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MONITORING MOLDOVA'S PUBLIC PROCUREMENT

Newsletter no. 11 (May 2024)

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EDITORIAL

SABINE ENGELHARD:

SUSTAINABLE PROCUREMENT: A SMART WAY TO PROCURE, KEEPING THE "BIG PICTURE" IN MIND



Sabine Engelhard

What is Sustainable Procurement?

A process whereby organizations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole-life basis in terms of generating benefits not only to the organization, but also to society and the economy whilst minimizing damages to the environment.¹

Sustainable Procurement is based on the same essential principles as any public procurement: economy, integrity, efficiency, fairness, and transparency, striving to achieve value for money. What is different, however, is the approach. It is more encompassing and long-term oriented, considering economic, environmental, and social factors at all stages of the procurement cycle, both in the determination of what to procure and how to achieve value for money.

Looking at public procurement through a lens of sustainability requires thinking more about the "big picture" and the potential consequences of decisions.

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¹ Department for Environment, Food and Rural Affairs (2006): Procuring the Future: Sustainable Action Plan: Recommendations from the Sustainable Procurement Task Force. London, in: <http://collections.europarchive.org/tna/20080530153425/>; <https://www.sustainabilityexchange.ac.uk/files/sustainableprocurementactionplan.pdf>



THE PUBLIC PROCUREMENT MONITORING COALITION HELD ITS FOURTH WORKING MEETING

» On Friday, March 29, 2024, the fourth working meeting of the [Coalition for Monitoring Public Procurement](#) was held. During the event, sub-grantees of the project [Increasing the Integrity of Public Procurement](#), implemented by the [Institute for Development and Social Initiatives \(IDIS\) "Viitorul"](#), in partnership with the [Partnership for Transparency](#), reported on the state of their monitoring activities.

The meeting was also attended by a group of students from the Faculty of Economics of Moldova State University. **CAROLINA UNGUREANU**, project coordinator and vice director of IDIS "Viitorul", told the young people that public procurement has become an area of great interest today and that there is a need to monitor how public money is used. She told them that, as a result, the Coalition, represented by NGOs, activists and experts in the field, is monitoring the use of public money to ensure it is spent transparently. "We are interested in disseminating this information

and increasing the capacity of young people, of civil society, to have more experts and representatives overseeing the sector," said Carolina Ungureanu.

OLGA DIACONU, project coordinator at the Association for Efficient and Responsible Governance (AGER), presented the activities of the project "Monitoring sectoral procurement in the Republic of Moldova" which monitors procurements under Law No. 74/2020 in the fields of energy, water, transportation, and postal services. Thus, several large contracting

authorities were monitored on how they carry out procurements in these sectors in order to detect possible irregularities or risk indicators, as well as good or bad practices. The observations will later be reflected in a report, which will also include recommendations from AGER. This report will be shared with the contracting authorities to bring improvements to the legal framework. Five articles have already been published on certain suspect situations, with risk indicators in the monitoring of sectoral procurement carried out by Chisinau-Gaz, Chisinau International Airport, Termoelectrica, Moldova Railways and Apă-Canal Chisinau.



ALA REVENCO, president of the Public Association "Parents in Solidarity", which implements the project "Increasing the integrity of low-value purchases made by the education directorates of the municipality of Chisinau" analyzed the way in which low-value purchases are carried out, under the conditions of the new regulation that came into force on July 1, 2023. As a result, it was found that non-competitive procedures predominate. 96% of the money spent, about 40.4 million lei (~8729292 USD), excluding VAT, was discretionary spending by the education directorates on low-value purchases made on the basis of fiscal invoices and direct contracts. In such cases, the risks of corruption and collusion are very high. At the same time, the contracting authorities monitored carried out

311 and 416 procedures in the third and fourth quarters of 2023 respectively through invoices and direct contracts. 7% of procedures were reported after the deadline in Q3 and 32% in Q4. Through MTender, eight procedures were carried out in the third quarter and four were carried out in the fourth quarter. The thresholds for purchases through tax invoices and direct contracts were exceeded for sixteen procedures in Q3 and eight procedures in Q4.

ION MAZUR, head of the Advocacy, Campaigns and Publications Department of the Public Association "Independent Press Association", which implements the project "Strengthening Integrity in Public Procurement through Media Contribution", said that several procurement procedures of the National Programme's "European Village" and "European Village Express" projects have been monitored in order to carry out journalistic investigations and recommendations for authorities and economic entities, as well as to promote good local governance practices through the production of thematic articles. Three investigations and three articles on best practices were published. Concerning the Monitoring Report on the correctness of the use of public procurement procedures by the first level local public administration, with proposals to eliminate illegalities and recover public money, the expert contracted to make the report analyzed 29 contracts and procurement procedures out of the 65 planned.

DIANA GROSU, president of the Association for Human Rights Lex XXI, which implements the project "Monitoring and promoting transparency of public procurement in the social assistance sector in the Republic of Moldova", said that the project monitors public procurement carried out by the general directorates of social assistance in the northern part of the Republic of Moldova and by the Ministry of Labour and Social Protection, and the results of the monitoring

will be reflected in seven investigations and seven investigative reports. In the meantime, four investigations and three investigative reports have been carried out. The results of the investigations will be included in a monitoring report with recommendations to the contracting authorities/entities. "What we did kind of upset the authorities, given that we monitored how they use public money. As a result of these investigations, various threats were made, as the authorities are not used to someone monitoring them," said Diana Grosu.

LILIA ZAHARIA-CRAVCENCO, Executive Director of Transparency International-Moldova, which implements the project "Public Procurement in the City Hall of the Municipality of Chisinau. Chisinau under the magnifying glass of transparency", said that information from the procurement plans of the Chisinau City Hall and municipal enterprises for 2023-2024 was collected and analyzed. She said that several procurements were selected for monitoring in 2023 and that the contents of the budgetary and procurement components of websites belonging to Chisinau City Hall, the Directorate of Architecture, Urbanism and Land Relations and the MQ Autoalubritate were analyzed. The following information was selected: information from M-Tender and www.achizitii.md on the purchases made by the contracting authorities monitored and data on awarded contracts registered with the Public Procurement Agency. Information was also requested from municipal enterprises on purchases made in 2023. "The focus was on procurements with vulnerability factors and increased risks of corruption, but also those with significant procurement value. Contracting authorities seem to be more tempted to cancel procedures than to remedy them, a finding that emerged from the analysis of the decisions of the National Agency for Solving Complaints. We had difficulties at some stages of the journalistic investigations, but these have been overcome. We will also produce a monitoring report and hold a journalists' club where we

will invite the monitored institutions and the bidders who submitted complaints," said Lilia Zaharia.

During the meeting, Valeriu Ciorba, a monitor from Parents in Solidarity, presented the draft of a public appeal from civil society regarding low-value public procurement. According to Valeriu Ciorba, nowhere in the legislation is it stipulated that contracts from 150 thousand to 350 thousand lei, which are carried out by Mtender, must be published. Thus, it is requested that certain interventions be made in the Government's decision regulating these procedures, so that those contracts that take place through Mtender are published.



The [Coalition for Monitoring Public Procurement](#) was created at the initiative of [the Institute for Development and Social Initiatives \(IDIS\) "Viitorul"](#), within the project [Increasing the Integrity of Public Procurement](#), implemented in partnership with [Partnership for Transparency](#). The coalition aims to support public procurement reforms in the Republic of Moldova. More than 20 civil society organizations, investigative journalists, experts and independent monitors from the Republic of Moldova are members of the Coalition.

So far, [Coalition for Monitoring Public Procurement](#) has held three meetings, where a number of topical issues in the field of public procurement have been discussed.

NEW LAW FOR DEFENCE AND SECURITY PROCUREMENT

» The Moldovan authorities want a relevant regulatory framework for defence and security procurement. A [draft law on procedures for the award of certain works, supply and service contracts by contracting authorities or entities in the fields of defence and security](#) has been prepared by the Ministry of Finance and the Ministry of Defence and has been submitted for public consultation.

In the project's [Information Note](#) it is mentioned that the project is developed in accordance with the [National Action Plan for the Accession of the Republic of Moldova to the European Union \(EU\) for the years 2024-2027](#) to regulate the mechanism of organization and conduct of public procurement in the fields of defense and security. It is also noted that following the assessment of the Republic of Moldova's performance in public administration in accordance with SIGMA's "Principles of Public Administration", SIGMA experts found that the Republic of Moldova has not made progress in transposing the EU Directive on public procurement in the field of defence and security. Thus, the need arose to draft a law on defence and security procurement aligned with the EU Directive on defence and security procurement.

"Defence and security procurement has specific characteristics and cannot be organized according to the general regulatory framework. At the moment defence and security procurement is organized under the exceptions approved in Art. 5 lit. (l) and (i)

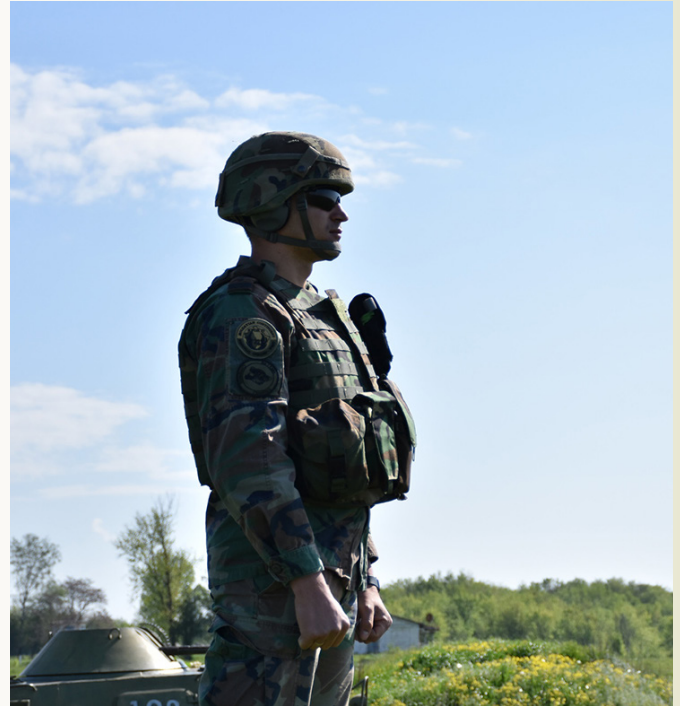


Foto: Flickr.com / MD National Army

of Law No. 131/2015 and Art. 66 of Law No. 181/2014. The current legislative framework does not expressly regulate the mode of procurement in the field of defence and security, which leaves room for interpretation and ambiguity in the management of this sector," the Information Note states.

It is also mentioned that many producing countries impose certain restrictions on export authorizations, impose certain specific procedures (e.g. advance payment before the start of production, average production time, end-user control, specific rules on the procurement of maintenance and training services, etc.) "All these aspects make it impossible to procure defence and security goods and services through classical procurement procedures, which in turn require the approval of special rules," the Information Note says.

Author: Institute for Development and Social Initiatives (IDIS) "Viitorul"

PUBLIC PROCUREMENT AGENCY REORGANIZED AND GIVEN NEW TASKS

» The Public Procurement Agency (AAP) of the Republic of Moldova will be reorganized in order to increase the quality of the public procurement process. The government approved at the end of January the [new regulation](#) on the organization and functioning of the institution, which provides for several changes related to the structure, organization chart, tasks and staffing limit, which is increased by 7 units to 32 and for which 2.2 million lei (~USD 477,950) are needed.



The document also regulates the mission, areas of activity and basic functions of the Agency. The need for reorganization is justified by the establishment of new tasks in the field of sectoral and small value procurement. According to the newly approved Regulation, the Agency will perform four main functions: implementation of public/sector procurement policies and legislation; drafting of proposals to amend procurement legislation; monitoring and evaluation of the functioning of the public/sector procurement system; and capacity building of contracting authorities/entities and contractors.

In order to carry out these functions, the Agency will carry out a number of tasks in the field of both public and sectoral procurement, including: drafting legislative proposals, monitoring the compliance of procurement, including low-value procurement, from the point of view of regularity and quality, based on risk indicators; reporting to the competent authorities in case of identification of illegalities, risks of anti-competitive practices

or corruption, quarterly and annual statistical analyses, including for low-value procurement. The Regulation also establishes the Agency's power to establish the commission of offences and, where appropriate, impose sanctions in accordance with the provisions of the Code of Offences, which is currently not applied.

At the same time, the Agency will annually develop the national training program for contracting authorities/entities and contractors and will develop professionalization and continuous training programs for procurement/sector specialists. A new task of the Agency is to carry out activities related to the certification of specialists in the field of public/sector procurement. It should be noted that certification in the field of procurement is a recently regulated mechanism and is yet to be implemented by the authorities.

Author: Institute for Development and Social Initiatives (IDIS) "Viitorul"



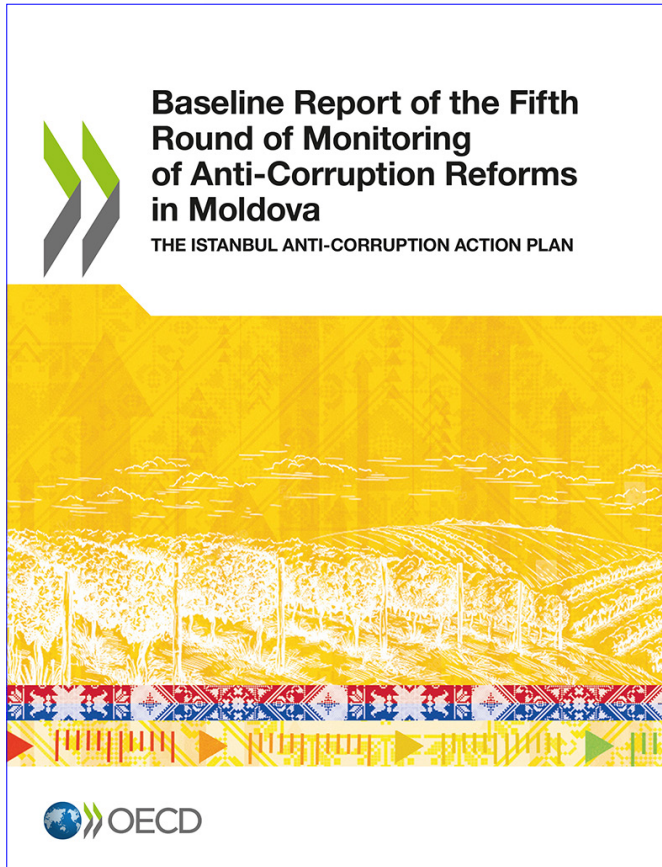
Foto: jcomp on Freepik

INTEGRITY IN PUBLIC PROCUREMENT RATED 30.3 OUT OF 100 IN OECD REPORT

» In the area of public procurement the Republic of Moldova received a score of 30.3 (performance level C- medium) points out of 100, according to the baseline [report](#) of the fifth round of monitoring of anti-corruption reforms in the Republic of Moldova.

The report includes an assessment of anti-corruption practices and reforms in the Republic of Moldova against a set of indicators, and elements, in nine areas focusing on anti-corruption policies, corruption prevention and law enforcement. The report assesses the Republic of Moldova's efforts to develop anti-corruption institutions, measures to detect, investigate and prosecute corruption cases and identifies directions for improvement.

The integrity performance level of public procurement was set on the basis of four indicators, (25 points were available for each indicator): comprehensive public procurement system, with a score of 6 out of 25 points; competitive public procurement system with a score of 14 out of 25 points; sanctioning of violations – with a score of 7 out of 25 points; and transparency of public procurement – with a score of 4 out of 25 points.



says that the provisions on mandatory exclusion from public procurement of individuals and legal entities convicted of corruption are not applied in practice.

It is also noted that the national e-procurement platform, MTender, does not cover all procurement methods available under the law, while centralized publication of up-to-date procurement data remains a challenge and most information is not published in an open machine readable format.

Civil society organizations from the Republic of Moldova, which participated in the preparation of the report, expressed a number of concerns about the risks of corruption in the Moldovan public procurement system. The concerns included:

- **INCOMPLETE COVERAGE** of procurement methods in Mtender;
- **INEFFECTIVE ADMINISTRATION** of utility procurements regulated by the law on utility procurement in state-owned enterprises, especially with regard municipal enterprises
- **POOR PLANNING** with delayed publication of tender notices, as well as frequent changes to the notices;
- **USE OF TARGETED SPECIFICATIONS** and requirements to be met by a single specific participant under the umbrella of competitive processes;
- **USE OF INCOMPLETE REQUIREMENTS** and ambiguous evaluation criteria;
- **SCHEDULING ONLY A SHORT TIME** for preparation of proposals;
- **FAILURE TO QUALIFY** participants;
- **LACK OF TRANSPARENCY** and insufficient control over contract implementation with frequent increases in contract prices; and
- **LACK OF TIMELY PUBLICATION** of exclusion information.

Figure 5.1. Performance level for Integrity in Public Procurement is average.

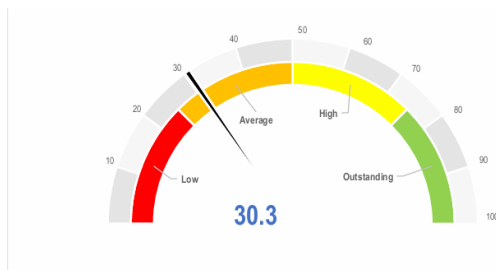
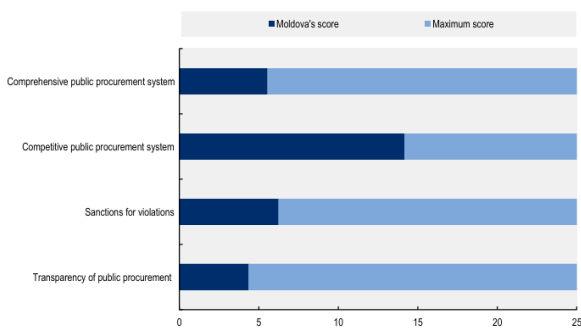


Figure 5.2. Performance level for Integrity in Public Procurement by indicators.



According to the report, the Republic of Moldova has implemented various measures to combat corruption in public procurement. However, there are gaps in the enforcement of sanctions for violations of conflict of interest rules. Similarly, it

Author: Institute for Development and Social Initiatives (IDIS) "Viitorul"

RED FLAGS IN THE PURCHASES CARRIED OUT BY "CHIȘINĂU-GAZ" SRL

» Suspicions about the fairness of the acquisition procedures carried out by the companies in which Moldovagaz SA holds the majority of shares have been publicized. In our monitoring activity, we also analyzed several procurement procedures carried out by the largest of these companies - "Chisinau-Gaz" Ltd. As a result, we identified a number of red flags, which speak about the limitation of competition and possible favoring of some contractors, exposed below.

THE TECHNICAL SPECIFICATIONS DO NOT LAY DOWN THE STANDARDS TO WHICH THE GOODS MUST CONFORM

An example of this is the procurement procedure for paints and varnishes, no. [ocds-b3wdp1-MD-1701432214880](#). In this procurement procedure, "Chisinau-Gaz" Ltd. proposed to purchase paints and varnishes with an estimated value of over 6 million lei (~USD 1303500) excluding VAT. The tender notice and the specifications do not specify the reference standards to which the purchased products must correspond, although the mandatory submission of certificates of conformity is required. However, the legislation of the Republic of Moldova to which the products must conform is listed, including the maximum limit of volatile organic compounds. These circumstances were detailed in the article Infringements in sectoral procurement of paints, published on <https://revizia.md/ro/incalcari-la-achizitiile-sectoriale-de-vopsele/>.

RESTRICTIVE TECHNICAL SPECIFICATIONS

In the procurement procedure for the construction works of the medium-pressure gas pipeline (ring) or. Aeroport, no. [ocds-b3wdp1-MD-1707492498677](#), "Chișinău-Gaz" SRL has stipulated in the tender notice **the requirement to submit quality certificates for some materials used in the works with the submission of tenders**. This requirement

was contested by "Polimer Gaz Constructions" SRL, which argued that the quality certificates for the product are only completed after the production of the good, not before, i.e. that this requirement would be aimed at creating obstacles for the tenderers. ANSC held that "if a certificate of conformity, within the meaning of Law no. 235/2011, is a document attesting that a duly identified product has undergone conformity assessment procedures and that, at the time of assessment, the product complies with the applicable specified requirements, a quality certificate is more a declaration by the manufacturer that the product meets the customer's requirements and, as the protester also claims, quality certificates are issued by the manufacturer at the stage of delivery of the products, which would indirectly require bidders either to purchase a certain batch of products during the period of preparation of the bid or to formally submit quality certificates from products purchased in the past." The ANSC thus upheld the challenge and ordered the revision of the tender documentation in this respect.

Another restrictive requirement in the tender notice, which has not been challenged, is the obligation to inspect the worksite and its surroundings in order to assess, at its own responsibility, costs and risks. Compliance with this requirement is confirmed by the presentation of the Certificate issued by the beneficiary. Although inspection of the land

should be a recommendation, we consider that this cannot be a mandatory requirement. In this case, we cannot exclude the situation where the contracting entity would evade the presentation of the site or the offer of the site visit certificate to a specific contractor, putting him in the situation of not being able to participate in the tender. One contractor asked for clarification on this point, proposing to announce dates with the exact time when visits could take place. The entity has evaded replying, citing an article in the law which refers to the rules applicable to communication.

The restrictive requirement for the **submission of quality certificates when submitting tenders** is also found in another procurement procedure, for the purchase of construction works for the medium pressure gas pipeline (ring) com. Stăuceni in the direction of Pașcani village, mun. Chisinau, no. [ocds-b3wdp1-MD-1671203890728](#). In this case, too, it is indicated that the bidder is obliged to acquaint himself with the object and to draw up the bid in the established manner, without specifying whether the entity issues certificates that would confirm the visit to the site.

In another procurement procedure, concerning the purchase of Oracle Database licenses and Oracle Weblogic licenses, No. [ocds-b3wdp1-MD-1685346158290](#), the contracting entity included **the requirement that bidders must be authorized Oracle partners in the sale of products in the public sector and have a minimum of three such contracts in their portfolio**. These conditions caused dissatisfaction among some contractors, who accused "Chișinău-gaz" SRL of distortion of competition, as the contracting entity is not a public sector enterprise. "Chisinau-gaz" SRL replied that goods and services are purchased for the Moldovagaz group of companies, of which "Moldovagaz" SA is a member. These details are not included in the contract notice or in the specifications.

Initially, the lowest priced bid submitted by "BTS PRO" SRL was rejected, including on the grounds that this contractor was not an authorized Oracle partner in the sale of products in the public sector, and the winning bid was designated the bid submitted by "S&T Mold" (formerly "Bass Systems" SRL). After examination of an objection submitted by "BTS PRO" SRL, which revealed that this contractor also held documents which would confirm this status, the contract was awarded to "BTS PRO" SRL.


In the procurement procedure for an excavator and a mini-excavator, No. [ocds-b3wdp1-MD-1673252235342](#), the contracting entity established **exact parameters for the mini-excavator, which corresponded to a certain model**. In the tender specifications the exact gauge of the mini excavator was set, i.e. 3.86m x 0.98m x 2.32m, and other dimensions were set in mm: digging depth - 2570 mm, digging radius - 3981 mm, and dumping height - 2630 mm. Moreover, the mini-excavator in question was included in the same lot with another excavator, which further limits competition.

Tipul caroseriei	MINIEXCAVATOR
Dimensiuni:	
- Gabarituri:	3.86 m × 0.98 m × 2.32 m
- Adâncimea de săpare:	2 570 mm
- Raza de săpare:	3 981 mm
- Înălțimea de descărcare:	2 630 mm
Greutatea operationala maxima (kg)	1 943 kg
Puterea Motorului (CP)	16,3 CP / 12 kVt
Combustibil:	Motorină
	EURO 5
Lățimea șenile:	230 mm
Șenile:	Cauciuc
Cabina:	Tip închis cu încălzire
Încălzitor autonom:	+
Scaun pneumatic:	+
Cupa de săpat 30 cm:	+
Cupa de săpat 40 cm:	+
Cupa de săpat 60 cm:	+
Cupa taluz 1 metru:	+
Lamă față 980 mm:	+
Sistem hidraulic pentru ciocan:	+
Stare tehnica	NOU
Anul producerii (NOU)	Nu mai vechi decit 2022

Following an contractor's comment in the "clarifications" section, the parameters for the mini-excavator have been updated, leaving in fact exactly the same dimensions as mentioned,

but with the specification that these parameters are minimal. These changes do not change the substance. From the winning tender, we note that the proposed dimensions are identical to those in the contracting entity's specifications.

2	"MINIEXCAVATOR" 1 buc	Descrie în documentația de atribuire	Minieexcavator Dimensiuni: L x l x H 3860 mm x 980 mm x 2320 mm *Adâncimea de săpare: 2570 mm *Raza de săpare: 3981 mm *Înălțimea de descărcare: 2630 mm *Puterea Motorului (CP): 16.3 CP / 12 kW *Combustibil: Motorină *Lățimea senile: 230 mm	Marea Britanie	JCB
			*Senile: Cauciuc *Cabina: Tip închis cu încălzire *Încalzitor autonom *Scaan pneumatic *Cupa de săpat 30 cm *Cupa de săpat 40 cm *Cupa de săpat 60 cm *Cupa taluz 1 metru *Lamă față 980 mm *Sistem hidraulic pentru ciocan *Stare tehnică: NOU *Anul producerii 2022		

Semnat:  Numele, Prenumele: Gheorghe Veaceslav
 În calitate de: Director
 Ofertantul: Omega Trade SRL
 Adresa: MD-2059 str. Calea Orheiului 112, or. Chisinau.
 Data 10.02.2023

The purchase contract was awarded to the contractor "Omega Trade" SRL. The same contractor also sold the contracting entity an excavator in 2022, as a result of the tender procedure no. [ocds-b3wdp1-MD1651046537639](#), according to [the Report on the execution of sectoral procurement contracts for 2022](#).

Another possible case of restrictive specifications we identified in the procurement procedure for household meters, No. [ocds-b3wdp1-MD-1701433884573](#). The tender notice requested **experience of similar deliveries (delivery of goods: meters, legal measuring instruments or other goods in the category of the subject of the procurement)**. The tenderer or the members of the consortium had to demonstrate that they had carried out a contract for the supply of similar goods: meters, legal measuring instruments or other goods of the category of the object of the procurement, equal to at least 75% of the value of the future contract or that the cumulative value of all the contracts

carried out in the last year of activity was equal to or greater than the value of the future contract. The similar experience requirements, which describe so specifically the goods to be supplied by the tenderer and the minimum value of the contracts concerned, allow a very limited number of contractors to participate in these tenders. Few entities carry out tenders for the purchase of meters, especially on such a large scale. In other words, when the conditions relating to similar experience are so restrictive, tenders may generally be submitted by the same contractors who have supplied similar goods to the contracting entity in previous years. The procurement contract was awarded to "Orion-GS" SRL, which was awarded another contract worth more than 36 million lei, excluding VAT, in early 2023, as a result of tender procedure no. [ocds-b3wdp1-MD-1673613150942](#).

DECLARAȚIE privind lista principalelor livrări/prestări efectuate în ultimii 3 ani de activitate						
Nr d/o	Obiectul contractului	Denumirea/numele beneficiarului/Adresa	Calitatea Furnizorului/Prestatorului ¹⁾	Prețul contractului/ valoarea bunurilor/serviciilor or livrate/prestate	Cantitatea (buc., km., serv.: ș.a.)	Perioada de livrare/prestare (luni)
1	Contoare de uz casnic	S.C. MULTIENERGO S.R.L. 2020	Contract unic	2006.4 mii euro	60793 buc.	7 luni
2	Contoare de uz casnic	S.C. MULTIENERGO S.R.L. 2021	Contract unic	1852.1 mii euro	56219 buc.	7 luni
3	Contoare de uz casnic	S.C. MULTIENERGO S.R.L. 2022	Contract unic	2015.8 mii euro	55397 buc.	7 luni
4	Contoare de uz casnic	ООО «Тираспольтрансгаз -Приднестровье» 2020	Contract unic	35.5 mii euro	1024 buc.	5 luni
5	Contoare de uz casnic	ООО «Тираспольтрансгаз -Приднестровье» 2021	Contract unic	98.6 mii euro	1654 buc.	5 luni
6	Contoare de uz casnic	ООО «Тираспольтрансгаз -Приднестровье» 2022	Contract unic	93.1 mii euro	1414 buc.	5 luni
7	Contoare de uz casnic	ROTALIN GAZ TRADING S.R.L. 2022	Contract unic	955.1 mii lei	930 buc.	3 luni

¹⁾ Se precizează calitatea în care s-a participat la îndeplinirea contractului, care poate fi de: contractant unic sau lider de asociație; contractant asociat; subcontractant.

Semnat:  Nume: Ceh Luma
 Funcția în cadrul firmei: director general
 Denumirea firmei: ORION-GS SRL

From the declaration on similar deliveries we find that in the last 3 years the same contractor has delivered meters worth almost 6 million Euro to SC "Multienergo" SRL. In 2022, "Orion-GS" SRL delivered 55397 household meters to SC "Multienergo" SRL at a price of 2,015,800 Euro. This is exactly the number of meters that "Chisinau-gas" SRL purchased from SC "Multienergo" SRL in 2022, at the price of 53,531,555.05 MDL (~USD

11,629,725) with VAT, as we learn from the [Report for monitoring sectoral procurement contracts of "Chisinau-gas" SRL for 2022.](#)

LACK OF LAND SUBDIVISION

In several procurement procedures, "Chişinău-Gaz" SRL includes a large number of positions in the same lot. Thus, each contractor wishing to participate in a procurement procedure should be able to satisfy all the positions included in the lot. This practice of the contracting entity dissatisfied some contractors, who accused the contracting entity of limiting competition. In the procurement procedure for fasteners, No [ocds-b3wdp1-MD-1703844416707](#), the contracting entity included 12 items in one lot.

8. Cumpărătorul invită operatorii economici interesați, care îi pot satisface necesitățile, să participe la procedura de achiziție privind livrarea/prestarea/executarea următoarelor bunuri /servicii/lucrări:					
Nr. d/o	Cod CPV	Denumirea bunurilor solicitate	Unitate măsură	Cantitatea	Specificarea tehnică deplină solicitată, Standarde de referință
1	44523200-4	Nod de fixare D 15 (Узел крепления газового счетчика Д15)	buc. (set)	490	Conform documentației de atribuire (caietul de sarcini)
2	44523200-4	Nod de fixare D 20 (Узел крепления газового счетчика Д20)	buc. (set)	1 132	Conform documentației de atribuire (caietul de sarcini)
3	44523200-4	Nod de fixare D 25 (Узел крепления газового счетчика Д25)	buc. (set)	13 761	Conform documentației de atribuire (caietul de sarcini)
4	44523200-4	Nod de fixare D 32 (Узел крепления газового счетчика Д32)	buc. (set)	2	Conform documentației de atribuire (caietul de sarcini)
5	44523200-4	Nod de fixare D 40 (Узел крепления газового счетчика Д40)	buc. (set)	2	Conform documentației de atribuire (caietul de sarcini)
6	44523200-4	Garnitură D 15 (Прокладка резиновая Д15)	buc.	69 279	Conform documentației de atribuire (caietul de sarcini)
7	44523200-4	Garnitură D 20 (Прокладка резиновая Д20)	buc.	75 653	Conform documentației de atribuire (caietul de sarcini)
8	44523200-4	Garnitură D 25 (Прокладка резиновая Д25)	buc.	155 624	Conform documentației de atribuire (caietul de sarcini)
9	44523200-4	Garnitură D 32 (Прокладка резиновая Д32)	buc.	1 828	Conform documentației de atribuire (caietul de sarcini)
10	44523200-4	Garnitură D 40 (Прокладка резиновая Д40)	buc.	1 940	Conform documentației de atribuire (caietul de sarcini)
11	44523200-4	Garnitură D 50 (Прокладка резиновая Д50)	buc.	1 302	Conform documentației de atribuire (caietul de sarcini)
12	44523200-4	Garnitură D 76 (Прокладка резиновая Д76)	buc.	632	Conform documentației de atribuire (caietul de sarcini)
Valoarea estimativă totală (lei fără TVA): 4 136 276,00 MDL					

In the "clarifications" section, claims have been made on this issue, with one contractor asking for evaluation per position, in order not to favour a particular company.

In another procurement procedure for gas leak detection devices, No. [ocds-b3wdp1-MD-1672068092615](#), the contracting entity included 13 items in one lot.

8. Cumpărătorul invită operatorii economici interesați, care îi pot satisface necesitățile, să participe la procedura de achiziție privind livrarea/prestarea/executarea următoarelor bunuri /servicii/lucrări:					
Nr. d/o	Cod CPV	Denumirea bunurilor solicitate	Unitatea de măsură	Cantitatea	Specificarea tehnică deplină solicitată, Standarde de referință
1	38431100-6 38543000-3	Echiptament de gasire a conductelor de gaz subterane din otel marca "AHHH"	buc	2	Echiptament de gasire a conductelor de gaz subterane din otel marca "AHHH"
2	38431100-6 38543000-3	Echiptament de gasire a conductelor de gaz subterane din otel marca "Progress-3"	buc	2	Echiptament de gasire a conductelor de gaz subterane din otel marca "Progress-3"
3	38431100-6 38543000-3	Manometru electronic FD09	buc	24	Manometru electronic FD09
4	38431100-6 38543000-3	Aparat multifunctional de masurare a gazelor VARIOTEC 460 EX	buc	1	Manometru care arata clasa de precizie 2.0 cu gradarea 0...0,4 Mpa
5	38431100-6 38543000-3	Dispozitiv de masurare a rezistentei ІІC- 4107	buc	3	Dispozitiv de masurare a rezistentei ІІC- 4107
6	38431100-6 38543000-3	Dispozitiv de masurare a rezistentei ІІC-20/1	buc	1	Dispozitiv de masurare a rezistentei ІІC-20/1
7	38431100-6 38543000-3	Manometru digital diferential Testo 510	buc	4	Manometru digital diferential Testo 510
8	38431100-6 38543000-3	Detector de scurgeri de gaze Inspectra Laser	buc	2	Detector de scurgeri de gaze Inspectra Laser
9	38431100-6 38543000-3	Detector de scurji de gaze "Bapra 5-03"	buc	2	Detector de scurji de gaze "Bapra 5-03"
10	38431100-6 38543000-3	Manometru electronic 3 kg/cm2	buc	11	Manometru electronic 3 kg/cm2
11	38431100-6 38543000-3	Detector de scurji de gaze TGM-3	buc	44	Detector de scurji de gaze TGM-3
12	38431100-6 38543000-3	Detector de gaze SNOOPER mini	buc	68	Detector de gaze SNOOPER mini
13	38431100-6 38543000-3	Detector de gaze "ФП11.2"	buc	13	Detector de gaze "ФП11.2"
Valoarea estimativă totală (lei fără TVA): 3 678 391,67					

Again, the lack of allotment has been the subject of requests for clarification in the MTender system. One contractor asked whether it would be allowed to participate in the competition for only one product and not for all positions. He was told that the procedure in question is carried out in a single integral batch. Another contractor asked to avoid any apparent restriction of the participation of contractors by cancelling the current procedure and starting another one, respecting the principle of division into lots. No objections were lodged against the tender dossier on this point. Subsequently, one additional agreement was concluded to amend the goods in the contract and others to extend the delivery period. The delivery period was extended from 120 days to 240 days. These circumstances might not have arisen if the contracting entity had divided the purchase into lots, thus leaving the possibility for other contractors to submit tenders which they could have honored.

Even in the case of the purchase of computers and office equipment, No [ocds-b3wdp1-MD-1703842634584](#), the entity procured the goods under **9 different positions included in a single lot**, although the division into lots would have allowed for wider competition.

8. Cumpărătorul invită operatorii economici interesați, care îi pot satisface necesitățile, să participe la procedura de achiziție privind livrarea/prestarea/executarea următoarelor bunuri/servicii/lucrări:

Nr. d/o	COD CPV	Denumirea bunurilor solicitate	Unitate de măsură	Cantitate	Specificarea tehnică deplină solicitată, Standarde de referință
1	30141200-1	Unitate multifuncțională (MFU A4)	buc.	45	descrișă în documentația de atribuire (caiet de sarcini)
2	30141200-1	Calculator (All-in-One) - 1	buc.	123	descrișă în documentația de atribuire (caiet de sarcini)
3	30141200-1	Notebook	buc.	10	descrișă în documentația de atribuire (caiet de sarcini)
4	30141200-1	Unitate multifuncțională (MFU A4) laser color	buc.	2	descrișă în documentația de atribuire (caiet de sarcini)
5	30141200-1	Unitate multifuncțională (MFU A3) Canon	buc.	1	descrișă în documentația de atribuire (caiet de sarcini)
6	30141200-1	Calculator (All-in-One) - 2	buc.	1	descrișă în documentația de atribuire (caiet de sarcini)
7	30141200-1	Scanner (A4)	buc.	2	descrișă în documentația de atribuire (caiet de sarcini)
8	30141200-1	Printer (A4)	buc.	16	descrișă în documentația de atribuire (caiet de sarcini)
9	30141200-1	Planset	buc.	3	descrișă în documentația de atribuire (caiet de sarcini)
Valoarea estimativă totală, lei fără TVA:				2 611 250,00 MDL	

One contractor drew the contracting entity's attention to the fact that the lotting would result in more advantageous tenders. The contracting entity replied that it had the right not to allocate, without justifying its decision. We consider that such an approach shows bad faith on the part of the contracting entity, as well as possible favoring of some contractors. The contract was awarded to the only bidder - "BTS Pro" Ltd. The situation is similar to another procurement procedure for computers and office equipment, No. [ocds-b3wdp1-MD-1672326028356](#). In this case too, the contract, containing nine different items, was awarded to the same contractor - "BTS Pro" SRL.

And the cleaning services procurement procedure, No [ocds-b3wdp1-MD-1701430918640](#), **included cleaning services to be provided in 22 different locations in a single lot**. No small company could have been awarded such a contract, which means that competition was limited in favor of a large company. The contract was awarded to the only bidder - "Proterra Grup" SRL. The same contractor had also obtained a contract for the procurement of cleaning services in early 2023 as a result of the repeated tender No. [ocds-b3wdp1-MD-1675841854065](#).

DESIGNATION AS SUCCESSFUL OF A NON-COMPLIANT TENDER / FAVOURING OF CONTRACTORS WHO SUBMITTED NON-COMPLIANT TENDERS

In the steel pipe procurement procedure, no. [ocds-](#)

[b3wdp1-MD-1701412139866](#), "Chișinău-gaz" SRL proposed to purchase 26 different pipe positions. In point 14 of the contract notice, which refers to the possibility for an contractor to submit a tender by lots, the entity indicated "applicable". However, the 26 positions are entered in the Mtender system as one lot. The evaluation of the tenders was carried out as for a single lot with 26 positions and the tender submitted by "Metalica-Zuev" SRL was designated as the winner. The contractor "Santarm" SRL submitted an objection, arguing that not all the positions offered by "Metalica-Zuev" SRL would correspond to the technical specification referring to the metal thickness. The contracting entity replied that the deviations from the winning tender did not affect the substance of the decision taken by the working group.

In examining the challenge, the ANSC found that "SRL "Chisinau Gaz" did not carry out the evaluation of the bids according to its own instructions in the tender documentation and, respectively, **did not award the contracts for each lot meeting the pre-established award criteria, including the technical requirements requested in the tender documentation**. Therefore, the Agency considers admissible the complainant's claim that „the company Santarm SRL offered the lowest price for the goods requested, and which corresponds to the technical characteristics requested in the tender in question”, but for certain lots, including lot no. 2 and lot no. 25, "Santarm" SRL offered lower prices for the products subject to the procedure than the prices proposed by the successful tenderer". With reference to the entity's acceptance of the different thickness of the metal compared to the technical specification, ANSC considered that **"accepting products with different specifications is an action contrary to the principles regulated in Article 28 of Law no. 74/2020, according to which contracting entities shall treat contractors equally, without discrimination and act in a transparent and proportionate manner"**.

The ANSC upheld the appeal and ordered a re-evaluation of the bids. However, "Chișinău-Gaz"

SRL ordered the [cancellation of the procedure](#) on the grounds that an error had been admitted when indicating the award of contracts by lots.

In the tender procedure "Purchase of protective equipment, special clothing and footwear", No [ocds-b3wdp1-MD-1701436760452](#), all three lots were awarded to the contractor "Absolutely Safety" SRL. The contractor "Universcom" SRL filed an objection to two lots, arguing that the winning bids would be non-compliant. ANSC partially admitted the objection and ordered the re-evaluation of the tender "Absolutely Safety" SRL, considering that this contractor did not submit conformity/quality certificates as required in the tender documentation. The contracting entity re-evaluated the tenders and awarded the contracts to "Absolutely Safety" SRL again. A new complaint is in the process of being examined by ANSC.

Another aspect invoked by the complainant is the fact that the company "Absolutely Safety" SRL was founded by the head of another company on the banned list - "Soling" SA. The contractor SA "Soling" was included in the ban list managed by the Public Procurement Agency as a result of submitting false documents in a procurement procedure conducted by the Resources Insurance and Property Management Agency of the Ministry of Defence in 2021. However, goods produced by SA "Soling" continue to be purchased by contracting authorities and contracting entities in tenders conducted with public money. However, an affiliated company - Absolutely Safety Ltd., registered by the administrator of Soling SA, Dubic Ruslan, on 10.07.2013, participates in the tenders. Currently, the administrator and sole founder of this company is Dubic Vera. ANSC did not admit these claims on the grounds that, on the one hand, the company "Absolutely Safety" Ltd. does not currently have as partners/managers persons who are partners/managers in the "Soling" OJSC. On the other hand, the exclusion of operators on the banned list is optional in the case of sectoral purchases.

INCORRECT EVALUATION OF TENDERS / UNJUSTIFIED REJECTION OF A TENDER

In the procurement procedure for the metrological verification of legal measuring instruments, no. [ocds-b3wdp1-MD-1701785346869](#), "Chişinău-Gaz" SRL rejected the bidder "Center for Applied Metrology and Certification" for not having submitted some documents, not foreseen in the tender documentation. These circumstances prompted the tenderer "Centrul de Metrologie Aplicată și Certificaare" to lodge an objection with ANSC for lots 2 and 4.

The documents not foreseen in the tender documentation but on the basis of which the entity rejected this tenderer were the following:

- **Annexes to the certificate of accreditation with validity until February 13, 2024 (valid at the stage of evaluation of offers)**

No clarifications were requested from the tenderer "Center for Applied Metrology and Certification" in this respect, although the entity was to request clarifications under the provisions of Article 69 (4) of Law 74/2020. If the entity had used the clarification mechanism, the tenderer would have had the opportunity to submit the new accreditation certificate, valid until 2028, obtained on February 14, 2024, which was issued after the deadline for submission of tenders.

- **Failure to present the certificate of designation in metrology**

There was no requirement in the tender documentation to provide this certificate. The tenderer explained that this certificate is obtained after the accreditation certificate has been obtained, as the new accreditation certificate was obtained on February 14, 2024, i.e. after the evaluation of the tenders.

ANSC admitted the appeal and ordered the re-evaluation of the tender submitted by the "Center for Applied Metrology and Certification".

ADDITIONAL AGREEMENTS AMENDING CONTRACTS

In addition to agreements to increase / decrease the value of contracts or to extend the execution term, in the execution reports of sectoral procurement contracts of "Chisinau-gaz" Ltd. we also find contracts for the modification of goods. We learn about their conclusion from the [report for 2023](#). Among the most modified contracts we list:

- ❶ **CONTRACT NO 111 OF 15.03.2023** for the purchase of gas leak detection devices concluded with "Varox Commerce" Ltd. as a result of the procurement procedure [ocds-b3wdp1-MD1672068092615](#) has been amended five times. The first agreement, dated May 22, 2023, amended the equipment. Then on July 12, 2023 the delivery time was amended from 120 days to 150 days. On August 2, 2023, the contract was increased by 11,040 Euro (~USD 11942). Two further additional agreements amended the delivery period to 180 days and 240 days respectively.
- ❷ **CONTRACT NO 201 OF JUNE 22, 2023** for the purchase of paint and varnishes (repeated) concluded with "Varox Commerce" Ltd. was amended by two additional agreements. Both agreements concerned the modification of goods.
- ❸ **CONTRACT NO 79 OF FEBRUARY 21, 2023** for the purchase of gas cabinets, concluded with Agronordteh-M Ltd., has been amended four times. Initially the contract was increased, then decreased, the delivery period was changed and finally the goods were changed.
- ❹ **CONTRACT NO 78 OF FEBRUARY 21, 2023** for the Purchase of computers and office equipment, concluded with "BTS PRO" Ltd. has been amended four times. Two agreements concerned an increase in the delivery period and two others an increase in the contract amount.
- ❺ **CONTRACT NO 81 OF FEBRUARY 21, 2023** for the purchase of insulation materials, concluded with Agronordteh-M Ltd, has been amended four times. Three times the delivery time was increased and once the specifications of

the goods were changed with respect to the tolerance of +/-3%.

- ❻ **CONTRACT NO 148 OF APRIL 13, 2023** for the purchase of construction and capital repair works of cathodic protection stations, concluded with "Profaluminium" Ltd, has been amended three times. The amount was changed, then the name of the subject matter, and later the execution deadline.
- ❼ **CONTRACT NO. 108 OF MARCH 15, 2023** for the purchase of construction works of the Gas Regulation Points mun. Chisinau, concluded with "Agronordteh-M" Ltd., was amended five times. All five agreements were aimed at modifying the amount of the contract.

In order to elucidate the relevant circumstances regarding these additional agreements, we requested information from "Chişinău-gaz" SRL. We undertake to come back with the reply from "Chişinău-gaz" and the information requested to be provided to us.

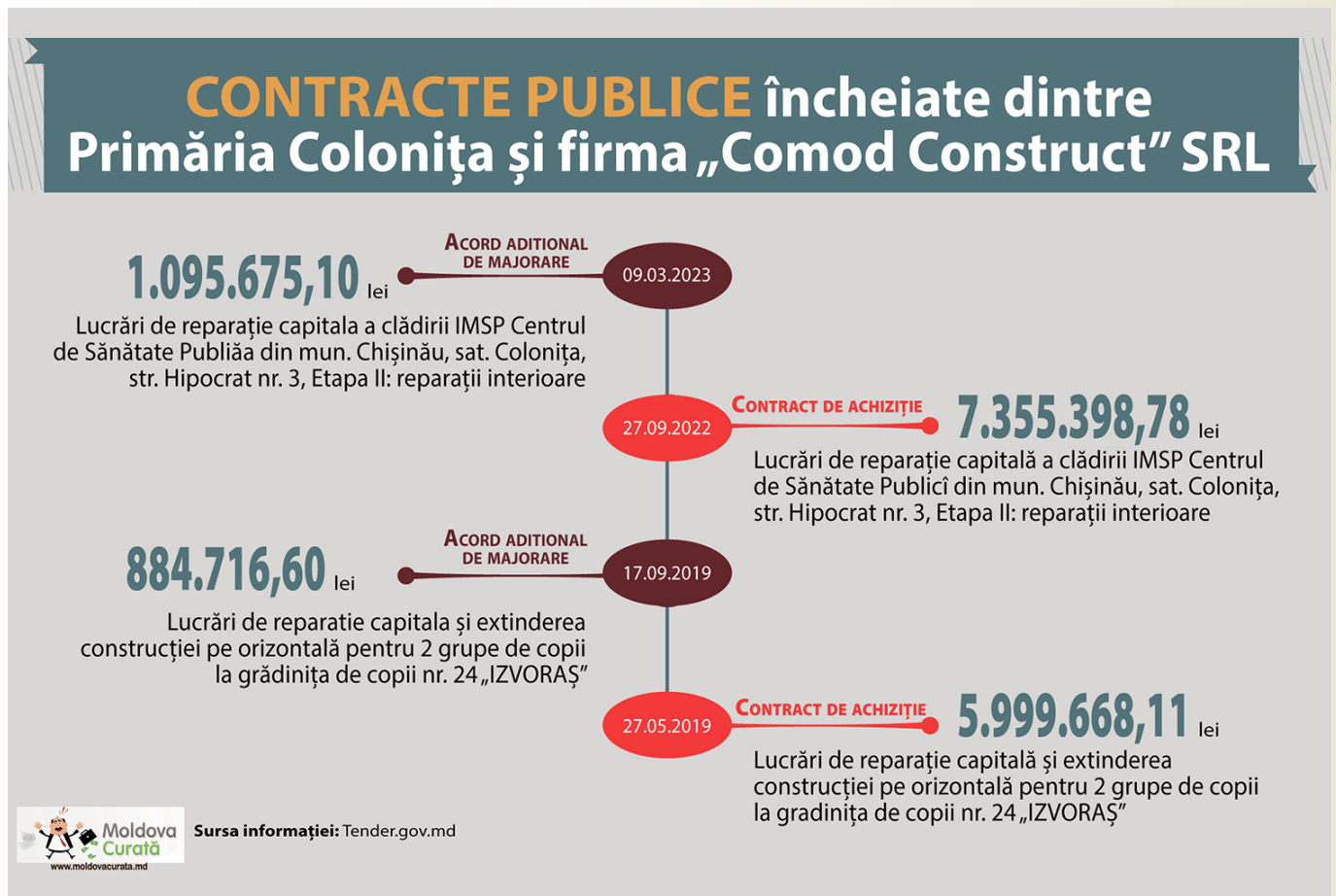
CONCLUSIONS

Narrow terms, narrow requirements, the inclusion of numerous goods items in a single lot - all of these limit competition, eliminating contractors who do not meet the requirements 100%. What happens is that even the contractor who won the contract cannot deliver all the goods it has undertaken to deliver, or cannot meet the delivery terms originally set. However, if the requirements had been designed from the outset to allow a larger number of contractors to submit tenders, the contracting entity could have obtained more advantageous offers. Hence the numerous additional agreements, which in some cases raise suspicions of favoritism. Additional agreements can be caused by various circumstances, ranging from poor procurement planning, unforeseeable situations arising in the contract execution process, to favoring contractors who, although awarded the contract, cannot honor it and need adjustments.

*Author: Agency for Efficient and Accountable
Governance (AGER)*

ADDITIONAL CONTRACTS AT THE LIMIT OF LEGALITY IN COLONIȚA TOWN HALL

» For the repair of the Public Health Center building, the Municipality of Colonița selected a contractor in 2022 who offered the lowest price, but later concluded an additional agreement for more than one million lei (~USD 56,393). A local councillor claims that this is in fact a scheme whereby a company deliberately bids a low price to win the tender and then enters into additional agreements.



Both the prime contractor and its subcontractor deny that they had a deal on the contract and claim that the need for additional work arose along the way. But procurement experts say that bidding too low is a risk factor. The repair of the public health centre is being carried out with money from the state budget under the European Village Program.

In August 2022, the Town Hall of Colonița published [a call for tenders](#) requesting tenders

to purchase capital repair works for the Public Health Center building (phase II: interior repairs). Eight contractors participated in the tender and after evaluation of the bids, the contract was awarded to the company "Comod Construct" SRL, which submitted the lowest price. The bid proposed by this company was about **6.13 million lei** (~USD 6,130,000), which was only 58.99% of the estimated value of the future contract, of more than 10 million lei (~USD 563,930) excluding VAT. Therefore, the company "Comod Construct" initially

submitted a bid more than **40% lower than the estimated value of the works.**

SUPPLEMENTARY AGREEMENT AT THE LIMIT OF LEGALITY

More than a year later, the Municipality of Colonița and the company "Comod Construct" SRL decided to conclude an additional agreement to increase the contract value by more than one million lei (~USD 56,393), including VAT, the amount constituting **14.89% of the original contract value**, at the maximum limit of 15% allowed by the Public Procurement Law. According to the Guide for Monitoring Public Procurement, produced by the Institute for Development and Social Initiatives (IDIS), this last stage of the procurement process concerns the implementation of the procurement contract, the amendment of contracts through additional agreements, and the monitoring of contract performance.

Ofertantul	Oferta finală	Declarație pe proprie răspundere	Documentele OE	Statutul și decizia Grupului de lucru
SRL COMOD CONSTRUCT IDNO Codul: MD-IDNO-1017600015458	6 129 498.98 MDL achiziției fără TVA	<u>MTender ESPD</u> Declarație pe proprie răspundere		Câștigătorul 04.10.2022 / 15:03
MAXCOSM PRIM IDNO Codul: MD-IDNO-1009600028556	6 503 253.01 MDL achiziției fără TVA	<u>MTender ESPD</u> Declarație pe proprie răspundere		Refuzat 14.09.2022 / 20:15
Valdcongrup SRL IDNO Codul: MD-IDNO-1009600000374	6 986 727.95 MDL achiziției fără TVA	<u>MTender ESPD</u> Declarație pe proprie răspundere		Refuzat 14.09.2022 / 20:16
Conscity SRL IDNO Codul: MD-IDNO-1015600043202	7 185 657.19 MDL achiziției fără TVA	<u>MTender ESPD</u> Declarație pe proprie răspundere		Refuzat 14.09.2022 / 20:18
ACAR-CONSTRUCT IDNO Codul: MD-IDNO-1007600058348	8 755 595.42 MDL achiziției fără TVA	<u>MTender ESPD</u> Declarație pe proprie răspundere		În așteptare
Hiperteh IDNO Codul: MD-IDNO-1003600080897	8 990 897.48 MDL achiziției fără TVA	<u>MTender ESPD</u> Declarație pe proprie răspundere		În așteptare
5AQ INVEST SRL IDNO Codul: MD-IDNO-1009600004663	9 394 280.00 MDL achiziției fără TVA	<u>MTender ESPD</u> Declarație pe proprie răspundere		În așteptare
Cons Art Engineering IDNO Codul: MD-IDNO-1014600032805	10 201 873.04 MDL achiziției fără TVA	<u>MTender ESPD</u> Declarație pe proprie răspundere		În așteptare

Local councillor **Mircea Brenici** told MoldovaCurată.md that, in fact, this would be a scheme used by the mayor Angela Zaporojan – the contractor who proposes a bid with low, therefore underestimated expenses is declared the winner, and then, at the limit of legality, additional agreements are concluded.

"It is already a practice at the Town Hall of Colonița that there are such agreements with contractors. It's clear that there are hidden interests at stake," says councillor Mircea Brenici, who ran

for mayor of Chisinau municipality on behalf of the Liberal Party of Moldova.

THE MAYOR OF COLONIȚA: "THE COMPANY DOES ITS WORK WELL, QUALITATIVELY. WHAT IS MY WHIM, THAT I DON'T LIKE THAT HE'S STUCK IN THE WOODS?"

For her part, mayor **Angela Zaporojan**, who ran on the list of the National Alternative Movement Party, denies that she had an agreement with the "Comod Construct" company. She says the contractor offered arguments for the additional expenses.



Foto: ZdG.md

"Open the website Achiziții.md and see that the lowest price has been offered. And in our country, in the Republic of Moldova, the one who gives the lowest price wins. In addition to Comod Construct, every year we work with dozens of different companies. There is no „Comod Construct” with a star in the lead and I have no business with it. It won the tender legally. The law allows me to make additional agreement, which does not exceed 15 percent. Where is the violation?" asks the mayor.

She said that in this procedure, the three lowest bidders were asked to explain the value of their bid and Comod Construct offered the lowest price. [The mayor](#) accused some local councillors

of looking for pretexts to bring her unfounded criticism. Angela Zaporojan concluded that the low price and the quality of the previous works had been taken into account when selecting the offer proposed by Comod Construct.

"The company does its work well, qualitatively. What is my whim, that I don't like that he's stuck in the woods?"

IT'S THE OLD BUILDINGS

In turn, **Ion Ciobanu**, chief engineer of the company "Comod Construct" explained to MoldovaCurata.md that an additional agreement was needed because the building is old and during the course of the project there was a need for more works.

"I don't know what studies you have, but when planning costs for works, you can't initially predict exactly all the amounts. At Colonița, the building is 30 years old and works have been carried out that were not visible to the naked eye at the beginning", explained Ion Ciobanu.

AGER EXPERT: "OFFERING SUCH A LOW PRICE MAY SIGNAL AN ILLICIT AGREEMENT WITH THE CONTRACTING AUTHORITY"

According to Olga Diaconu, public procurement monitor and project coordinator at the Association for Efficient and Responsible Governance AGER, the initial underestimated prices should be assessed much more carefully by the contracting authority, as they would be the first indications that the work could be done with materials that will not correspond to the quality.

"No contractor is interested in running a loss-making contractor contract. When the price offered is much lower than the estimated value, in this case only 58.99% of the estimated value, this is a risk indicator. The risk is that the contractor will either exclude some works or use

inferior materials, inferior technologies to execute the works for which it has been contracted. In many cases, offering such a low price signals an illicit agreement with the contracting authority to increase the contract after its conclusion under the pretext of additional works. In this case, we note that the contract value was increased by an amount just below the limit set by the Public Procurement Act", explains Olga Diaconu.

The expert added that this contractor had done similar in previous years, when it offered a lower price and then signed an additional agreement with the Colonița municipality.

Indeed, according to the portal Tender.gov.md, in 2019, the company "Comod Construct" concluded a procurement contract with the town hall of Colonița worth about 6 million lei (~USD 1303500), and four months later an additional agreement was signed for 885 thousand lei (~USD 192,266) for capital repair works and extension of the horizontal construction for two groups in the kindergarten "Izvoraș" in the locality, which constitutes almost 15 percent, at the limit of legality. According to the above-mentioned Guide, the contracting authority may additionally purchase goods, provided that the original price set, their quality requirements, other requirements laid down in the original contract are met, and the value of the goods additionally contracted for does not exceed 15% of the value of the goods originally contracted for.

After the publication of the investigation, the portal MoldovaCurata.md will ask local councillors from Colonița to follow up whether the modification of the contract conditions took place in accordance with the legal provisions and the additional agreements concluded in 2019 and 2023 with the company "Comod Construct" and whether they are not used as a tool for an unjustified increase of the initial contract price.

Author: Independent Press Association (API)



LIGHTING UP WITH SNOW AT COZEȘTI

» Local Public Authorities (LPA) of Grigorauca commune, Sangerei district, are suspected of having compromised a tender for the purchase of street lighting installation works by disqualifying two bids without providing justifications to the contractor. As a result, the National Agency for Solving Complaints (ANSC) annulled the procurement procedure and ordered the city hall to re-evaluate the bids. However, the City Council chose the same contractor. The project is part of the National Program "European Village Express".

In August 2023, the City Hall of Grigorauca commune, Singerei [announced a public tender](#) in which it requested offers for the installation of public lighting in the village of Cozesti, with an estimated value of **375 thousand lei excluding VAT (~USD 81,468)**. The criterion for awarding the winning bid was the lowest price. Three contractors took part in the competition and the

winning bid was declared "*Euro VL Construct*", with a value of **291 thousand lei, excluding VAT (~USD 63,219)**. The bids of the company "*EnergoleD*" SRL, which presented a price of **192 200 lei (~USD 41755)**, and the company "*Zepto*" SRL, which proposed **320 thousand lei (~USD 69,520)** (both excluding VAT), were rejected. The procurement procedure was

conducted by the authority with the application of electronic tender, which according to the Law on Public Procurement, takes place in 3 rounds of negotiations. In this public tender, bidders have the possibility to reduce the initial bid price. After the review, the company "Zepto" Ltd. offered the amount of **140 thousand lei (~USD 30,414)**, and "EnergLED" - about **180 thousand lei (~USD 39105)**.

TENDERS DISQUALIFIED WITHOUT BEING ASKED TO JUSTIFY THE PRICE

EnergLED did not agree with the decision of the members of the working group and challenged it at the National Agency for Solving Complaints (ANSC), arguing in the complaint that the tender was rejected without a valid reason.

"The contracting authority violated the provisions of Article 14 of the Public Procurement Act, which specifies that the authority contracted through the working group is obliged to ensure objectivity and impartiality in public procurement procedures, as well as the provisions of paragraph (3) of the same law, which states that the member of the working group is autonomous, impartial and subject only to the law," the complaint states.

For its part, Grigorauca City Hall explained to ANSC that the two bids were disqualified because the contractors did not justify their low bids submitted a second time:

"In the opinion of the members of the working group, the disqualification of the operators was due to the proposal of abnormally low bids, which was catalogued as suspicion that they were inadequate, unacceptable and non-compliant, which found that there were serious deviations from the legal provisions affecting the outcome of the tender procedure".



According to the "[Public Procurement Monitoring Guide: a tool for civil society](#)", developed by the Institute for Development and Social Initiatives "Viitorul", excluding a bidder without legal grounds (e.g. disqualifying a bidder for insignificant deviations/without requesting clarifications or without requesting justification of the abnormally low price), is a red flag in the process of tender evaluation and contract award.

We remind you that the "European Village Express" Program was launched in the summer of 2023, with the aim of modernizing rural infrastructure through the implementation of quick projects, with a maximum completion period of 6 months and the possibility of accessing financial resources of up to 450 thousand lei (~USD 97,762). The National Office for Regional and Local Development, the institution responsible for the implementation of projects in the national programmes "European Village" and "European Village Express", [announced](#) that by the end of last year, 52 localities across the country had upgraded their street lighting systems under the "European Village Express" programme.

Author: Independent Press Association (API)

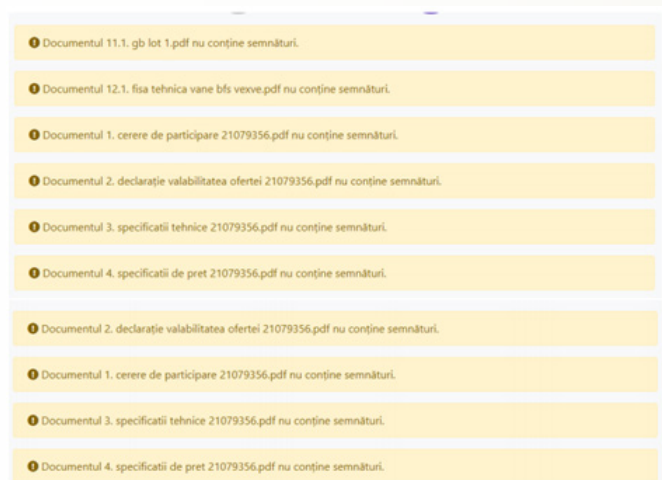
ELECTRONIC SIGNATURE - A SUBJECT OF DIVERGENCE IN SECTORAL PROCUREMENT

➤ By ANSC Decision [No. 03D-461-23 of July 17, 2023](#), ANSC has established a precedent according to which in sectoral procurement it is not mandatory to electronically sign the offer. In this article we will analyze the legal implications of that decision.

The ANSC decision was issued on a challenge to the results of procurement procedure no. [ocds-b3wdp1-MD-1682594558944](#) of April 27, 2023 concerning "Purchase of valves, triple eccentric valves". In this case, the contracting entity - "Termoelectrica" SA indicated in the contract notice at item 20 that the following documents were to be electronically signed:

Nr. d/o	Descrierea criteriului/cerinței	Mod de demonstrare a îndeplinirii criteriului/cerinței:	Nivelul minim/Obligatorivitatea
1	Cerere de participare	Original, conform formularului atașat, semnat electronic	Obligatoriu
2	Declarație privind valabilitatea ofertei	Original, conform formularului atașat, semnat electronic	Obligatoriu
3	Specificații de preț	Original, conform formularului atașat, semnat electronic	Obligatoriu
4	Specificații tehnice	Original, conform formularului atașat, semnat electronic	Obligatoriu

The tenderer "Techno Test" Ltd. submitted those documents, but „despite the fact that they contain the holographic signature and wet stamp of the contractor, as a result of verification through the portal of the Government Electronic Signature Service MSign (www.msign.gov.md), they are not electronically signed”:



However, the contracting entity awarded the contract to "Techno Test" Ltd. This decision

was challenged by another contractor participating in the tender procedure, which pointed out the legal invalidity of the winning tender.

ANSC rejected the appeal for the following reasons:

În cele din urmă, Agenția va reține raționamentele entității contractante care a apreciat omisiunea ofertantului declarat câștigător ca fiind una ce nu afectează angajamentele asumate de către „Techno Test” SRL, iar în condițiile în care Legea nr. 74/2020 nu impune expres utilizarea SIA „RSAP”, respectiv, și toate reglementările prevăzute în acest sens în legătură cu acesta, fiind impusă doar aplicarea mijloacelor electronice de comunicare fără specificarea expresă a acestora, aplicabile sunt prevederile art. 316 alin. (2) din Codul Civil al Republicii Moldova nr. 1107 din 06.06.2002, care prevede că forma este o condiție de valabilitate a actului juridic numai în cazurile expres prevăzute de lege.

Prin urmare, reieșind din cele menționate, Agenția va respinge pretențiile contestatorului în măsura în care pretențiile acestuia privind obligativitatea formei electronice actului juridic este dedusă din propriile interpretări ale cadrului normativ în vigoare, inclusiv din interpretarea conținutului unor decizii anterioare ale Agenției prin care a fost constatat că aplicarea semnăturii electronice reprezintă o condiție de validitate a documentului electronic în circuitul civil, apreciere ce nu poate fi negată, însă contestatorul nu a ținut cont de prevederile legale ce reglementează în cazul achizițiilor sectoriale, inclusiv principiile de reglementare a acestora, la caz, fiind relevant principiul proporționalității, or entitatea contractantă este obligată să-l aplice, cu atât mai mult cu cât oferta a cărei legalitate se contestă este și cea mai avantajoasă economic.

THUS, THE ANSC BASED ITS DECISION ON 3 FINDINGS:

1. The Regulation on how to keep the State Register of Public Procurement formed by the AIS "AMPS" does not apply to sectoral procurement regulated by Law No 74/2020 because the Law does not expressly provide for the use of the AIS "AMPS".
2. Law No 74/2020 does not expressly require the use of electronic signatures
3. Although the contracting entity has made the use of electronic signature mandatory in the contract notice, disqualification of a tender for non-compliance with this requirement would be disproportionate.

WE CONSIDER that findings 1 and 3 are wrong and the second was misapplied.

1 ANSC considered that since Law no. 74/2020 does not make the use of the "RSAP" (MTender) CIS mandatory, the Regulation on how to keep the State Register of Public Procurement formed by the "RSAP" CIS (which in paragraph 121 provides for the mandatory use of electronic signature) does not apply to sectoral procurement regulated by Law no. 74/2020, implicitly also to any other procedure whose regulation does not make MTender mandatory.

This approach is open to criticism, as the Regulation mentions and describes the operation and use of MTender, and its use cannot be made in a legal vacuum. That Regulation does not state that it is applicable only to purchases governed by Law No 131/2015. It was adopted in accordance with Law No 131/2015 and for its transposition into practice, however its use is in no way limited to procurements under Law No 131/2015 only.

And here a rhetorical question arises: if a procuring entity decides to conduct a sectoral procurement procedure via MTender, then what rules govern the use of the MTender system? Is it not the Regulation mentioned?

Art. 2 of the Regulation states: *"This Regulation lays down rules on how to keep the State Register of Public Procurement (hereinafter - Register) as a result of the operation of the Automated Information System "State Register of Public Procurement" (MTender) (hereinafter - SIA RSAP (MTender)) in the process of organizing and conducting public procurement procedures, minimum requirements towards the use of means of protection when entering, storing, processing and accessing information on public procurement procedures and the adjacent one, as well as minimum requirements towards*

technical and program equipment and towards users of SIA RSAP MTender."

Although it is indicated that the Regulation lays down the rules for keeping MTender in the process of conducting public procurement procedures, the term used here for "public procurement" does not only refer to procurement under Law No 131/2015, but has a broader meaning and refers to procurement that is in the public interest.

For example, from July 1, 2023, part of the low-value procurement will also be carried out by MTender under the Low Value Procurement Regulation. Paradoxically, low-value sectoral procurements falling under the Small Value Procurement Regulation must necessarily be conducted through MTender, whereas higher-value procurements can be conducted anywhere the contracting entity wishes. Thus, the applicable regulations impose much greater transparency on low-value sectoral procurement than on higher-value procurement, which makes no sense. According to the same interpretation, a low-value utility procurement through MTender requires tenders to be signed electronically, whereas a utility tender under Law 74/2020 would not impose such a requirement and this would also be illogical.

And if at some point other procurement procedures will be carried out by MTender, then this Regulation would also apply to them (e.g. procurement organized by international organizations, diplomatic missions or others that are exempted from Law no. 131/2015 under Art. 5 para. (1).

2 The second finding of the ANSC on which it bases its decision is that Law No 74/2020 does not make the use of electronic signatures mandatory. Hence the conclusion that electronic signatures are not mandatory in sectoral procurement, even if carried out by MTender. This conclusion is open to criticism.

ANSC bases its decision on Article 316 para. (2) of the Civil Code of the Republic of Moldova which states that "Form is a condition of validity of the legal act only in cases expressly provided by law". However, if we are to apply the given rule in the same way as ANSC, then it would come out that the application of electronic signature is not required in public procurement regulated by Law no. 131/2015 either. **However, just as Law no. 74/2020 does not say anything about the obligation to sign the offer electronically, neither does Law no. 131/2015.**

As an example we offer the ANSC's reasoning in a procurement case regulated by Law no. 131/2015 where a bidder did not electronically sign the bid. In [Decision No. 03D-24-24 of 19 January 2024](#) ANSC indicated that in procurement regulated by Law No. 131/2015 failure to sign the offer must lead to its rejection:

Astfel, la soluționarea contestației, Agenția va avea în vedere prevederile art. 33 alin. (14) lit. i) din Legea nr. 131/2015, care reglementează obligativitatea garantării ca instrumentele și dispozitivele utilizate pentru comunicarea prin mijloace electronice să asigure depunerea ofertelor electronice prin aplicarea semnăturii electronice, iar în acest sens este de menționat că SIA „RSAP” asigură posibilitatea semnării electronice a ofertelor.

Totodată, în conformitate cu pct. 105 din Regulamentul privind modul de ținere a Registrului de stat al achizițiilor publice format de Sistemul informațional automatizat „Registrul de stat al achizițiilor publice” (MTender), aprobat prin Hotărârea Guvernului nr. 986 din 10.10.2018, depunerea ofertei finale este precedată în mod obligatoriu de semnarea electronică și criptarea acesteia, iar potrivit pct. 121 din același regulament toate documentele ofertelor încărcate, precum și contractele rezultate în urma procedurii de achiziție publică urmează a fi semnate digital, utilizând semnătura electronică avansată calificată. Prin urmare, având în vedere faptul că procedura de achiziție publică din speță s-a inițiat prin intermediul SIA „RSAP” (MTender), semnarea electronică a ofertelor reprezintă mecanismul prin care este garantată respectarea condiției de validitate a documentelor depuse de ofertanți.

În acest context, Agenția apreciază drept relevante dispozițiile art. 65 alin. (4) din Legea nr. 131/2015, potrivit căruia prezentarea ofertei presupune depunerea într-un set comun a propunerii tehnice, a propunerii financiare, a DUAE și, după caz, a garanției pentru ofertă, totodată alin. (5) din același articol, prevede că oferta, scrisă și semnată, se prezintă în conformitate cu cerințele expuse în documentația de atribuire utilizând SIA „RSAP”.

De asemenea, conform pct. 64 din Documentația standard pentru realizarea achizițiilor publice de lucrări, aprobată prin Ordinul Ministrului Finanțelor nr. 69 din 07.05.2021, la caz documentația de atribuire, prevede că, oferta scrisă și semnată în format electronic, de către administratorul companiei indicat în Extrasul Registrului de Stat al persoanelor juridice sau de către persoana împuternicită, atât și în cazul delegării sau împuternicirii persoanei, la ofertă se anexează actul/documentul de împuternicire și se prezintă conform cerințelor expuse în anexa nr. 2, în conformitate cu instrumentele existente în SIA RSAP, cu excepția cazurilor prevăzute la art. 33 alin. (7) și alin. (11) din Legea nr. 131/2015 privind achizițiile publice..

Here we will analyze each legal norm to which the ANSC refers:

First, reference is made to Article 33(1). (14) letter i) of Law no. 131/2015. It states that: "*The tools*

and devices for the electronic receipt of tenders, requests to participate, as well as plans and projects for calls for tenders, must guarantee, by appropriate technical means and procedures, at least that: i) the electronic signature is applied to electronic tenders."

This requirement is in respect of tools and devices for the receipt of tenders. They must ensure that electronic signatures are affixed to tenders. This requirement is not respected by MTender, but any document, including those not signed electronically, can be submitted, which has also led to several procedures where tenders were not signed electronically and the facts given have come under scrutiny by the ANSC. If the given rule had been respected, such cases would not have reached the ANSC because unsigned bids could not have been submitted electronically. At the same time, this rule does not impose a requirement as to the form of the offer, it only regulates the requirements with regard to devices.

The legislator probably had a legitimate expectation in 2015 when it passed this law that when the electronic procurement platform is created by the Ministry of Finance, it will automatically not accept the submission of a tender/document that is not electronically signed, nor did it include any other special provision in the law requiring electronic signature of tenders.

At the same time, **the same legal provision exists in Law no. 74/2020 in Art. 32 para. (8) letter i):** "*The instruments and devices for the electronic receipt of tenders, requests to participate, as well as plans and projects for contests for solutions, must guarantee, by appropriate technical means and procedures, at least that: i) the electronic signature is applied to electronic tenders."*

Respectively, even if one were to accept the interpretation that Art. 33 para. (14) lit. i) of Law no. 131/2015 requires the electronic signature of tenders in the context of the procurement

covered by that law, then exactly the same interpretation would be attributed to Art. 32 para. (8) (i) Law no. 74/2020 in relation to tenders in sectoral procurement. Therefore Art. 33 para. (14) (i) of Law No 131/2015 cannot be the basis for a differentiated approach in public procurement with regard to the electronic signature of tenders.

Further on in the Decision under review, the ANSC refers to the Regulation on how to keep the State Register of Public Procurement formed by the AIS "RSAP", which also imposes the obligation of electronic signature of the offer. As indicated above, the given Regulation applies to all procurements carried out through MTender not only those under Law no. 131/2015.

Next, the ANSC refers to Article 65 para. (4) and (5) of Law no. 131/2015, which states: *"(4) The submission of the bid requires the submission in a common set of the technical proposal, the financial proposal, the DUAE and, if applicable, the bid guarantee. (5) The offer, written and signed, shall be submitted in accordance with the requirements set out in the tender documentation using the "RSAP" AIS, except in the cases provided for in art.33 para. (7) and (11). The contracting authority shall issue to the contractor a receipt indicating the date and time of receipt of the tender or confirming receipt of the tender in cases where the tender has been submitted by electronic means."*

Here too there is no mention of electronic signatures, the legislator is simply pointing to standard documentation. In the case in point, point 64 of the standard tender documentation, approved by Order of the Ministry of Finance 69/2021, does indeed provide for the obligation to sign tenders electronically, but this obligation, as provided for in the standard documentation, is in no way superior to the obligation in the contract notice to sign tenders electronically. Both are part of the tender documentation, which is equally mandatory in the case of procurement covered by Law No 131/2015 and sectoral procurement covered by Law No 74/2020 (see

Art. 55 para. (1), art. 69 par. (3), Art. 75 para. (At the same time, as the contract notice is not a law, the standard documentation is not a law, it is a normative act subject to the law. But Art. 316 para. (2) of the Civil Code, to which the ANSC refers, indicates that the condition for the validity of the legal act must be **expressly** laid down in the **law** in order to be effective. If the ANSC's analysis is to be applied consistently, then the provisions of the tender documents cannot make the use of an electronic signature compulsory as a formal condition for the tender.

The contracting authority further refers to the Law no. 91/2014 on electronic signature and electronic document, which has been repealed in 2022 under Law 124 of May 19, 2022, published in the Official Gazette 70-176/10.06.22 art.317; in force 10.12.22. A repealed rule has been applied here.

And the last provision of [Decision No. 03D-24-24 of 19 January 2024](#) to which reference is made for the finding that an unsigned electronic tender cannot be admitted to a procurement under Law No. 131/2015 is Article 1, which describes the notion of tender: *"tender - legal act by which the contractor expresses its willingness to commit itself legally to a public procurement contract. The tender includes the financial proposal, the technical proposal, as well as other documents set out in the tender documentation;"* And here we see that it is not indicated that the use of electronic signature is mandatory for the validity of the tender.

Thus, if we compare these two cases we see that the ANSC's approach in them is different. Although in the case there are two procurements regulated by different laws (Law no. 74/2020 vs. Law no. 131/2015), the discrimination applied to the way of signing the offer in them is unjustified as neither of these laws requires the use of electronic signature, and both were carried out in MTender and therefore through the Regulation on the way of keeping the State Register of Public Procurement formed by the SIA "RSAP".

The ANSC's third finding in Decision [No 03D-461-23 of 17 July 2023](#) is that although the contracting entity in the contract notice made the use of electronic signature mandatory, disqualifying a tender for non-compliance with this requirement would be a disproportionate measure. This approach is open to criticism. First of all, it is contrary to the Regulation on how to keep the State Register of Public Procurement formed by the "RSAP" CIS, which, as explained above, also applies to sectoral procurement carried out through Mtender, and which makes the use of electronic signatures compulsory.

In order to correctly apply the principle of proportionality, an analysis of the legal effects of not electronically signing a tender in sectoral procurement through MTender had to be made. This was not done by the ANSC in that decision: it was only found that disqualification would be disproportionate, without an analysis to that effect.

First of all, we draw attention to the following nuance - the issue under consideration is not the form of the tender (which is after all an electronic document) but **the signature affixed to it**. The act to be examined is whether the signature affixed to that offer can be accepted.

Article 316 of the Civil Code provides that "(1) The legal act may be concluded verbally, in writing or in authentic form." We stress that the signature in essence cannot be in verbal form. And Art. 317 para. (1) of the Civil Code provides that "(1) A legal act for which the law or the agreement of the parties does not establish written or authentic form may be concluded orally." In this case, it was the contracting entity's wish that tenders be signed electronically. And by not contesting the tender documentation, "Techno Test" SRL implicitly accepted this requirement.

Art. 318 para. (1) of the Civil Code provides that "*The written/authentic legal act has an*

electronic form if it is contained in an electronic document that meets the conditions of the law." Para. (3) of the same article provides: "*The written legal act is concluded in electronic form if it is signed with the qualified advanced electronic signature of the person concluding the act, if the agreement of the parties or the law does not provide for the requirement to use another type of electronic signature.*"

In addition to this rule comes Article 319 para. (1) and (2) which provide: "*(1) Where the legal act is concluded by any electronic means and the person has not concluded it by means of an electronic signature as referred to in Article 318 para. (3), the consent of that person shall be presumed to be that person's until such time as he or she disputes its existence. (2) A person may not challenge the existence of consent solely on the ground that it was given by electronic means if he has consented to the use of that electronic means by a legal act concluded previously.*" The contracting entity has not transmitted prior to the submission of tenders by electronic means the information that it accepts the use of tenders signed other than by electronic signature. Therefore the provisions of Art. 319 para. (1) and (2) of the Civil Code are not applicable.

Law No 124/2022 on electronic identification and trust services regulates in Article 20 only two types of electronic signatures - advanced and qualified. The qualified signature is the one that can be verified through the MSign platform and meets the requirements of Art. 24 of Law 124/2022. The requirements for advanced signatures are set out in Art. 23 and include, among others, the following: they "*are created using electronic signature creation data or using electronic seal creation data, which the signatory or, respectively, the creator of the electronic seal can use with an increased level of confidence, exclusively under his/her control; they are linked to the data to which they relate, so that any subsequent changes to this data can be detected.*"

[Techno Test” Ltd.’s bid](#) for procedure no. [ocds-b3wdp1-MD-1682594558944](#) is a scanned document that was created, probably but not for sure, by document scanning software. And the scanned signature on it does not meet the requirements of Article 23 of Law 124/2022. It was not created using data with a high level of confidence and which is exclusively under the control of the person who signed it, and the document to which the signature is applied allows for its subsequent modification without this fact being detectable. If the electronically signed document is also modified, this affects the electronic signature in a detectable way.

Therefore, the tender submitted by "Techno Test" Ltd. cannot be considered as signed in writing or in authentic form. It cannot be considered to be signed. On the basis of this reasoning, tenders not signed electronically in the framework of sectoral procurement must be rejected. This is because they do not confirm the commitment made by the tenderer for that tender.

And in the event of a dispute arising from the withdrawal of the unsigned electronic tender, the contracting entity would be subject to the risk of not being able to oblige the tenderer to stick to the tender submitted. And if this dispute were to go to court, the court would probably find that there was no proper tender. This is the reasoning behind the ANSC’s findings in relation to tenders not electronically signed in the context of procurements regulated by Law 131/2015, and we believe the same reasoning should be applied to sectoral procurements.

And the principle of proportionality requires the rejection of a tender which is not properly signed, otherwise the contracting entity cannot ensure that the tender submitted will be respected. The provisions of Article 322 of the Civil Code, which provides for the consequences of non-compliance with the written form of the legal act, are not applicable

here, but in the field of administrative law, all rules are mandatory.

Following the analyzed decision, ANSC issued another similar decision - [Decision No. 03D-517-23 of 07 August 2023](#). It was issued on the award decision for the procurement procedure no. MD-1678435256742 organized by "CET-NORD" SA for the purchase of "Monitoring and recording system of power quality parameters in 10 kV and 110kV networks". The decision to award the contract to the non-resident bidder "Edela s.r.o." was contested, and among the reasons was indicated that it did not sign the offer electronically. The difference between these two reasons is that "CET-NORD" SA, in the tender notice did not include the requirement that the tender be signed electronically. This fact was noted by ANSC in that Decision, although in the previous Decision examined, the requirement in the tender notice to sign the offer did not change the solution in the case.

Astfel, având în vedere că Legea nr. 74/2020 nu prevede obligativitatea desfășurării procedurilor de achiziții sectoriale prin intermediul SIA „RSAP”, la fel și luând în considerare circumstanțele din speță și anume faptul că operatorul economic declarat câștigător a semnat olograf cu aplicarea ștampilei documentele prezentate, se conchide că respingerea ofertei „Edela s.r.o.”, astfel cum solicită contestatorul, ar fi o măsură disproporționată în raport cu omisiunea admisă, o interpretare inversă în circumstanțele de natura celor din speță ar contravine principiului proporționalității consfințit prin art. 28 din Legea nr. 74/2020, or principiul menționat impune ca actele multe măsuri adecvate, trebuie să se recurgă la cea mai puțin constrângătoare, iar inconvenientele cauzate nu trebuie să fie disproporționate în raport cu scopul urmărit.

La caz, urmează a fi reținut că entitatea contractantă nu a prevăzut în documentația de atribuire forma actelor ce urmau a fi prezentate de către operatorii economici, respectiv nu a indicat obligativitatea aplicării semnăturii electronice sau a semnăturii olografe pe documentele ofertei.

În cele din urmă, Agenția va reține că, în condițiile în care Legea nr. 74/2020 nu impune expres utilizarea SIA „RSAP”, respectiv, și toate reglementările prevăzute în acest sens în legătură cu acesta, fiind impusă doar aplicarea mijloacelor electronice de comunicare fără specificarea expresă a acestora, aplicabile sunt prevederile art. 316 alin. (2) din Codul Civil al Republicii Moldova nr. 1107 din 06.06.2002, care prevede că forma este o condiție de valabilitate a actului juridic numai în cazurile expres prevăzute de lege.

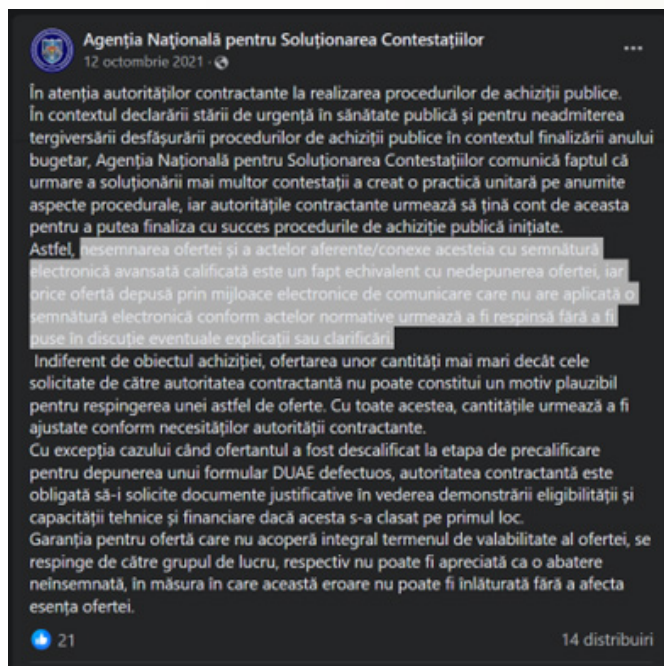
Prin urmare, reieșind din cele menționate, Agenția va respinge pretențiile contestatorului în măsura în care pretențiile acestuia privind obligativitatea formei electronice a actului juridic este dedusă din propriile interpretări ale cadrului normativ în vigoare, fără a ține cont de prevederile legale ce reglementează în cumul achizițiile sectoriale, inclusiv principiile de reglementare a acestora, la caz, fiind relevant principiul proporționalității, or entitatea contractantă este obligată să-l aplice, cu atât mai mult cu cât oferta a cărei legalitate se contestă a acumulat cel mai mare punctaj potrivit factorilor de evaluare.

More recently, on 6 March 2024, ANSC issued a [new Decision No. 03D-123-24](#) on the issue under analysis, where it maintained exactly the same approach:

Totuși, la caz, având în vedere că Legea nr. 74/2020 nu prevede obligativitatea desfășurării procedurilor de achiziții sectoriale prin intermediul SIA „RSAP”, la fel și luând în considerare circumstanțele din speță și anume faptul că operatorul contestator a semnat olograf și respectiv, a aplicat ștampila umedă pe documentele prezentate, se conchide că respingerea ofertei „Centrul de Metrologie Aplicată și Certificare” ÎS, ar fi o măsură disproporționată în raport cu omisiunea admisă, o interpretare inversă în circumstanțele de natura celor din speță ar contravine principiului proporționalității conștințit prin art. 28 din Legea nr. 74/2020, or principiul menționat impune ca actele instituțiilor să nu depășească limitele a ceea ce este adecvat și necesar în scopul realizării obiectivelor urmărite, înțelegându-se că, în cazul în care este posibilă o alegere între mai multe măsuri adecvate, trebuie să se recurgă la cea mai puțin constrângătoare, iar inconvenientele cauzate nu trebuie să fie disproporționate în raport cu scopul urmărit.

Astfel, urmează a fi reținut că deși entitatea contractantă a prevăzut în documentația de atribuire forma actelor ce urmau a fi prezentate de către operatorii economici, în speță, „semnat și stampilat de către operatorul economic, confirmat prin semnătură electronică”, condiție ce urma a fi respectată de către toți participanții, cu toate acestea, conform prevederilor art. 75 alin. (5) din Legea nr. 74/2020, entitatea contractantă are dreptul să considere oferta conformă dacă aceasta conține abateri neînsemnate de la prevederile documentației de atribuire, erori sau omiteri ce pot fi înlăturate fără a afecta esența ei. Orice deviere de acest fel se exprimă cantitativ, în măsura în care este posibil, și se ia în considerare la evaluarea și compararea ofertelor.

The three ANSC Decisions analyzed above which refer to the application of Law no. 74/2020 also contradict the guidance provided by the Agency on a [Facebook post](#) from October 2021, i.e. after the entry into force of Law no. 74/2020:



ANSC indicated: "failure to sign the tender and related/connected documents with a qualified advanced electronic signature is equivalent to non-submission of the tender, and any tender submitted by electronic means of communication that does not have an electronic signature applied in accordance with

the regulations shall be rejected without any explanation or clarification".

We believe that in order to maintain *uniform practice on certain procedural issues*, it is good that the decisions of the NCA are consistent, not only in the solutions to cases that raise exactly the same legal issues but also in the reasoning/analysis carried out. As stated above, the legal reasoning of the ANSC underlying the rejection of unsigned electronic tenders in procurement governed by Law no. 131/2015 is also applicable to those governed by Law no. 74/2020.

IN CONCLUSION, aBoth Law No 74/2020 and Law No 131/2015 do not expressly require the use of electronic signatures. The exception would be if we were to interpret Art. 33 para. (14) lit. i) of Law no. 131/2015 imposes this obligation, but in this case, the same obligation would follow from a similar rule in Law no. 74/2020, namely Art. 32 para. (The different approach to the obligation to sign tenders electronically in procurement procedures under these two laws is not justified.

The requirement for the use of electronic signature is included only in the Regulation on the manner of keeping the State Register of Public Procurement formed by the AIS "RSAP" in item 121 and by virtue of item 2 of the same Regulation is to be applied to all procurements carried out by MTender, not only procurements regulated by Law no. 131/2015 but also low-value procurements, sectoral procurements and others. And if the requirement for the use of electronic signature in a sectoral procurement is included in the call for tenders, even more so such a tender cannot be accepted. Otherwise the contracting entity is put at risk of accepting a tender which does not comply with the mandatory requirements of the Regulation and which cannot be subject to the obligation of compulsory execution.

Author: Agency for Efficient and Accountable Governance (AGER)

PROCUREMENT OF PETROLEUM PRODUCTS FOR THE YEAR 2023 IN THE SOROCA DIRECTORATE OF SOCIAL ASSISTANCE AND FAMILY PROTECTION (DASPF SOROCA): A LOT OF GASOLINE AND FEW CONTRACTUAL OBLIGATIONS

» The monitoring team followed this procurement procedure at different stages, but most attention was paid to the contract award stage, due to the discovery of contractual provisions that were far too lax in relation to the contractor's fulfilment of its contractual commitments, and to the contract implementation and monitoring stage, where the conduct of this procurement procedure indicates several potential red flags in relation to the volume of petrol purchased.

WHAT DID THE SOROCA SOCIAL ASSISTANCE AND FAMILY PROTECTION DIRECTORATE PURCHASE?

Through the access to information request No 239/23 of 21.11.2023, we requested from the Directorate of Social Assistance and Family Protection Soroca copies of several contracts concluded during 2023, including the purchase of petroleum products to meet the annual needs of the Directorate.

On November 28, 2023, the Directorate of Social Assistance and Family Protection of Soroca provided us with the answer number 2223, sending us a copy of the contract for the purchase of petroleum products for 2023.



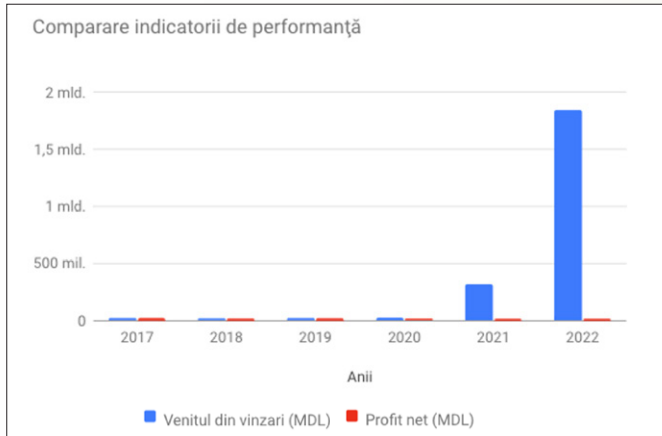
Thus, on January 4, 2023, DASPF Soroca signed contract no. 1 with the contractor VENTO

RETAIL S.R.L., represented by the head of the sales department, Mrs. Lucia Gheorghiiță. The goods were purchased under a low-value contract.

VENTO RETAIL S.R.L. (1009600044712) was founded in December 2009 and employs 850 people. According to the data2b.md platform, its revenues have skyrocketed since 2020. Thus, if in 2019 the company had a number of 3 employees and a sales revenue of 26.76 million MDL (~USD 5813607) then, since 2020, the company has increased both in its number of employees and in the amount of sales revenue. In 2022, the company enjoyed a headcount of 704 employees and a record sales revenue of 1.85 mil MDL (~USD 401912)¹.

Indicatorii de performanță			
Anii	Venitul din vânzari (MDL)	Profit net (MDL)	Nr. Angajati
2017	26,76 mil	20,39 mil	0
2018	24,50 mil	17,88 mil	3
2019	26,76 mil	19,82 mil	3
2020	30,07 mil	22,54 mil	3
2021	324,16 mil	16,42 mil	167
2022	1,85 mld	15,70 mil	704

¹ [S.R.L. VENTO RETAIL \(data2b.md\)](https://data2b.md)





Analyzing the MTender.md platform, we find that, over the last few years, VENTO RETAIL S.R.L. has concluded multiple large contracts, some of them worth millions of lei, with other local public authorities, such as the Professional School of Alexandreni, Sangerei²; the Town Hall of Mingir, Hincesti³; the State Enterprise "Enterprise for Forestry Iargara"⁴; the M.M. "Road Repair and Construction Department Balti" etc. Only the contract with the "Balti Road Repairs and Construction Department" has an exorbitant value of 6 192 070 MDL (~USD 1345227) with VAT.

The total amount of the contract concluded with VENTO RETAIL S.R.L. is 170 000 MDL (~USD 36932), VAT included. This contract is considered concluded on the date of signing and is valid until December 31, 2023.

The contract provides for the following price specifications:



Cod CP V	Denumirea bunurilor/ serviciilor	Unitatea de măsură	Cantitatea	Preț unitar (fără TVA)	Preț unitar (cu TVA)	Suma fără TVA	Suma cu TVA	Termenul de livrare/prestare	Clasificație bugetară (IBAN)	Discount %
1	Benzină A-95	litru		19,43	23,32			2023		0,25%
	Motorină Euro5	litru		19,70	23,64			2023		0,25%
TOTAL						141 666,67	170 000,00			

Vanzator Digitally signed by Gheorghita Lucia Date: 2023.01.04 12:30:25 EET Reason: MoldSign Signature Location: Moldova		Cumparator Digitally signed by Nicuta Vladimir Date: 2023.01.04 10:38:22 EET Reason: MoldSign Signature Location: Moldova	
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² MTender Public Portal (gov.md)
³ MTender Public Portal (gov.md)
⁴ Purchase information - MTender

In addition, the following technical specifications form an integral part of the contract:

Denumirea bunurilor/ serviciilor	Denumirea modelului/ bunului/ serviciului	Tara de origine	Producatorul	Specificarea tehnica deplină solicitată de către autoritatea contractantă	Specificarea tehnica deplină propusă de către ofertant	Standarde de referință
1	2	3	4	5	6	7
Bunuri/serVICII						
1	Lotul Benzina A-95	România	"OMV Petrom" S.A. România	Cifra octanică, COR, min 95; Aspect limpede și transparent	Cifra octanică, COR, min 95; Aspect limpede și transparent	SM SR EN 228
2	Lotul Motorina Euro5	România	"ROMPETROL RAFINARE" S.A. România	Aditivii din motorina nu trebuie să conțină compuși ai metalelor și fosforului. - Cifra octanică, min. 51,0 - Punct de inflamabilitate, min. 55 °C - Densitatea la 20° C, max 860,0 kg/m³ - Viscositate la 40 °C 2,00-4,50 mm2/s	Aditivii din motorina nu trebuie să conțină compuși ai metalelor și fosforului. - Cifra octanică, min. 51,0 - Punct de inflamabilitate, min. 55 °C - Densitatea la 20° C, max 860,0 kg/m³ - Viscositate la 40 °C 2,00-4,50 mm2/s	SM SR EN 590

Vanzator Digitally signed by Gheorghita Lucia Date: 2023.01.04 12:30:04 EET Reason: MoldSign Signature Location: Moldova		Cumparator Digitally signed by Nicuta Vladimir Date: 2023.01.04 11:03:17 EET Reason: MoldSign Signature Location: Moldova	
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RED FLAGS AT THE AWARD STAGE

From the analysis of the contract no. 1 of January 4, 2023 between DASPF Soroca and VENTO RETAIL SRL, it can be observed that the chapter on sanctions is completely lacking in specific values, repeatedly presenting a figure of 0% in all the sub-items mentioned. This may raise questions about the effectiveness and enforceability of sanctions in case one of the parties breaches the terms of the contract.

10. Sancțiuni	
10.1.	Garanția de bună executare a contractului agreeată de Cumpărător este sub forma de garanție bancară emisă de o bancă comercială sau transfer la contul Cumpărătorului, în cuantum de <u>0</u> % din valoarea contractului.
10.2.	Pentru refuzul de a vinde Bunurile prevăzute în prezentul Contract, Vanzatorul suportă o penalitate în valoare de <u>0</u> % din suma totală a contractului.
10.3.	Pentru livrarea cu întârziere a Bunurilor, Vanzatorul poartă răspundere materială în valoare de <u>0</u> % din suma Bunurilor nelivate, pentru fiecare zi de întârziere, dar nu mai mult de <u>0</u> % din suma totală a prezentului Contract. În cazul în care întârzierea depășește 30 zile, se consideră ca fiind refuz de a vinde Bunurile prevăzute în prezentul Contract și Vanzatorul își se va rejine garanția de bună executare a contractului, iar Cumpărătorul poate rezilia contractual unilateral.
10.4.	Pentru achitarea cu întârziere, Cumpărătorul poartă răspundere materială în valoare de <u>0</u> % din suma Bunurilor neachitate, pentru fiecare zi de întârziere, dar nu mai mult de <u>0</u> % din suma totală a Bunurilor neachitate.

For example, sub-paragraph 10.2 - Penalty for refusal to sell the goods - establishes a penalty for the seller in case of refusal to sell the agreed goods. However, the contract in question specifies an amount of 0%, which cannot be regarded as an effective penalty

for breach of the terms of the contract. The same is the case for sub-item 10.3 - Penalty for late delivery of goods - which mentions a penalty for the seller in case of late delivery of goods. However, again, an amount of 0% of the amount of undelivered goods is specified. This may suggest a lack of incentive for the seller to meet the delivery deadlines set out in the contract.

These findings point to the contract's weakness in terms of sanctions for breaches of contract terms, which may raise risks and questions about its enforceability and effectiveness in managing potential misunderstandings or disputes between the parties. It is advisable, for similar contracts in the future, to review and complement these aspects to ensure a fairer contractual framework for both parties involved.

Other social assistance directorates in the country, such as DASPF Glodeni, include clear sanctions in similar contracts. For example, in the contract No 1 of 24 January 2023 concluded between the Directorate of Social Assistance and Family Protection of Glodeni and LUKOIL-Moldova SRL, sanctions are clearly specified for refusal to sell/provide goods, late delivery/provision of goods and late payment. For example, in the case of refusal to sell or supply goods in conformity with the contract, it is stipulated that the contract performance guarantee will be retained, and in the event that it has not been established, the supplier will bear a penalty of 5% of the total amount of the contract.

10.2. Pentru refuzul de a vinde/presta Bunurile prevăzute în prezentul Contract, se va reține garanția de bună executare a contractului, în cazul în care ea a fost constituită în conformitate cu prevederile punctului 10.1., în caz contrar Furnizorul suportă o penalitate în valoare de 5% din suma totală a contractului.

10.3. Pentru livrarea/prestarea cu întârziere a Bunurilor, Furnizorul poartă plata despăgubirii în valoare de 0,1% din suma Bunurilor nelivrate/neprestate, pentru fiecare zi de întârziere, dar nu mai mult de 5% din suma totală a prezentului Contract. În cazul în care întârzierea depășește 10 zile, Furnizorul prezintă Cumpărătorului/Beneficiarului o explicație în formă scrisă. Dacă Cumpărătorul/Beneficiarul acceptă, Furnizorul prelungeste termenul de valabilitate a garanției de bună executare, în caz contrar se consideră ca fiind refuz de a livra/presta Bunurile prevăzute în prezentul Contract și Furnizorul/Prestatorului i se va reține garanția de bună executare a Contractului, în cazul în care a fost constituită în conformitate cu prevederile pct.10.1.

10.4. Pentru achitarea cu întârziere, Cumpărătorul/Beneficiarul poartă plata despăgubirii în valoare de 0,1% din suma Bunurilor neachitate, pentru fiecare zi de întârziere, dar nu mai mult de 5% din suma totală a prezentului contract.

These penalties are expressly defined and proportionate to contractual violations, thus providing transparency and certainty in the commercial relations between the parties. This is a normal practice, which should also be followed by DASPF Soroca.

RED FLAGS AT THE IMPLEMENTATION AND MONITORING STAGE OF THE CONTRACT: HOW MUCH PETROL DOES A SOCIAL ASSISTANCE DIRECTORATE NEED?

In 2023, DASPF Soroca set a record hard to match, purchasing enough petroleum products (gasoline and diesel) to travel, poetically speaking, from Moldova to Antarctica 6-9 times⁵. More precisely, we are talking about approximately 7200 litres of petrol/motor oil, purchased at a cost of 170 000 MDL (~USD 36932) with VAT.

With 7200 litres of petrol, a car could: make 5 return journeys from Paris to Rome⁶; make 20 return journeys from Berlin to Prague⁷; make 19 return journeys from London to Amsterdam⁸ etc. Because this volume of petroleum products seemed exorbitant to us, we tried to analyze the purchase/consumption of petroleum products by other public authorities at the same level. Thus, by means of access to information request no. 245/23 of November 21, 2023, we requested a copy of the contract for the purchase of petroleum products for the year 2023 from the Râșcani Social Assistance and Family Protection Directorate. On November 23, 2023, I received the reply with number 1027, through which I obtained the copy of the requested contract.

⁵ How the figure of 3 Moldova-Antarctica trips was calculated: according to worldata.info, the distance between Moldova and Antarctica is 15,445 km. The average oil consumption per 100 km is 5-8 litres. Thus, a trip from Moldova to Antarctica would require between 772.25 litres of petrol and 1 235.6 litres of petrol. Therefore, the consumption of 7000 litres of DASPF Soroca for the year 2023 would, in this format, be equivalent to 6-9 trips from Moldova to Antarctica.

⁶ The Paris-Rome journey covers approximately 1400 kilometres.

⁷ The Berlin-Prague journey covers about 350 kilometres

⁸ The London-Amsterdam journey covers approximately 360 kilometres



Thus, in accordance with the contract no. 4 of 12 January 2023 concluded between the Social Assistance and Family Protection Department Rascani and ICS LUKOIL MOLDOVA, the economic provider has undertaken to provide DASPF Rascani, during 2023, with petroleum products worth 55 000 MDL (~USD 11,948), including VAT.

3.2. Suma totală a prezentului Contract, inclusiv TVA, se stabilește în lei moldovenești și constituie: **55000 lei, Cincizeci și cinci mii lei 00 bani MD.**

We have tried to use the following reasoning to compare the two contracts: the larger the population and area of a district, the more petroleum products are needed for the proper functioning and activity of the Social Welfare and Family Protection Directorate in the district concerned.

Thus, for the year 2023, the Soroca Social Assistance and Family Protection Department purchased petroleum products worth 170 000 MDL (~USD 36932) with VAT, for a population of 99 000 inhabitants of Soroca district (2016), an area of 1043 square kilometers and a number of 68 localities⁹.

At the same time, the Riscani Social Welfare and Family Protection Department has purchased, for 2023, petroleum products worth only 55 000 MDL (~USD 11948) with VAT, for a district

population of 65 000 inhabitants (2018), an area of 936 square kilometers and a number of 55 localities.

THUS, WE CAN DRAW THE FOLLOWING COMPARATIVE CONCLUSIONS BETWEEN THE TWO CONTRACTS:



- 1 POPULATION:**
The population of Râșcani is about 34% smaller than that of Soroca.
- 2 AREA OF THE DISTRICT:**
The area of Soroca district is about 11% larger than that of Rascani district.
- 3 CONTRACT VALUE:**
The contract value for the purchase of petroleum products in Soroca is about 3 times higher than in Rascani.
- 4 RATIO OF CONTRACT VALUE TO POPULATION:**
The contract value per capita in Soroca is about 1.7 times higher than in Riscani.
- 5 RATIO OF CONTRACT VALUE TO DISTRICT AREA:**
The contract value per unit area in Soroca is about 2.8 times higher than in Riscani.

Thus, despite a relatively small difference in population and area of the districts, the value of the contract for the purchase of petroleum products is significantly higher in Soroca than in Riscani.

⁹ https://www.undp.org/sites/g/files/zskgke326/files/migration/md/Ghid-turistic_Soroca-site.pdf



CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE PROCUREMENT PROCEDURE CONCERNED

Conclusions:

- Detailed analysis of the contract between DASPF Soroca and VENTO RETAIL SRL reveals significant shortcomings in terms of sanctions for breach of contract terms. The lack of effective sanctions may raise risks and questions about its enforceability and effectiveness in managing potential misunderstandings or disputes between the parties.
- Other social assistance directorates in the country, such as DASPF Glodeni, include clear sanctions in similar contracts. These sanctions are expressly defined and proportionate to contractual violations, providing transparency and certainty in the commercial relations between the parties.
- In 2023, DASPF Soroca set a record hard to match, purchasing enough petroleum products (gasoline and diesel) to travel, poetically speaking, from Moldova to Antarctica 6-9 times¹⁰. To be precise, we

are talking about approximately 7200 litres of petrol/motor oil, purchased at a cost of 170 000 MDL (~USD 3 6932) with VAT.

- Comparative analysis of DASPF Soroca and DASPF Rascani contracts reveals significant differences in the value of contracts for the purchase of petroleum products in relation to the population and area of the districts. Although Râșcani is smaller than Soroca both in terms of population and area, the value of the contract concluded by DASPF Soroca is three times higher than that of the contract concluded by DASPF Râșcani.

Recommendations:

For similar contracts in the future, it is advisable that DASPF Soroca completes the chapter on sanctions in a detailed and responsible manner, in order to ensure a more robust and fair contractual framework for both parties involved.

Public authorities in the Republic of Moldova should consider extending the use of GPS systems on vehicles of public institutions, including those in the field of social assistance and family protection. This can increase transparency and efficiency in the use of public funds.

In the light of the apparently excessive volume of petroleum products purchased in 2023, a careful assessment of the real fuel needs for the activities of the Soroca Social Assistance and Family Protection Directorate is recommended. Detailed analysis of historical consumption and future projections can help optimise the use of resources and identify potential savings.

Author: LEX 21 Human Rights Association

¹⁰How the figure of 3 Moldova-Antarctica trips was calculated: according to worlddata.info, the distance between Moldova and Antarctica is 15,445 km. The average oil consumption per 100 km is 5-8 litres. Thus, a trip from Moldova to Antarctica would require between 772.25 litres of petrol and 1 235.6 litres of petrol. Therefore, the consumption of 7000 litres of

DASPF Soroca for the year 2023 would, in this format, be equivalent to 6-9 trips from Moldova to Antarctica.

SABINE ENGELHARD:

SUSTAINABLE PROCUREMENT: A SMART WAY TO PROCURE, KEEPING THE "BIG PICTURE" IN MIND

««« [BEGINNING ON PAGE 1](#)

It is not just about meeting the needs of a program, a project, an institution, or a country, obtaining the right quality of goods and services, on time, and at a competitive price. It is about meeting procurement needs in a way that does not compromise the ability of future generations to meet their own needs.² Sustainable Procurement is a core component of a society's efforts for achieving sustainable development, as clearly illustrated by the United Nations Sustainable Development Goals³, in particular SDG 12.7 which is about: "promoting public procurement practices that are sustainable, in accordance with national policies and priorities".

Embracing Sustainable Procurement starts with a review of a country's existing policies, legislation, and commitments at a national or international level. This legal framework will reflect the country's political commitment to Sustainable Procurement. The applicable rules may contain requirements pertaining to public access to certain information, requirements to treat hazardous waste, or prohibitions on using certain building materials, manufacturing products, or processes that might be detrimental to the environment or the health of citizens. These sets of rules may also require the use of eco-labelled or certified products, or products that do not have a negative effect on the environment. They may also entail



provisions requiring suppliers to be industry-certified, and/or to make self-declarations concerning the products or manufacturing processes they use. Additionally, these rules may include commitments pertaining to the disposal of public property such as computers, construction equipment, cars, chemicals, etc.

This wholistic approach leads to a more nuanced and flexible approach to public procurement at all stages of the cycle. For instance, at prequalification or initial selection stage, specific certification, or verification of an industry environmental or social standard, or a management system could be required. When technical specifications are conformance-based, they will detail special attributes/characteristics that the procured products must meet (e.g., recyclable content, sustainably managed timber). For performance-based specifications, the proposed functions to be performed by the product will be included (e.g., fuel/

² World Bank, guidance on Sustainable Procurement: <http://pubdocs.worldbank.org/en/788731479395390605/Guidance-on-Sustainable-Procurement.pdf> / Sustainable Procurement An introduction for practitioners to sustainable procurement in World Bank IPF projects, April 2019 <https://thedocs.worldbank.org/en/doc/788731479395390605-0290022019/original/GuidanceonSustainableProcurement.pdf>

³ <https://sdgs.un.org/goals>

energy efficiency). For bid evaluation, qualifying criteria, minimum requirements, or performance standards can be introduced as well as rated criteria and weighting of scores. Monetizing impacts (e.g., energy consumption and waste) is also an option. Bid evaluation can also be conducted based on life-cycle cost or whole-life criteria, taking into consideration all three pillars (economic, environmental, and social). At contract negotiation, corporate and social responsibility commitments can be negotiated and incorporated into the contract. During contract implementation, Key Performance Indicators (KPIs) can be used to measure suppliers' performance. Provisions could also be incorporated into the contract, providing for bonuses when KPIs are met, or penalties for non-compliance.



Sustainable Procurement comes with a lot of advantages. It can reduce total operating costs by purchasing more efficient and better-quality goods, works and services. It makes the disposal process of products at their end of life more transparent and minimizes its social cost.

Awards will be made to the bidder having submitted the "most advantageous bid" rather than the "lowest-evaluated substantially responsive bid". Determination of the most advantageous bid will be achieved using the factors and criteria described earlier, considering relevant costs and benefits, assessing risks and non-price attributes and/or life-cycle costs, or whole-life criteria, including disposal costs. Illustrating this shift in approach,

some countries have adopted in their public procurement legislation, or introduced regulations linked to such legislation provisions regarding the process, procedures, and oversight of public property disposal.

Over the years, the emphasis on sustainable procurement has evolved from a mostly "green procurement" focus to a more developmental and inclusive perspective where environmentally, socially responsible procurement (ESRP) considerations are front and center. Looking at the "big picture", ESRP can contribute to a country's economic development agenda and strategic goals. This can be achieved in different ways, for instance through the mandatory use of certain percentages of local labor for public infrastructure projects, leading to the creation of new jobs in a region. Alternatively, it can be achieved through the introduction of requirements to use locally manufactured goods or equipment, allowing the use of margins of preferences in the evaluation of bids containing locally manufactured goods or equipment, the creation of set-asides, reserving sets of public procurement contracts for pre-identified categories of economic operators (e.g., small, and medium-size enterprises, women-owned businesses, disabled-owned businesses).

ESRP can also lead to the adoption of more inclusive hiring and employment policies, prohibiting discrimination based on gender, sexual orientation, race, or religion. It can further result in the introduction of health and safety standards in the workplace, the prohibition of certain behaviors such as forced labor, child labor, sexual harassment, sexual exploitation, and abuse. Adopting these measures will also depend on the country's legal framework and its adherence to the corresponding conventions/declarations at the international level. In line with the applicable legal framework and commitments, specific provisions will be incorporated into public

procurement legislation, regulations, bidding documents, and public procurement contracts.

Sustainable Procurement comes with a lot of advantages. It can reduce total operating costs by purchasing more efficient and better-quality goods, works and services. It makes the disposal process of products at their end of life more transparent and minimizes its social cost. It can help promote the market's development capacities and competitiveness. It saves money on a long-term basis by applying life-cycle or whole-life costing. From a risk management perspective, it helps identify economic, legal, and environmental threats and opportunities, and contributes to developing approaches to manage them.

How a country or an organization embraces sustainable procurement will reflect its cultural and ethical values – as it reveals its willingness to incorporate considerations of long-term detriments and benefits as well as the common global well-being in its current decision-making process. Decisions taken today on a national level impact future generations around the world.

For all these reasons, Sustainable Procurement is smart procurement!

The Institute for Development and Social Initiatives (IDIS) "Viitorul", in supporting and promoting sustainable public procurement, implemented, in the period 2020-2023, in partnership with the Faculty of Economic Sciences of the State University of Moldova, the project "Consolidation of sustainable public procurement in the Republic of Moldova", which aimed at strengthening the sustainability component of public procurement in the Republic of Moldova through theoretical-methodological and applied research, but also through the analysis of good European practices in the field of sustainable public procurement.

Within the project it was developed [the "Sustainable public procurement" best practices guide](#) (in Romanian), a document that aims to present and analyze European practices regarding the application of sustainability criteria in the public procurement process, but also to promote sustainable public procurement practices, in accordance with policies and national priorities.

Also, [the 3rd edition \(2022\) of the Perception Index of the public procurement system](#) was developed, including the perception regarding the regulation and implementation of sustainable public procurement in the Republic of Moldova. The index presented in a comprehensive and systematic manner, the perception of all actors in the system (contracting authorities, private sector and civil society / monitors) regarding the use of public money through the national public procurement system. For the first time, the 3rd edition of the study evaluated the perception regarding the regulation and implementation of sustainable public procurement in the Republic of Moldova.

AT THE SAME TIME, WERE ANALYZED (*in Romanian*):

- (1) [MAPPING THE COMMITMENTS assumed by the Republic of Moldova within the framework of international agreements with reference to public procurement sustainable](#);
- (2) [THE CONCEPT OF SUSTAINABILITY in public procurement law: regulation versus enforcement](#); and
- (3) [SUSTAINABILITY AND ENVIRONMENTAL PROTECTION. Components of the secondary normative framework in public procurement](#)