

Recommendations for the new Regulation on the planning of public procurement contracts public procurement

The procurement planning stage plays a crucial role in the success of a procurement, although it is often not given the necessary attention. And a successful procurement can be achieved by a procurement that has clear rules, requirements proportionate to the purpose of the procurement; carried out in time to enable the authority to achieve its institutional objectives; and which provides the authority with goods, services or works of the required quality. Careful planning ensures that the necessary goods/services/works are procured in accordance with the needs of the authority, in due time, in the required quantity and quality and at the right price. This is all the more important as the procurement sector is closely monitored by our partners, especially in the context of the process of European integration of the Republic of Moldova and the alignment of the legislation with the *acquis communautaire*.

Poor planning is one of the most frequent violations in the procurement process, which is confirmed by both the data on the results of the monitoring carried out by the Public Procurement Agency and the monitoring from civil society. And, the practice of procuring only to utilize the financial resources allocated for the current budget year is certainly a harmful practice that should be avoided at all costs, if not ruled out. At the same time, rigorous planning prevents or mitigates a number of risks that can have a negative impact on the procurement process and the achievement of the authorities' institutional objectives. These risks relate to: split procurement, lack of bids, cancellation of procurement procedures (and increasing share of negotiation procedures without publication), contestations, exceeding deadlines set for project implementation, increased costs (administrative, financial) inefficiency in the use of public money and even delays in the provision of quality public services to citizens.

It is important to note that planning is not just about developing a Procurement Plan. The procurement planning stage is also about identifying the authority's needs, estimating costs, analyzing the market, establishing clear timelines and the appropriate procedures by which the goods, services or works will be procured. At the same time, the procurement plan is a forecast and is not binding on the contracting authority. Its purpose is to streamline the procurement process and to inform economic operators, citizens about the goods, services and works to be procured during the budget year by a specific contracting authority.

As a result of our monitoring of public procurement and discussions with representatives of contracting authorities of all levels and capacities, we are formulating a series of recommendations for streamlining planning, structured in 3 categories:

I. Legislation

The primary and secondary legal frameworks are not properly aligned, leading to risks, inconsistencies and inconsistent application. In addition, the legal framework contains unnecessary rules that are not applied in practice and need to be amended or excluded. Law 131/2015 requires the contracting authority to prepare annual and quarterly procurement plans. Respectively we have a rule that is not applied in the authorities' practice and requires revision. Respectively, the exclusion of the obligation to draw up quarterly plans follows. We recommend to exclude the confusion between the Annual Procurement Plan and the Notice of Intent including the terms of approval and publication.

II. Administrative/technical

Next to procurement transparency, which is a fundamental principle in procurement, civil society advocates for an efficient procurement process with simple and easy to administer procedures for contracting authorities. The focus should be on results and not on duplicative bureaucratic procedures that are an administrative burden for authorities. The simpler the processes, the lower the risks.

III. Digitization and open data

It is imperative that the planning phase be fully digitized, so that procurement plans drawn up on paper, scanned and published on some 2000 websites of central and local contracting authorities across the country are permanently excluded.

The Annual Procurement Plan template needs to be digitized, automated and integrated into the electronic system so that there are no different approaches. The contracting authorities only need to enter the planned procurement data into the system and the automated system will systematize and publish it. The digitization of procurement planning would eliminate a number of problems and procedures that authorities now follow and represent an administrative burden.

Access to open procurement data is crucial and has a number of advantages, including allowing authorities to develop even more evidence and evidence-based policies, analysis and monitoring, as well as civil society monitoring and access to data for citizens. The format in which procurement plans are currently published does not provide access to publicly accessible open data that can be used and analyzed. Open data means data that is easily accessible, analyzable, usable and reusable. A scanned document published on a website does not provide these characteristics. The digitization of the planning stage, and indeed of the entire procurement cycle, enables

Both decision-makers and civil society to track the outcome of procurement and to determine its efficiency by comparing the final value of a procurement contract, the estimated, planned, planned value included in the plan, and the expected expenditure in the institution's budget.

Proposals to the draft new Regulation:

Provisions that we consider positive and support:

1. The deadlines for approval and publication of the Procurement Plan have been clarified. In the current Regulation the provisions were confusing in particular with regard to the deadline for approval of the Plan. The draft new Regulation clearly mentions the deadlines for approval, publication and republication after amendment.

Item 40. The Procurement Plan shall be approved within 10 days from the date of approval of the institution's budget and shall be published within 5 days on the official website of the contracting authority, in the Procurement Department.

Point 46. Any changes to the procurement plan shall be duly documented and the revised form of the plan shall be approved by the management of the contracting authority and published on the official website of the institution in the Public Procurement section within 5 days of approval

2. Introducing a new concept of monitoring. The draft regulation provides that the contracting authority will draw up six-monthly and annual reports on



monitoring the execution of the annual procurement plan: monitoring shall be carried out by regularly updating the status of each procurement, identifying any delays, bottlenecks or deviations and applying corrective measures as necessary and depending on the financial resources available

Provisions of the new Regulation that need improvement:

1. The rule on batches is a general one that may generate dual and even abusive interpretations. In this respect, we suggest to extend the need for lot splitting also to attract and support SMEs, especially in sectors such as food.
Depending on the nature and complexity of the procurement, the contracting authority assesses the appropriateness of splitting the contract into lots in order to encourage competition and the participation of small and medium-sized economic operators
2. The wording under seasonal goods and services is taken from the previous regulation and generates contradictory interpretations. It is not clear enough, is this list of seasonal goods and services exhaustive or are some examples given, the wording "such as" is used: In the case of purchases of seasonal goods and services such as food, food services and air passenger transportation"
3. In paragraph 37 of the Regulation which refers to the structure of the Plan, we consider that the rule is improved and the Plan will contain more data. However, we also have some additional recommendations that will contribute to a sport access to open data on planned acquisitions. Given the complexity and the large number of pages of some of the Plans, we also recommend that the general structuring by goods, services and works with total amounts for each category and overall should be improved.
4. And, last but not least, we emphasize the need to urgently approve and implement the mechanism of Professionalization and Certification that will significantly contribute to the improvement and efficiency of procurement planning by increasing the capacity of procurement specialists to analyze needs, market analysis, application of methods of calculating the estimated value, etc..