



# EVALUATION OF THE APPEALS SOLUTION SYSTEM IN THE PUBLIC PROCUREMENT SECTOR

AND RECOMMENDATIONS FOR THE IMPROVEMENT  
OF THE SYSTEM OF CONTESTATIONS AND SOLUTIONS  
IN THE PUBLIC PROCUREMENT SECTOR

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Chisinau, 2018

# EVALUATION OF THE APPEALS SOLUTION SYSTEM IN THE PUBLIC PROCUREMENT SECTOR

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This document was developed within the framework of the project "Cutting edge improvements in the public procurement system in Moldova through inclusiveness, creativity and low abiding practices"/ „Îmbunătățiri inovative în sistemul de achiziții publice din Republica Moldova prin incluziune, creativitate și practici de respectare a legislației.” This publication has been funded by the EU and co-funded by the UK Aid with the support of the UK Government. Responsibility for the content of this publication rests to the authors and does not necessarily reflect the position of the EU or that of the British Government.



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# Introduction

The reform of the national public procurement system is necessary in order to adjust it to the international standards and align it with the *acquis communautaire*, in accordance to the commitments assumed by the Republic of Moldova through the ratification of the Association Agreement with the European Union. An effective public procurement process involves not only a proper legislative framework but also a functional and effective appeal system functioning in the interest of all actors by providing remedies and correct solutions in the case of breaches and violations of the law.

In order to increase the transparency and efficiency of the Remedies and Solutions System, we proposed to evaluate and monitor the activity and decision-making process of the National Agency for Solving Complaints (hereinafter NASC). The analysis and monitoring of the decisions taken by NASC are necessary to determine whether the right to appeal is respected, and also to ascertain whether the legislation and the procedure for examining the appeals are in compliance with the principles of legality, celerity, contradiction and of the right to defense. Another objective is to identify the shortages of the contestation system and the risk indicators that are causing corrupt decisions and schemes mimicking competition.

The monitoring process will help identify some trends, problems, and loopholes, see the general picture of the solutions adopted, highlight the areas where most complaints take place and establish the most frequent violations of the legislation committed in public procurement procedures. As a result of the monitoring and analysis of appeals, recommendations will be made in order to improve the process of examination and resolution of appeals, the decision-making process, but also to increase the degree efficiency in the work of the National Agency for Solving Complaints.

In accordance with the provisions of the Law on Public Procurement no. 131 of 03.07.2015, in September 2017 NASC began to register appeals submitted by economic operators following the conclusion of public procurement procedures.

The evaluation of the new system of remedies and resolution of appeals began at the start of NASC's activity, and the first report was drafted and published in January. In it, we have assessed 152 decisions issued by NASC between 09.08.2017 - 19.01.2018.

This report includes the evaluation of NASC 400 decisions taken between 1 January and 5 September 2018.

# 1. Generalities

## 1.1. The role and the mission of NASC

The National Agency for Settlement of Complaints (hereinafter NASC) was established by the Parliament's Decision no. 271 of 15.12.2016, being an independent and autonomous public authority vis-à-vis other public authorities, vis-à-vis natural and legal persons, which examines the appeals formulated in the framework of the public procurement procedures. NASC has organizational, functional, operational and financial independence and is not subordinated to any other public authority or institution, having the obligation to defend the legitimate rights and interests of all parties involved in appeals filed for review without any privilege or discrimination.

NASC is apolitical, does not support or assist any political party and exerts its powers in conformity with the principles of independence and stability in function of its counselors for settling appeals, and respecting the principles of transparency and impartiality in decision-making. The Agency has 7 counselors tasked with the resolution of appeals, including the general director and his deputy. The counselors examine the appeals through panels made up of 3 members and they have the status of personae with public dignity positions, being appointed by the Parliament through the vote of the majority of the deputies present at the proposal of the Parliament's Committee on Economy, Budget and Finance.

## 1.2. The management, human resources and organizational structure of NASC

According to the Regulation on its organization and functioning (Parliament's Decision No. 271/2016), which made provisions limiting the number of individuals enlisted in NASC's staff, the personnel of the institution was set to be of 30 individuals, out of which there are 7 positions of public dignity - these being the counselors (including the General Director and his Deputy), 20 positions having the status of civil servants, 2 auxiliary staff positions and one of technical service, tasked with ensuring the functioning of the public authority. On 21 July 2017, the Parliament of the Republic of Moldova appointed seven counselors in office for the settlement of appeals for a term of 7 years.

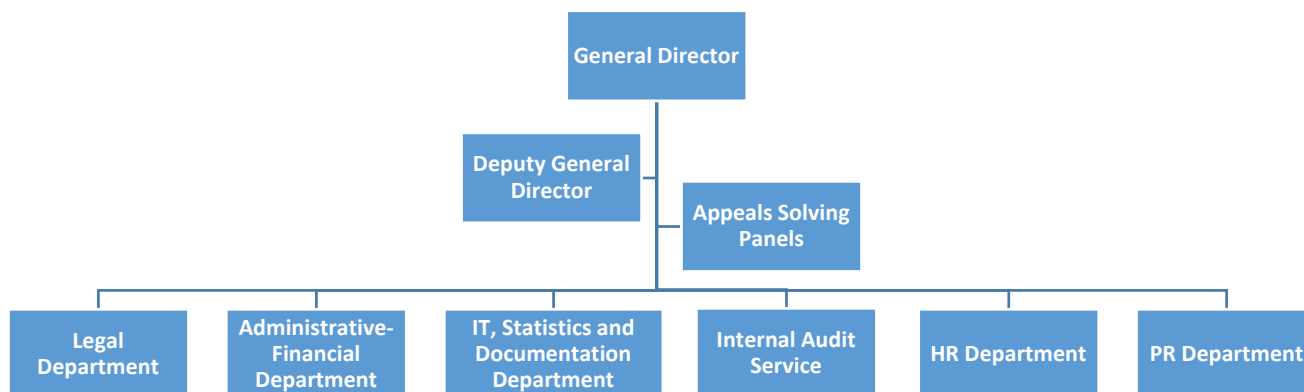
Subsequently, in accordance with Art. 48 of the Law no. 158 of 04.07.2008 regarding the public

function and the status of the civil servant, there were appointed by transfer civil servants in the positions of chief of the Legal Department, chief of the Administrative-financial Department, chief of the Directorate for information technologies, statistics and documentation and a principal consultant for the HR Department. Thus began the process of organizing the institution's activity. It is worth mentioning that on 4 September 2017, the Agency began receiving and examining appeals. Since then, the volume of complaints has been steadily increasing, while the number of employees stood the same:

- 7 counselors, including NASC's leadership;
- 2 civil servants who assisted in the activity of the panels (the head of the Legal Department and the head of Information Technologies, Statistics and Documentation Department);

- 2 officials from the Administrative-Financial Department
- 1 official from the Human Resources Department
- 2 auxiliary staff employees

**Figure 1. NASC's organizational chart<sup>1</sup>**



At the end of 2017, 15 people out of 30 (the upper-limit) were active in the Agency, the occupancy rate being of 50%, as follows:

- 7 counselors for solving appeals (including the management of the Agency);
- 5 civil servants (3 - public civil servants and 2 civil servants with executive attributions);
- 2 auxiliary staff-member;
- 1 technical service employee tasked with ensuring the functioning of the public agency.

On 01.12.2017 the first announcements were made regarding the organization of the competition for vacancies in the NASC's departments were published. On 4 September 2017, NASC began to receive appeals submitted by economic operators as a result of the public procurement procedures, in accordance with the terms and provisions of the public procurement Law no. 131 of 03.07.2015. On 5 September, the first appeal was registered at NASC.

In this context, the operational procedure for settling appeals was elaborated and approved, aiming at establishing the basic standard requirements for documenting the activity, organizing the work on the appeals formulated by the economic operators with regard to a public procurement procedure, including the elaboration

of a template of appeal that, on the one hand, standardizes the appeals lodged and, on the other hand, guides the contestants towards the observance of the the appeal procedure.

The NASC budget for 2017 was approved and set at 6.000.000 MDL. During the period of its activity, from the planned budget for 2017, there were spent 4,318,600 MDL. This expenditure was divided as follows:

**1. Current expenses – 2.243.500 MDL, including:**

- personnel expenditure – 1.158.600 MDL;*
- social benefits – 4000 MDL*
- goods and services – 1.080.900 MDL*

**2. Procurement of non-financial assets – 2.075.100 MDL, including:**

- Current material purchases – 148.200 MDL;*
- Procurement of fixed assets – 1.926.900 MDL;*

The savings made are due to the fact that the Agency has de facto started its activity in July, with the appointment by the Parliament of counselors for the settlement of appeals. Accordingly, there were no expenses in the first part of the year.

<sup>1</sup> [https://ansc.md/sites/default/files/document/attachments/raport\\_de\\_performanta\\_ansc\\_pentru\\_anul\\_2017.pdf](https://ansc.md/sites/default/files/document/attachments/raport_de_performanta_ansc_pentru_anul_2017.pdf)



### 1.3. The transparency of NASC's sessions and decisions

In the process of evaluation of the system of remedies and of elaboration of this report, the expert and the representative of IDIS „Viitorul” participated in two sessions of examination of appeals.

**1. COP 1675-op / 18 - Vamelidas Nord LLC vs the Cornești City Hall, Ungheni district, the decision no. 03D-417-18.**

**The claims of the economic operator:** Vamelidas Nord LLC's requested that its bid is declared the winner of the public procurement tender.

**Contracting authority's argument:** Rejection of the bid of the challenger due to failure to submit the qualification documents.

**NASC's decision:** Partial admissibility, annulled procedure.

**Length of open session:** 15 minutes

**Term of examination and decision issuance:** 18 business days.

**2. Public tender 353/18 - Mihcons-Plus SRL bs The Sanitary-Curative and Recovery Association of the State Chancellery, the decision no. 03D-415-18.**

**The claims of the economic operator:** Canceling Public the results of public tender 353/18 and reviewing by the contracting authority of the bids submitted within the public procurement procedure.

**Contracting authority's argument:** Rejection of the bid of the complainant because of an abnormally low offer and the failure to submit all the required qualification documents in the Acquisition Data Sheet.

**NASC's decision:** Partial admissibility. The contracting authority was obliged, as a remedy, to communicate within 5 days the information regarding the successful bidder.

**Length of open session:** 15 minutes.

**Term of examination and issuance of the of the decision:** 13 working days.

At the examination of appeals, there were present representatives of the contracting authority, the economic operator whose tender was declared the winner, and the representatives of the contestant. We consider that the meetings were held in accordance with the legal framework and the existing regulations. During the sessions, the parties have voiced the submitted claims (the contestant) and the arguments in favor of the adopted decision (the contracting authority) and have responded to a number of request for clarifications and questions from the Complaints Solving Board. At the

same time, it is necessary to mention that the examination period from the registration of the appeal until the issuance of the decisions falls within the terms stipulated by Law no. 131/15, namely art. 79, par. (10) stating that NASC the obligation to resolve the appeal within 20 working days from the date of its receipt, and in the event of an exception preventing the substantive examination of the appeal, according to art. 80 par. (1), NASC shall elaborate on this within 10 days. In duly justified cases, the deadline for resolving the appeal may be extended only once by 10 days.

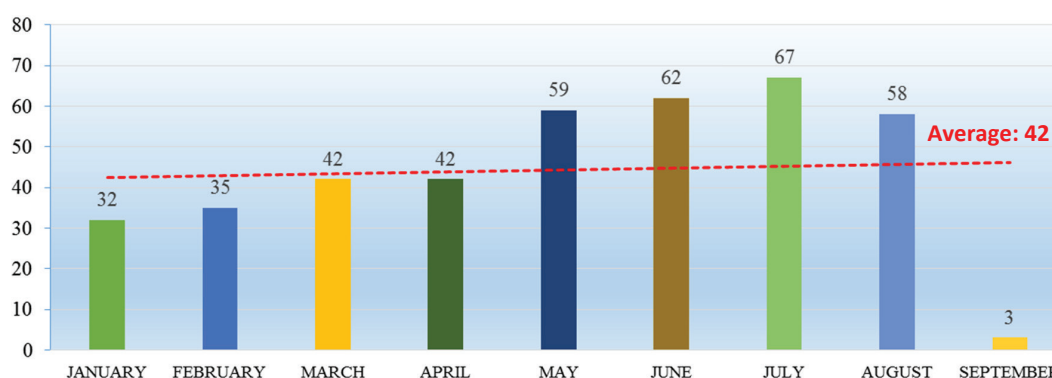


## 2. NASC's activity between 1 January – 5 September 2018

Between 1 January and 5 September 2018, the number of complaints filed by economic operators and recorded at NASC reached **400**.

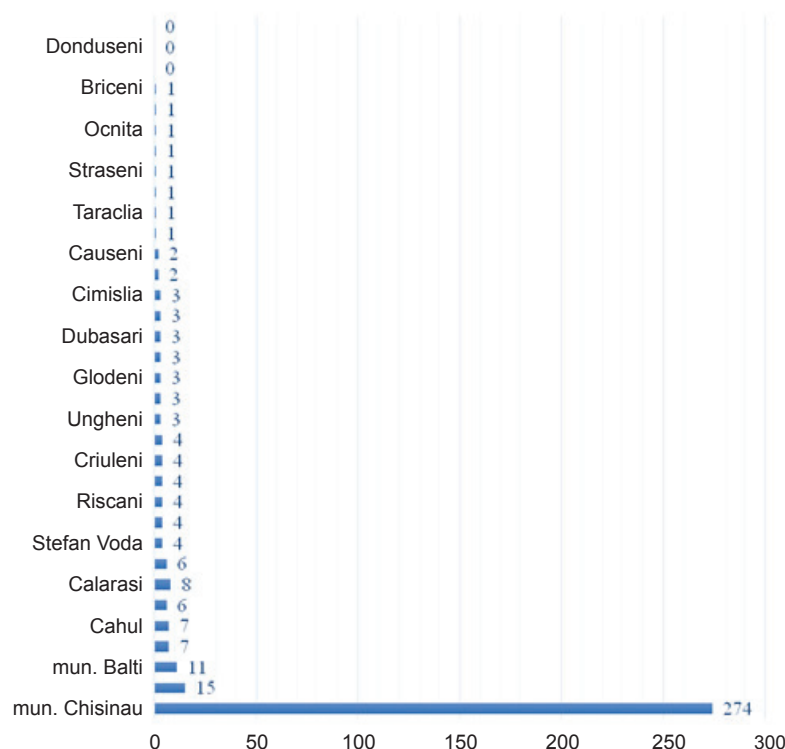
During the first nine months of 2018, the number of complaints made by economic operators and recorded at ANSC evolved as follows:

**Figure 2.** *The evolution of appeals filed by economic operators with NASC in 2018*



In terms of distribution by administrative-territorial units (ATU), the number of contestations by economic operators evolved in 2018 as follows:

**Figure 3.** *Geographical distribution of contracting authorities*



Concerning the appeals filed by the economic operators with regard to awarding procedures, these can be classified according to the object of the public procurement contract. In 2018 the situation was as follows:

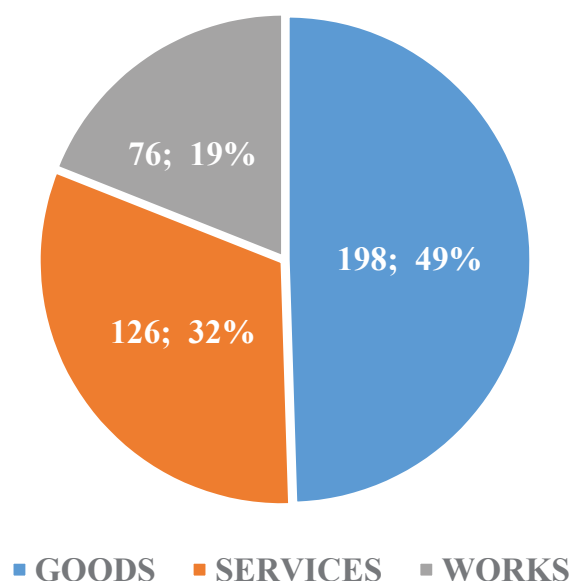
- procedures for awarding of public procurement contracts for the execution of public works - **76 (19%)**;
- procedures for awarding of public procurement contracts for the delivery of services - **126 (32%)**;
- procedures for the awarding of public procurement contracts for the delivery of goods - **198 (49%)**;

Analyzing the graph above regarding the complaints formulated in 2018 by the economic operators according to the type/object of the public procurement contract, it can be noticed that the largest share was registered as being contestations formulated following the procedures for awarding public procurement contracts with a view to procuring goods (49%).

During the year 2018, the four solution panels were randomly tasked to resolve **400** (a monthly load of about 42.6 files/month).

It is important to underline that, since its establishment and until September 4, 2018, there have been registered **528** appeals filed by the economic operators.

**Figure 4.** *The picture of complaints formulated by economic operators in 2018 according to the type of contract*



## 2.1. The object of appeals filed by economic operators

Regardless of the object of the subjective right (performance, abstention), the appeal filed following an award procedure always has as its object the protection of this right, but there may also be situations in which the object can be the protection of interests.

When filing an appeal, this act will become an individualized process/litigation, and its object is constituted by what the parties agree to settle, and that which they will require the counselors to check, appreciate, take notice of, and resolve. It thus results „ipso facto” that the resolution action of the dispute resolution brings into discussion both a factual matter and a

legal issue which counselors are called upon to resolve by the panel’s decision in order to ensure the protection of subjective rights.

The object of the appeal may be the total or partial annulment of an administrative act or the obligation of a contracting authority (within the Law No 131/2015) which refuses to issue a decision to carry out a particular operation.

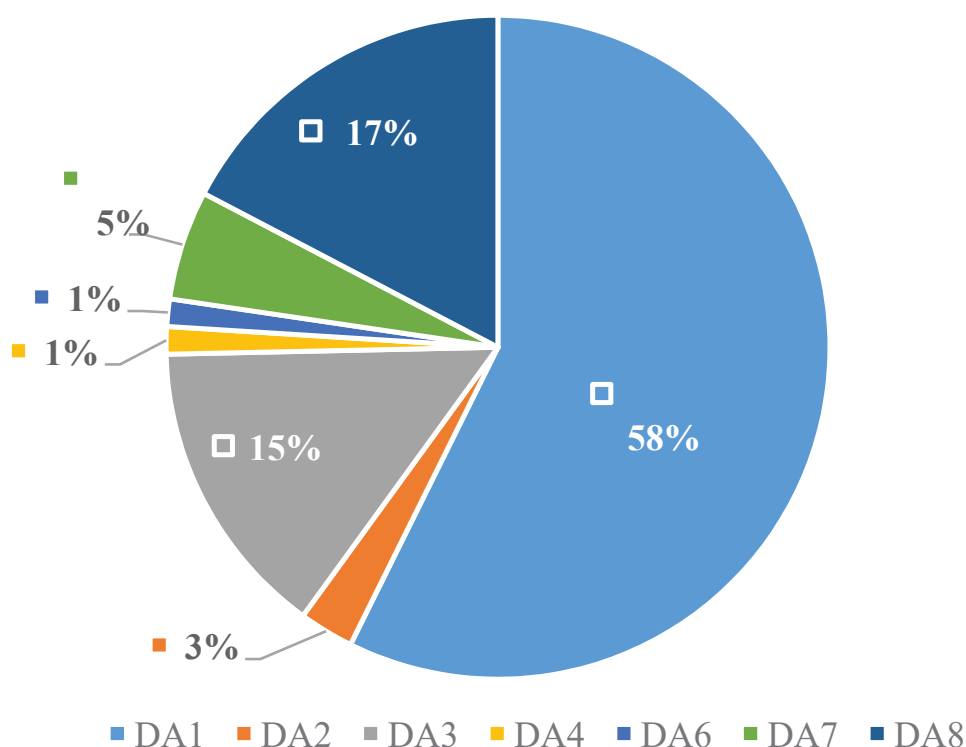
As mentioned above, as a result of analyzing the object of the 400 appeals registered by the economic operators with ANSC in 2018, 75 of the complaints were related to awarding documents (18.75%) and 322 to the result of the awarding procedure (80.50%).

By analyzing the object of the appeals formulated against the requirements imposed in the awarding documentation, it was noticed that the most often contested are:

- Restrictive requirements on the similar experience, qualification criteria, technical specifications;
- Awarding criteria and evaluation factors without a calculation algorithm, or with a non-transparent or subjective calculation algorithm;
- Mentioning in the awarding documentation of names of technologies, products, brands, manufacturers, without using the / or equivalent/syntagm;
- The lack of a clear, complete and unambiguous answer from the contracting authority to requests for clarification regarding the provisions of the awarding documentation;
- Imposing unfair or excessive contractual clauses;
- Lack of classification in separate batches of similar products/works;
- Others.

Nr.	Criteria	Contestations
DA1	Restrictive requirements on the similar experience, qualification criteria, technical specifications	43
DA2	Awarding criteria and evaluation factors without a calculation algorithm, or with a non-transparent or subjective calculation algorithm	2
DA3	Mentioning in the awarding documentation of names of technologies, products, brands, manufacturers, without using the / or equivalent/ syntagm.	11
DA4	The lack of a clear, complete and unambiguous answer from the contracting authority to requests for clarification regarding the provisions of the awarding documentation	1
DA6	Imposing unfair or excessive contractual clauses;	1
DA7	Lack of classification in separate batches of similar products/works;	4
DA8	Others.	13

**Figure 5.** *The situation of the complaints in relation to the criticisms made against the awarding documentation in 2018*

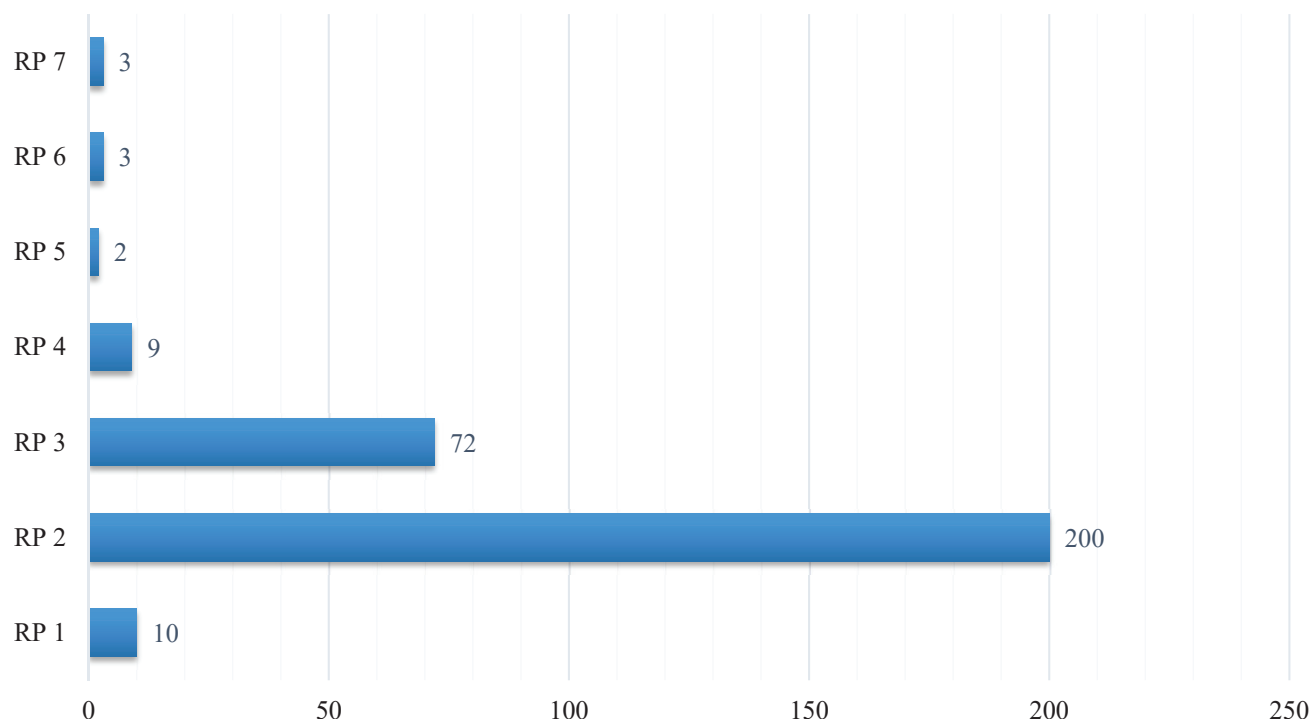


With regard to appeals filed against the outcome of the awarding procedures, it was noticed that the most often contested/criticized are:

- The minutes of the opening session of the tender (including failure to take into consideration the offer guarantee, the manner of conducting the session.)
- Rejection of the contestant's offer as inappropriate or unacceptable.
- Acceptance by the contracting authority of other non-compliant or unacceptable offers from other bidders;
- The way in which the contestant's offer is rated/evaluated by the contracting authority.
- The manner of grading / evaluating the tenders of other participants by the contracting authority;
- Cases when in the notice concerning the outcome of the procedure, the contracting authority failed to specify the reasons for rejection of the bid;
- Rejection of the offer by contracting authority without requesting clarifications regarding the technical proposal/bid price, or the incorrect assessment of the submitted clarifications.
- Others.

Nr.	Criteria	Contestations
RP 1	The minutes of the opening session of the tender (including failure to take into consideration the offer guarantee, the manner of conducting the session.)	10
RP 2	Rejection of the contestant's offer as inappropriate or unacceptable.	200
RP 3	Acceptance by the contracting authority of other non-compliant or unacceptable offers from other bidders;	72
RP 4	The way in which the contestant's offer is rated/evaluated by the contracting authority.	9
RP 5	The manner of grading / evaluating the tenders of other participants by the contracting authority;	2
RP 6	Cases when in the notice concerning the outcome of the procedure, the contracting authority failed to specify the reasons for rejection of the bid;	3
RP 7	Rejection of the offer by contracting authority without requesting clarifications regarding the technical proposal/bid price, or the incorrect assessment of the submitted clarifications.	3
RP 8	Others	23

**Figure 6.** *The picture of the appeals in relation to the criticisms made against the outcome of the procedure in 2018*

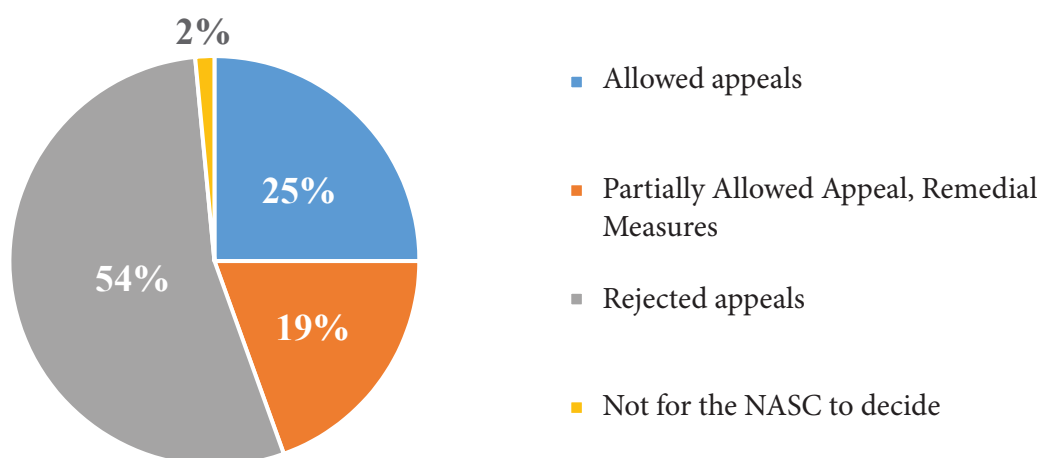


## 2.2. The picture of solved appeals filed with NASC

### 2.2.1 Decisions issued by ANSC

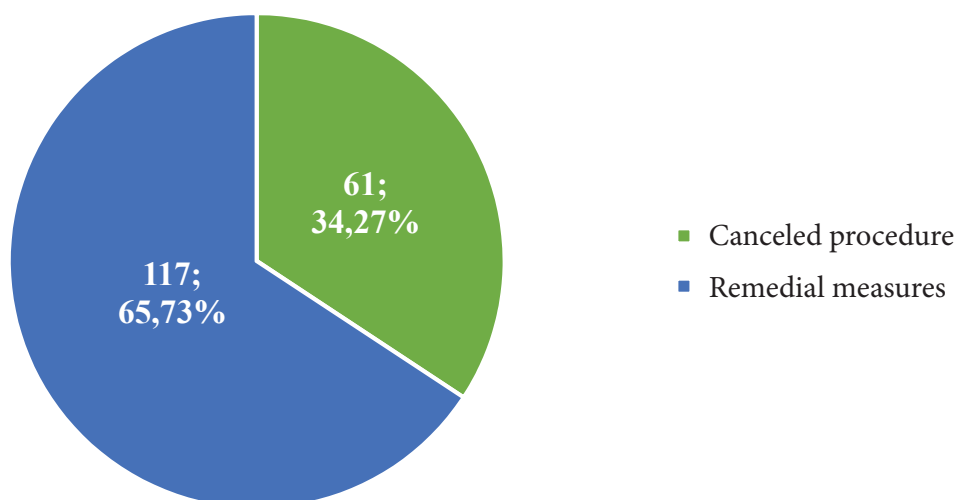
- ✓ As it was mentioned above, between 1 January and 4 September 2018, the total number of decisions issued by the 4 resolution panels was 400. As a result of the contestations formulated by the economic operators, NASC has issued :
  - ✓ **100 decisions** in which it allowed the admission of the appeals formulated by the economic operators. For these cases, the content of the report on the litigation compiled together with the issuance of the solution was taken under consideration, the contestant being awarded the favorable decision. On this occasion, the solution requested by the contestant and adopted during the deliberation by the resolution panel corresponds to the need for administrative or judicial defense of the violated or unrecognized subjective right and its restoration to the state provisioned by the law.
  - ✓ **78 decisions** in which the partial admission of the complaints formulated by the economic operators and the adoption of remedial measures was ordered.
  - ✓ **6 decisions** in which it concluded that the claims made by the economic operators are not within the competence of the Agency;
  - ✓ **216 decisions** ordering the rejection of the appeals filed by the economic operators because:
    - The Agency had to „hold back”, on the grounds that there was invoked by a party, or ex officio, a substantial or procedural exception (the appeal was delayed, it was inadmissible, devoid of object or interest, was filed by people lacking appropriate quality, etc.);
    - On the content of the resolved appeal, the Agency has decided in favor of the contracting authority, due to the fact that the filed appeal proved unfounded;
    - The contestant has made use of his or her right to waive the filed appeal and thus put an end to the litigious action. Thus, the mere request for the waiver of the contestation made by the initiator of the litigation has the immediate effect of closing the file.

**Figure 7.** *The picture of decisions issued by NASC in 2018*



Regarding the decisions accepted or partially admitted (**178** such decisions issued by NASC), from the existing statistical data we can conclude that in the case of 61 decisions (**34.27%**), the annulment of the award procedure was ordered, and in **117** decisions (**65.73%**) NASC has ordered the remediation of the award procedures - so that they can continue to comply with the legal provisions.

**Figure 8.** Measures which were taken by NASC following the admission of appeals in 2018



### 2.2.2 Non-uniform practices in NASC's decisions/solutions

Among the uneven practices in the decisions/solutions issued by NASC, we can highlight the following:

#### 1. *Non-uniform treatment of cases in the examined appeals.*

- a. **Public Tender 18/0109** – Medalmir SRL vs. the Center for Regional Development, the decision no. 03D-197-18.

**Claims of the economic operator:** Reassessment of the bid and correct assignment of the public procurement contract

**The arguments of the contracting authority:** The economic operator was disqualified due to failure to present receipt reports following the works attesting the execution of the works for the contracts indicated in the formulas F3.10 and F3.11.

**NASC's decision:** Based on the provisions of Art. 65, par. (4) of the Law no. 131/15, corroborated with the provisions of art. 14 paragraph (2), of the same law, the working group was to additionally request copies of the reports on contracts attesting the execution of the works showcased by the bidder in order to confirm its similar experience



**b. Public tender 17/03599 - Profmarket Prim SRL vs.the Ministry of Internal Affairs, the decision no. 03D-81-17.**

**Claims of the economic operator:** Annullment of the decision of the working group on the disqualification of the offer made by Profmarket Prim LLC and the revaluation by the contracting authority of the offers presented in for the public tender 17/03599

**The arguments of the contracting authority:** The economic operator has been disqualified due to lack of similar experience, namely the failure to present receipt reports following the works attesting the execution of the works for the contracts indicated in the formulas F3.10 and F3.11.

**NASC's decision:** In accordance with Art. 21, par. (3) of Law 131/15 and with the point 16 of the Standard Documentation for the execution of the contracts of public works, one of the conditions that had to be fulfilled for this bid was the execution in the last 5 years of at least one contract with a value not less than 75% of the value of the future contract, an accomplishment which is to be confirmed by the presentation of the business or subcontracting agreement, as well as by the minutes of the reception at the end of the works. Consequently, the condition is the execution of a similar contract, and the proof is a record of the final acceptance of the executed works, and under these circumstances the Agency accepted the arguments of the contracting authority (n.a. that the contracting authority has disqualified the offer because the minutes have not been presented).

**Non-uniform practice:** In two different cases of the same essence, NASC has issued two contradictory decisions. In the case of the decision no. 03D-197-18, the working group was to request additional copies of the minutes at the end of the works for the contracts submitted by the bidder in order to confirm its similar experience, and in the case of the decision no. 03D-81-17, it considered that the working group disqualified the bidder reasonably because economic operator did not provide supporting evidence of won bids of similar nature.

**It is recommended** that NASC should uniformize the examination of appeal cases and rule on similar issues based on the same approach.

**2. Appeals rejected for not being of NASC's competence**

**a. The decision nr. 03D-354-18, INSTEL-PRIM SRL vs. The Alliance Energy Efficiency and regeneration**

**NASC decision:** In order to identify the obligation to apply the national regulatory framework in the field of public procurement by the Civil Association „The Alliance for Energetic and Renewable Efficiency”, the National Agency for Solving Complaints will consider the provisions of Art. 2 par. (2) of the Law no. 131/15, which stipulates that the aforementioned framework is also applied by a legal entity that does not qualify as a contracting authority in the case of awarding of a public works or service contract for which more than 50% of the funds are coming directly from the contracting authorities and which does not concern to the exceptions specified in art. 4, including the provisions of art. 12 paragraph (1) and (2) of the same law according to which: - (1) Contracting authorities are public authorities, defined in the legislation of the Republic of Moldova, legal persons of public law, associations of these authorities or persons. According to the above-mentioned provisions, in conjunction with the situation given by the present case, the Agency concluded that the object of GLM 04/18 tender is not

financed by public money with more than 50 percent of the funds coming from a contracting authority as stipulated by Law no. 131/15, art. 2 par. (2) thereof, as the contract was financed through the grant agreement „External Actions of the European Union”, ENPI / 2014 / 354-589, signed between the Delegation of the European Union to the Republic of Moldova and the Alliance for Energetic and Renewable Efficiency Alliance.

**Non-uniform practice:** ANSC decided that the object of the appeal is not of its competence since the object of the acquisition is not financed mostly (over 50%) with public money. This practice may create obstacles to the public procurement process, as the Economic Operator is limited in the possibility of contesting the conduction of the awarding documentation by the contracting authority.

**It is recommended** that the NASC examines each appeal where there is a share of public money financing, whether it is above or below 50%.

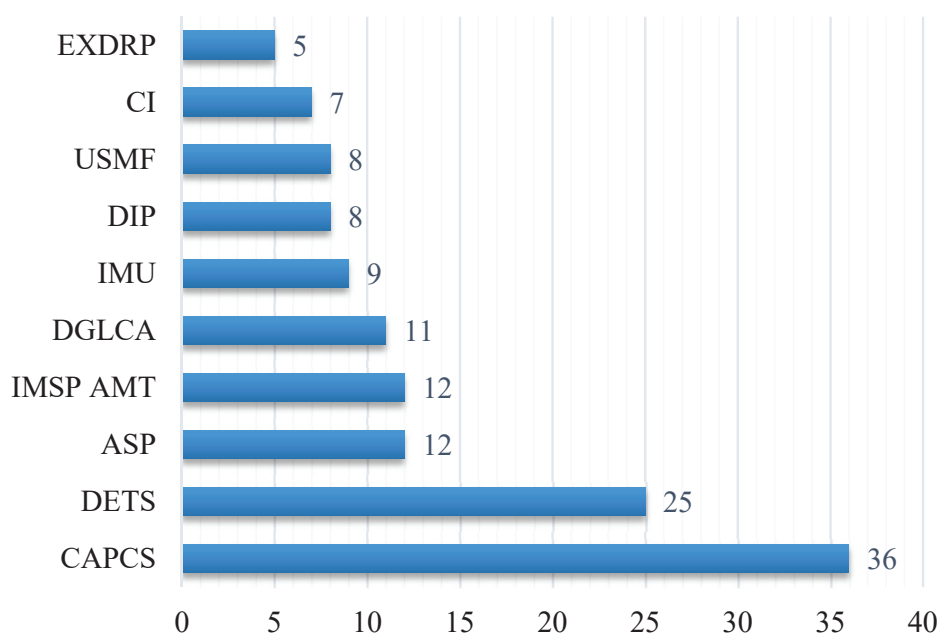
## 2.3. Contested contracting authorities and the appeals of the economic operators

There are 27 Contracting Authorities (CAs) targeted two and more times in the procedures for examining appeals.

The picture of the most contested contracting authorities can help us understand which are the entities in need of training to improve public procurement procedures. Additionally, we can see from this picture the areas of activity of these contested contracting authorities.

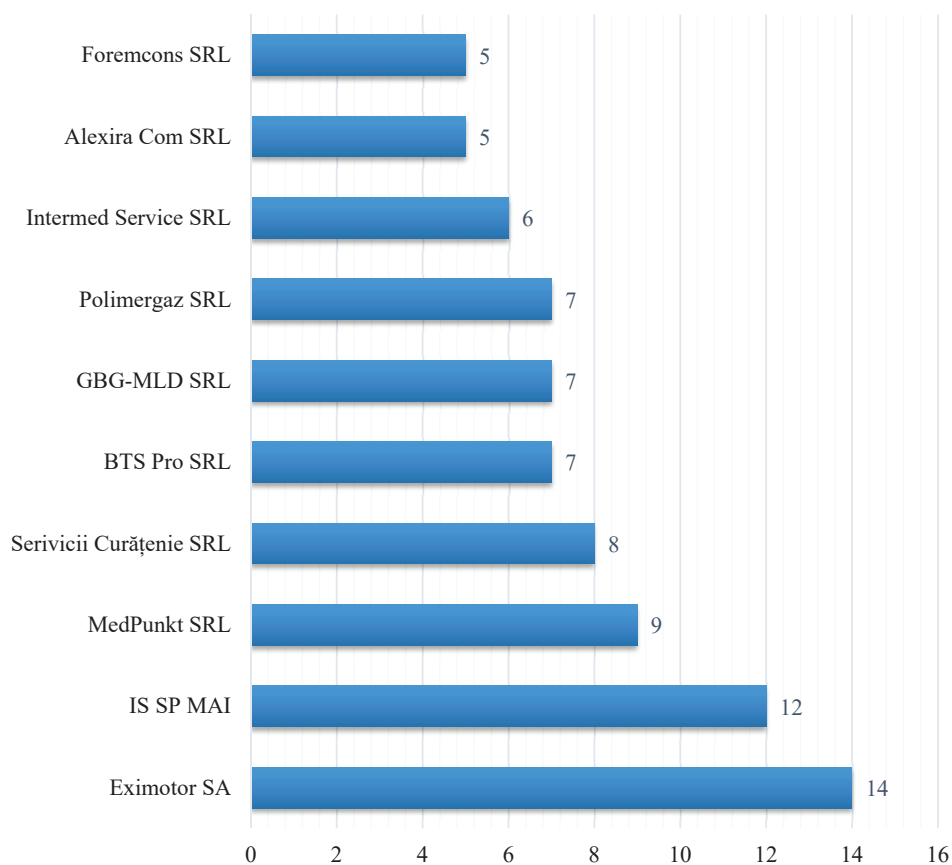
No.	Contracting Authorities	Abbreviation	Contestations
1	Center for centralized health procurement	CAPCS	36
2	DETS (Botanica, Centru, Râșcani, Ciocana)	DETS	25
3	Public Services Agency	ASP	12
4	IMSP AMT	IMSP AMT	12
5	Directorate General for Housing and Communal Arrangement	DGLCA	11
6	IMSP Urgent Medicine Institute	IMU	9
7	Department of Penitentiary Institutions	DIP	8
8	State University of Medicine and Pharmacy	USMF	8
9	Engineering College	CI	7
10	EXDRUPO Î.M.	EXDRP	5

**Figure 9. Contracting authorities with the most disputes**



The economic operators who have the most complaints submitted against them are listed in the table below. It is noteworthy that the economic operators delivering or supplying goods/services have better skills in public procurement than those performing works.

**Figure 10. Economic operators targeted by multiple contestations**



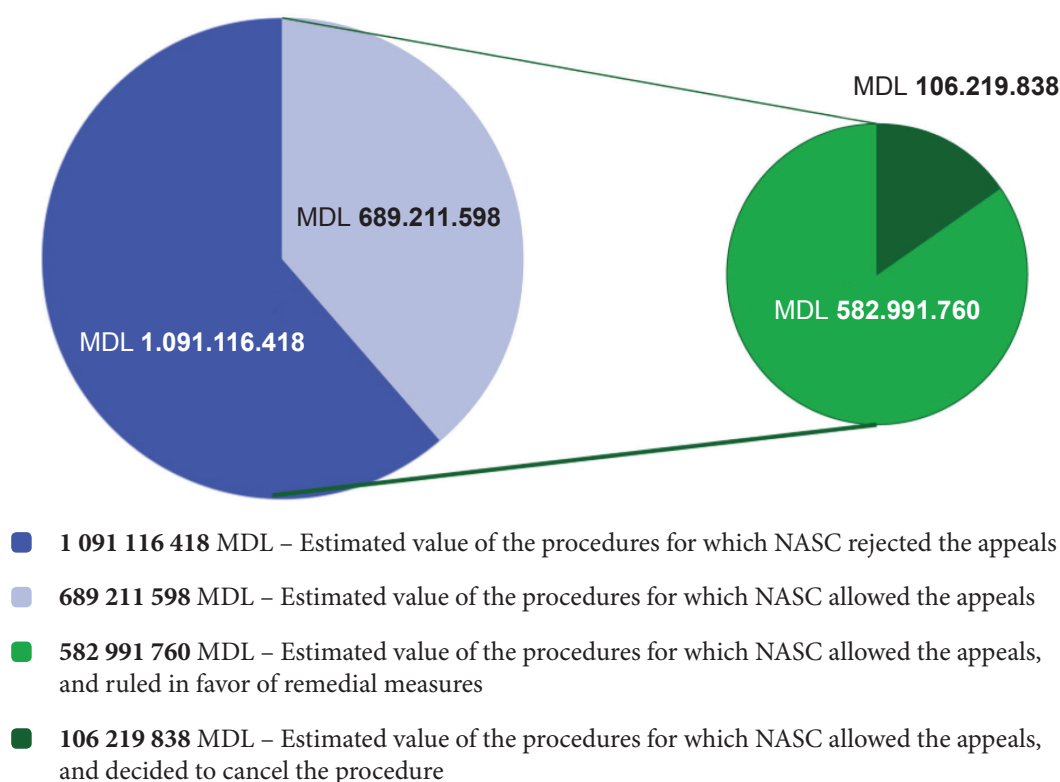
## 2.4. NASC's activity in terms of the estimated value of the awarding procedures

In 2018, NASC issued decisions with regard to awarding procedures with a total estimated value of MDL **1.780.328.016**.

Value-wise, the estimated total value of the award procedures for which NASC issued decisions on the admission of appeals by economic operators was of MDL **689.211.598** in 2018.

At the same time, during the year 2018, the estimated total value of the procedures in which NASC issued decisions to reject the appeals formulated by the economic operators was of MDL **1.091.116.418**. Out of the total estimated value of the cases in which decisions to admit appeals were issued in 2018, the estimated value of the awarding procedures canceled by NASC was of MDL **106.219.838** while the awarding procedures in which remedial measures were ordered amounted to MDL **582.991.760**.

**Figure 11.** *The estimated total value of the award procedures in which NASC took decisions during 2018*



By analyzing the previous chart, it can be noticed that in 2018 the total estimated value of the award procedures for which NASC issued decisions for admission of contestations by economic operators (689.211.598 MDL) accounted for 38.71% of the estimated total value (MDL 1.780.328.016) of the procedures on which NASC had to rule, while the value of the procedures on which the Agency issued decisions to reject the complaints by economic operators (MDL 1,091,116,418) accounted for 61.29% of the estimated total value of all procedures on which the Council had to pronounce. However, it has been pointed out that once again NASC has demonstrated its role as an effective filter for the prevention of irregularities in public procurement, taking into account the significant amounts represented by the estimated value of the award procedures on which NASC made decisions that allowed appeals and ordered the annulment of the procedure.

## Conclusions and recommendations

In order to increase the efficiency of the process of filing and settling complaints, information and training campaigns are needed for economic operators, especially for those outside the capital. These campaigns should target:

- a) appeals procedures;
- b) the terms of appeal, for them not to be rejected for being filed too late;
- c) the content of a contestation and its correct filing, to avoid it being rejected on this ground;
- d) the correct formulation of the requests within the appeal, in order to increase their quality;

This will help improve the quality of filed appeals, reduce the number of late appeals, and increase the efficiency of NASC's work.

Other recommendations concern:

1. Developing and publishing, as recommendation and guidance for economic operators, of templates for appeals.
2. Training the contracting authorities to improve public procurement procedures, especially those authorities which deal with the most contested areas of public procurement.
3. It is necessary to examine the possibility and the appropriateness of reviewing Article 76 (1) or to interpret this regulation in a manner which would allow to determine precisely the subjects of the appeal procedure while also offering other actors the possibility to file appeals, and not only to the direct participants in the the public procurement proceedings.
4. It is necessary to analyze, on the basis of public consultations with all interested parties, the opportunity of introducing a obligatory state fee for appeals filing, so as to reduce the potential abuse on the side of dishonest operators.
5. Amending the law no.131 / 2015 in order to allow economic operators providing justified reasons to requalify for the tender, a step will decrease the percentage of appeals rejected as late.
6. Uniformization of the practices of examining the delay of appeals, by developing a standard template for decisions, possibly an electronic one, in which it will be mandatory to mention the observance / omission by the economic operator of the legal terms.
7. Revision of the Agency's practices, erroneously interpreted and not regulated by Law No 131/2015, to revoke its own previously issued decisions.
8. Uniformization of practices regarding the request, submission, examination and analysis of the evidence in support of the claims in the appeal. Although the burden of proof lies with the challenger, NASC has to play an active role in obtaining, administering, identifying, investigating all the evidence necessary for the proper examination of the procedure.
9. NASC should permanently, and not only sporadically, examine the circumstances of the cases in all its aspects, including the circumstances and deviations unrelated to the filed complaint by an economic operator, and which are identified directly by ANSC during the examination of the appeal.

10. If the Agency partially accepts an appeal with multiple requests, it shall expressly indicate in the decision which requests it rejects.
11. In order to increase public confidence in the public procurement procedures dispute settlement system and to avoid generating practices contrary to the ECHR jurisprudence, the Agency will adopt similar solutions for similar situations.
12. The Agency shall periodically review the most frequent violations committed in public procurement procedures in order to take the necessary steps and to streamline the judicial practice of settling disputes.
13. It is appropriate to continue the positive standardization of practices of the Agency, such as the one referring to the “average hourly wage of construction workers” which is found in several decisions.
14. It is necessary to amend the law no.131 / 2015 so as to allow, in the final decisions issued by NASC, the reflection of the individual opinion of each member of the decisional panel.

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