been carried out. However, we have identified some examples showing that this risk indicator is nevertheless encountered in public procurement in the Republic of Moldova:

Example 59. A case of fictitious invoicing, for works that were not executed, was found by sentence no. 1-4013/2019 of November 24, 2022. The sentence states that *"Păvăloi Andrei as the perpetrator of the offense, exceeding his official duties, intentionally rigged the public procurement procedure. As a result, a formal contract for the procurement of services for several high schools in mun. Chisinau, totaling 297 000 lei. . . through the signature of Păvăloi Andrei were transferred to the account of Todorova Nadejda, the amounts of 239 900 lei, 4 000 lei and 54 000 lei, which, in turn, she transferred to the real beneficiary, the engineer of DETS sect. Râșcani cet. Lilia Manoila, which she shared with Păvăloi Andrei.*

Example 60. Another case, identified by the AO "ADO LEX 21", refers to the purchase of "photo-video services in the framework of cultural-artistic actions dedicated to the International Children's Day, the Festival of folk dance "Who plays the horele", XIIth edition, 2022" by the Culture Department of the City Hall of mun. Balti. The Provider undertook to deliver the following services:

⁴³ [Purchases of petroleum products for the year 2023 in Balti City Hall: hidden invoices and exorbitant volumes](#)

production of layouts and banners, outdoor recordings - 5 hours, photo services - 2000 tabs, video services - 10 hours, as well as preparation of 4 video clips.

However, on the communication channels of the City Hall mun. Balti no photos or videos from the targeted events appear. What is more, a little earlier, a new department had already been created within the City Hall, which is responsible for working with the press and media. Five additional jobs were created and money was allocated for professional photographers.

Example 61. Another investigation carried out by AO "ADO Lex 21" refers to the capital repair works of the sidewalk on M. Sadoveanu Street, mun. Balti⁴⁴. Although the works have not been carried out, the money for the repair of this stretch of sidewalk has been transferred, in the absence of the handover-receipt of services. A municipal councilor addressed a complaint to the Anti-Corruption Prosecutor's Office and the General Prosecutor's Office, alleging dubious schemes in the transfer of financial resources by the Balti City Hall.

3. *Fictitious bidder/participation with concerted bids in public procurement*

Competition in public procurement favors higher quality goods, services or works at lower prices. On the other hand, distortion of competition has the effect of wasting public money by acquiring goods, services or works of inferior quality at higher prices. Under the provisions of Art. 19 para. (3) lit. g) of the Law on Public Procurement No. 131/2015, "contracting authorities are obliged to exclude from the procedure for awarding public procurement contracts any bidder or candidate who has entered into agreements with other economic operators aimed at distorting competition". The Procurement Law, however, links the possibility of exclusion from the procurement procedure to the condition that the infringement has been established by a decision of the body empowered to do so, which is the Competition Council, and that no more than 3 years have elapsed since the event occurred.

Examples of anti-competitive practices in public procurement procedures are more difficult to identify and prove, however, we list some of them below:

Example 62. In the October 2022 monitoring report⁴⁵, AGER documented a possible anticompetitive agreement between two bidders - "Prosperus-Cons" SRL and Termosistem Company. Although it has submitted its own bid, "Prosperus-Cons" SRL appears as a third party technical and professional supporter in the bid of Termosistem Company. We have also identified other contracts from other procurement procedures, where Termosistem Company had concluded public procurement contracts and then subcontracted all the works to "Prosperus-Cons" SRL for a price close to the value of the public procurement contract.

The scheme works as follows: if there are no other bids between the two bids submitted in the interest of the same company/persons that have a chance of winning, the bidder with the lower price will "discard" its bid in favor of the bid with the higher price. As a rule, this "discarding" takes

⁴⁴ [Where is the sidewalk on Mihail Sadoveanu Street, or how does Balti City Hall manage to circumvent the regulatory framework of the Republic of Moldova?](#)

⁴⁵ [Public Procurement Monitoring Report \(June 2022 - October 2022\)](#)

place by ignoring the contracting authority's requests for clarification, for justification of the apparently abnormally low price or for additional documents. In these circumstances, the contracting authority has no option but to examine the next higher tender.

The impression is created that the bidder "Compania Termosistem" SRL is just a fictitious bidder, and once it gets the contract, it subcontracts it to "Prosperus-Cons" SRL, probably in exchange for some benefits.

Example 63. AGER's public procurement monitoring report of September 2023⁴⁶, reflects 5 cases of suspected concerted bidding in public procurement. In several of these cases, these are dependent undertakings and the current regulatory framework does not qualify as anticompetitive agreements the submission of bids in the same tender procedure by dependent undertakings. Thus, although the Competition Council admits that there is participation with rigged bids in public procurement, it cannot comment on this aspect. On the other hand, the GPA avoids including the economic operators involved in such anti-competitive agreements in the prohibition list, under the pretext of the absence of a decision issued by the Competition Council.

More recently, in a [decision of the Competition Council of 05.04.2024](#), it is noted that "the mere fact that two undertakings have decided to participate in the same tender, which is in itself a competitive process, imposes on these undertakings the obligation to ensure independence in the preparation and submission of bids and not to admit any form of coordination in order to participate in the same tender." The Council found that this obligation had not been fulfilled by "Vigurcom" SRL and "Rapid Link" SRL. These two companies had tried to avoid sanctions from the Competition Council, arguing that they were dependent undertakings and were part of the same group of undertakings, even if not the same partners, and therefore it could be presumed that there could not be an anti-competitive agreement between them. However, the Competition Council found that the infringement of competition law by participating with rigged bids in a public procurement procedure.

4. Corruption/bribery for procurement officials

Acts of corruption/bribery in public procurement can only be detected by law enforcement bodies. Although it is informally known that bribery is very common in public procurement, it is almost impossible for civil society and even investigative journalists to find out and prove. Criminal prosecutions for corruption in public procurement are extremely rare, and reasonable suspicions of fraud reported by civil society and journalists are usually left unexamined.

Example 64. A judgment of conviction was handed down against the current acting head of DGETS, Andrei Păvăloi, Andrei Păvăloi, Liliei Manoilă, chief engineer at DETS Râșcani and the administrator of a company. In criminal case no. 1-19159487-12-1-1-08102019 filed in 2019, whose Sentence was pronounced by the Chisinau Court on November 24, 2022, the payment of an unlawful amount equivalent to 21% of a public procurement contract by the company's administration for the benefit of public officials of DETS Riscani is documented.

⁴⁶ [Public procurement monitoring report \(April - September 2023\)](#)

Example 65. Another criminal file for corruption in public procurement concerns the head of DETS Buiucani, Tatiana Oboroc, and a businessman, detained by CNA. The investigation documented the prior agreement between the interim head of DETS Buiucani and the administrator of the construction company, as a result of which the latter obtained the contract for the provision of services for the repair of access ramps in 9 educational institutions. As a reward, on November 2, 2022, the economic agent allegedly transferred to the DETS Buiucani DETS official the amount of 174 000 lei, and on November 22, 2022 another amount of 52 000 lei. The targeted company is "Anreal Cons" SRL, a company that used to obtain numerous contracts from the municipal education directorates.

Example 66. An investigation carried out by AO "ADO Lex 21"⁴⁷ reveals a situation in which the execution of the contract for the capital repair of the roadway part of Independenței Street in mun. Balti was suspended. On the one hand, the City Hall of mun. Bălți accuses the contractor of having requested a higher amount than the initial contract. On the other hand, the contractor talks about the fact that the project documentation provided by the contracting authority does not correspond to the current state of the road. Moreover, a municipal councillor has publicly stated that he has audio recordings in which the mayor of mun. Balti directly asked the contractor to purchase construction materials from certain economic agents.

Recommendations:

For this stage of the procurement procedure, in order to eradicate or at least minimize the frequency of the risk indicators listed above, the set of actions to be taken in these cases includes:

- rigorous control by the institutions responsible for the management of public financial resources (Court of Auditors) and the exercise of budgetary control and management of public budget resources (ICFS)
- control by the Competition Council to identify and sanction anti-competitive practices
- the establishment of clear powers for the Public Procurement Agency and/or the Agency for the Settlement of Disputes, which would allow economic operators that have submitted rigged bids in public procurement procedures to be removed from public procurement procedures without the need for a decision by the Competition Council
- Rigorous control by the NAC, responsible for preventing and combating corruption and acts related to corruption, including on the basis of information from reports prepared by civil society, investigative journalists, etc.
- training staff involved in carrying out procurement procedures on ethics and integrity
- periodic audit (compliance and performance) of public procurement procedures
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Stage of the public procurement procedure	Risk/error indicator	Consequences	Actions
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⁴⁷ [City Hall of Balti vs. "Tehnologica Construct" Ltd.: what interests hides the procurement procedure on "Capital repair of the roadway of Independence Street, mun. Balti"?](#)

Contract implementation stage	Double billing for the same services	damage to the budget of the contracting authority the goods/services/works will not be delivered	rigorous control by the institutions responsible for the management of public financial resources (Court of Auditors) and the exercise of budgetary control and management of public budget resources (ICFS) periodic audit (compliance and performance) of public procurement procedures
	Fictitious invoicing/Invoices paid for services not performed	damage to the budget of the contracting authority the goods/services/works will not be delivered	rigorous control by the institutions responsible for the management of public financial resources (Court of Auditors) and the exercise of budgetary control and management of public budget resources (ICFS) rigorous control within the contracting authority periodic audit (compliance and performance) of public procurement procedures
	Fictitious bidder/participation with concerted bids in public procurement	damage to the budget of the contracting authority distortion of competition	control by the Competition Council with a view to identifying non-competitive agreements periodic audit (compliance and performance) of public procurement procedures establishing clear powers for the GPA and/or ANSC to remove from public procurement procedures economic operators that have submitted rigged bids in public procurement procedures

	Corruption/bribery for procurement officials	contracts awarded to economic operators who tendered with non-compliant tenders goods/services/work of inferior quality discouraging competition	Rigorous control by the NAC, responsible for preventing and combating corruption and acts related to corruption, including on the basis of information from reports prepared by civil society, investigative journalists, etc. training staff involved in carrying out procurement procedures on ethics and integrity periodic audit (compliance and performance) of public procurement procedures
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Conclusions

The study aimed to highlight the most frequently encountered risk indicators in public procurement in the Republic of Moldova over the last few years, based on the monitoring activity of several civil society organizations. A particularly vulnerable stage is the planning stage of public procurement. There are many reasons for this phenomenon: either the decision to carry out certain projects is made immediately when the possibility of obtaining funding for these projects arises; or the staff responsible for planning and carrying out public procurement procedures is not sufficiently qualified and specialized to carry out these tasks, in the absence of centralized procurement; or the specialists involved or the contracted designers carry out their tasks in a hurry, without taking into account all the circumstances that are important for the successful implementation of projects.

Some of these problems can be solved by introducing certification for procurement specialists, so that procurement procedures are carried out by people with appropriate training in this field. For contracting authorities with small budgets, for which hiring procurement specialists, either contracting the services of certified procurers, but also other specialists in the fields relevant to the subject matter of the procurement, would be unfeasible and/or excessively costly, the solution would be to centralize procurement procedures. In this way, procurement of goods, services or works would be contracted out to other central procurement authorities, which would have superior capacities to streamline procurement processes and the use of public money.

There is also a need to introduce/increase effective internal controls, regular audit, and effective monitoring by PAA, ICFS. It is also necessary to update the Contravention Code and/or the Criminal Code in the part that refers to violations in the conduct of public procurement procedures, with the establishment of sanctions to discourage incorrect and/or illegal practices.

The main risk indicators at the stage of the procurement procedures relate to the admission of restrictive qualification or evaluation requirements, and in other irrelevant cases, non-compliant evaluation of tenders, with premature rejection of some tenders without clarification, rejection of compliant tenders, or the winning of non-compliant tenders. These circumstances may be caused by the poor training or expertise of the members of the working groups, as well as by bad faith, when the intention is to favor certain economic operators, the existence of conflicts of interest. Professionalizing public procurement and centralizing public procurement could reduce these risks. Internal controls and regular audits would also help to identify and combat systemic problems.

At the stage of awarding public procurement contracts, the most frequent risks are related to failure to comply with waiting periods, failure to inform participants about the results of the procurement procedure, non-publication/incomplete or late publication of award decisions, awarding contracts to economic operators falling under the grounds for exclusion, ignoring ANSC decisions, modification of contract provisions during the execution period and implicitly favoring certain economic operators. Once again, training the members of the working groups would reduce these risks, in combination with internal control and regular audit of public procurement procedures.

With reference to the conclusion of public procurement contracts in disregard of ANSC decisions, it is necessary to introduce into the legal framework contraventional and/or criminal sanctions for the members of the working groups within the contracting authorities, who admitted these violations. Also, for contracts concluded in violation of ANSC decisions, which are null and void under the Public Procurement Law, rigorous control is required in order to block the financing by the State Treasury.

Another particularly vulnerable and non-transparent stage is the implementation of public procurement contracts. As mentioned in the study, there is limited access to information related to the execution stage of public procurement contracts, starting with the award decision and ending with the execution and invoicing for goods/services delivered or works performed. The low transparency of this phase, together with the lack of effective control by the Public Procurement Agency, is responsible for numerous frauds and massive waste of public funds. In order to reduce these risks, in addition to internal controls and regular audits, rigorous control by the institutions responsible for the management of public financial resources (Court of Auditors) and the exercise of budgetary control and management of public budget resources (ICFS) is required.

Rigorous control is also required on the part of the CNA, which is responsible for preventing and combating corruption and acts related to corruption, including on the basis of information from reports drawn up by civil society, investigative journalists, etc. With regard to participation in public procurement with rigged bids, it is recommended that the Competition Act be amended so as to eliminate the impunity under this Act of dependent companies that participate in public procurement with rigged bids. At the same time, it is recommended to establish clear powers for the Public Procurement Agency and/or the Agency for the Settlement of Complaints, which would allow the removal from public procurement procedures of economic operators that have submitted rigged bids in public procurement procedures, without the need to obtain a decision from the Competition Council.