

Inception Report

13 May 2021

Organization Name	Partnership for Transparency Fund, Inc
Program Title	Increasing the Integrity of Public Procurement
Target Country/Countries	Moldova
Program Synopsis	The goal of the proposed project is to support procurement reforms in Moldova that will increase transparency and fairness of public procurement through empowering citizens to hold relevant institutions accountable. This will be accomplished through training civil society organizations to serve as watchdogs by monitoring public procurements through the e-platform and other means.
Program Length	30 months
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0. Abbreviations and acronyms

AGER	Association for Efficient and Responsible Governance
AIM	Alliance of Small and Medium Businesses
AmCham	American Chamber of Commerce
ANSC	Agencia Națională pentru Soluționarea Contestațiilor (see also NASC)
CA	Contracting Authorities
CC	Competition Council
CSOs	Civil Society Organisations
CCPPH	Center for Centralized Public Procurement in Healthcare (see also CAPCS)
CLDP	Commercial Law Development Programme
CoA	Court of Accounts
DRL	US Department of State Bureau of Democracy, Human Rights and Labor
EBRD	European Bank for Reconstruction and Development
ESPD	European Single Procurement Document
EO	Economic Operators
FI	Financial Inspectorate
IDIS	Institutul pentru Dezvoltare și Inițative Sociale „Viitorul”
MAPS	Moldova: Assessment of the public procurement system
MOF	Ministry of Finance
NAC	National Anticorruption Centre
NASC	National Agency for Solving Complaints (see also ANSC)
NGOs	Non-government organisations
NIA	National Integrity Authority
PP	Public Procurement
PPL	Public Procurement Law
PPA	Public Procurement Agency
PTF	Partnership for Transparency Fund
SRA	State Road Administration
SWOT	Strengths, Weaknesses, Opportunities and Threats
TI	Transparency International
UNDP	United Nations Development Programme

1. Executive Summary

This Inception Report is underpinned by an **intensive and extensive process of desk reviews**, bringing together the findings of many existing reports, studies and documents. The project team has also carried out studies and surveys specifically designed for this project, rounded out by interviews and consultations with key government agencies, as well as bi-lateral and multilateral organizations active in Moldova. Resulting from the baseline study and the work accomplished during the inception phase is a well-grounded, documented understanding of the conditions, needs, challenges and opportunities surrounding public procurement in Moldova. This Inception Report and the **Implementation Plan** contained within it serve as the blueprints for implementing this project.

The primary goal of this project is to enhance the transparency, fairness and effectiveness of the public procurement process in Moldova through training and empowering civil society actors such as CSOs and investigative journalists to engage in informed and responsible monitoring of public procurement. To this end, the in-depth **training curriculum** outlined in this Inception Report was developed, based on identified needs of the target audience, which will equip the participants with the knowledge, skills and tools to identify irregularities at various stages of the procurement process, analyze data and evaluate risks of abuse that merit investigation by appropriate and relevant control and enforcement bodies. In interactive sessions and with the help of case studies the training will also strive to provide the participants with more effective tools for communicating with procurement and control bodies to improve the response rate and corrective actions taken by these bodies to the findings from the monitoring. A planned period of support funding and technical assistance for a select number of organizations completing the training will enable them to put into practice the competencies acquired in the training.

There is already a small number of very experienced and committed CSOs and investigative journalists involved in **monitoring public procurement** in Moldova. This project aims to broaden the pool of such monitors and to deepen the skills of those already monitoring, particularly in the use of monitoring tools that have been developed since the last in-depth training provided by IDIS in 2018. Such tools include a 2.0 version of the OpenMoney platform, Tender.Health, Revizia.md, a website with red flag indicators. The launch in late April 2021 of the pilot Business Intelligence (BI) Module to be tested for the balance of the year adds to the tools available to all entities involved in monitoring procurement.

Despite earlier concerns that the **MTender** might be abandoned in favor of a new system, a move that would have made it necessary to train CSOs and investigative journalists without access to the e-procurement platform as a tool for monitoring, most of the uncertainty around the future of the e-procurement platform MTender has been removed, with all indications being that the Ministry of Finance is committed to retaining, upgrading and expanding the system. Concerns remain about the overall political instability in Moldova, which could negatively affect the results of the project,

The **training of public procurement staff** in Contracting Authorities that was initiated **by the Public Procurement Authority** with technical assistance from the Commercial Law Development Program (CLDP) of the US Department of Commerce will be an important step in upgrading the skill set of those tasked with handling public procurement and the plan to provide a formal certification process for those trained will lead to the much-needed professionalization of the process and provide a career track for public sector staff involved in managing public procurement.

In the course of reviewing the challenges and opportunities for enhancing the process and outcomes of public procurement in Moldova, it became clear that many Economic Operators refrain from bidding

on procurement opportunities, due to some extent to their lack of clear understanding of the requirements – legal, regulatory, procedural – and to their lack of confidence in the fairness and transparency of the review and award process. Thus, the project will **include Economic Operators in some parts of the training** that are relevant to their information needs, with the goal of encouraging their greater participation in the procurement marketplace. In addition, a **roundtable dialogue** is planned **among key stakeholders in procurement**, i.e., Contracting Authorities, Economic Operators and CSOs/investigative journalists to increase trust and promote the potential of Integrity Pacts and codes of conduct as tools to enhance transparency and fairness. While not a planned outcome of this project, it is hoped that the roundtable will lead to piloting of at least one Integrity Pact and perhaps lead to the formation of a long-term multi-stakeholder group of these key stakeholders.

Because of the **COVID-related restrictions on travel and size of in-person gatherings**, the official launch event for this project had to be moved from June to late September. While it is conceivable that the ongoing COVID pandemic could lead to a change in the mode of delivery of the planned training, making it necessary to hold all or part of it in an online format rather than face-to-face, such a change will not alter the content, but it may result in an extension of the timetable for delivery. The potential need to change to an online training modality has already been anticipated and planned for by the project team.

2. Methodology of data collection

Methodology | During the Inception Phase, the following methodological approach was pursued:

1. Conducting a thorough desk review of all relevant documents available (see Annex 6.4.3, 6.6.2 and 6.6.3).
2. Conducting 23 semi-structured qualitative interviews with 27 stakeholders (see Annex 6.6.1): consultation with central and local governments (such as Ministry of Finance (MoF) Public Procurement Agency (PPA), Court of Accounts (COA), European Bank for Reconstruction and Development (EBRD), World Bank, European Union Delegation (EU), Open Contracting Partnership (OCP), international and Moldovan organizations such as Association for Efficient and Responsible Governance (AGER), and Transparency International (TI) Moldova. Some of these organizations were involved in funding, design and implementation of the e-procurement system and/or monitoring of procurement, including access platforms such as OpenMoney, Tender.Health, and Revizia.md.
3. Conducting one online survey about procurement monitoring training needs among 326 CSOs and Journalists with, 79 or 24% responding. (see Annex 6.3.1)

Desk review

- Moldova: Assessment of the public procurement system (MAPS) World Bank and government of Moldova (draft 30 August 2020)
- Civil society organizations from the Republic of Moldova: Evolution, sustainability, capacities. (Konrad Adenauer Stiftung, August 2019)
- Procurement Monitoring Guide (IDIS, 2018)
- Technical Assistance for Developing an e-Procurement system in the Republic of Moldova, Inception Report issued by European Dynamics, February 2020

Analysis designed and carried out specifically for this project

- Report on the Procurement Monitoring Needs Assessment (Annex 6.3.1)
- An approach to improve the response of economic operators in public procurement to increase their participation and thus enhance competition (Annex 6.3.2)
- Analysis of Stakeholders in Procurement in Moldova (Annex 6.2)
- Analysis of risks in public procurement (see Annex 6.1.1)
- Analysis of relevant secondary legislation, regulations and policies in public procurement (Annex 6.6.3)
- Public Procurement – A review of monitoring tools (Annex 6.4)

3. Baseline study: analysis of public procurement and civil society monitoring in Moldova

3.1 Risk assessment

The objective of the risk analysis is to answer the following **guiding questions**:

- What are the most important risks in public procurement?
- Where and how should priorities be set for this project?

3.1.1 Risk analysis approaches

These three sources follow **different approaches to identifying and assessing risks**:

1. The MAPS assessment is structured into four thematic pillars: (i) Legal, Regulatory and Policy Framework; (ii) Institutional Framework and Management Capacity; (iii) Procurement Operations and Market Practices; and (iv) Accountability, Integrity and Transparency. It includes a total of 14 indicators and 55 sub-indicators. It is based on a logic of quality of services delivery and evidence-based outcomes. It identifies substantive gaps and red flags for each indicator, and provides recommendations for remediation (capacity building, reforms, etc.).
2. Semi-structured qualitative stakeholder interviews provided background information on issues identified from the perspective of different stakeholders. In combination with the next section (3.2 Stakeholder Analysis), they can be used for a third approach of assessing risks based on an understanding of the position of different stakeholders involved in the procurement process.
3. The analysis of risks in public procurement (Annex 6.1.1) conducted by IDIS identifies risks during different stages of the procurement process. This analysis highlights several top priority risk areas within almost all stages of procurement. According to the INTOSAI methodology applied (www.intosai.org), they are classified as “Extreme” and “High” Risks. Immediate attention and dedicated efforts are required for their management.

3.1.2 Most important risks in public procurement

Based on the MAPS Report, structured interviews carried out as part of the inception phase of this project, and a study conducted by IDIS the **most important risks** are as follows:

Extreme Risks are associated mainly with actions or inactions by the Contracting Authorities (CA). This concerns the following items:

- 1) The CA may not provide timely and complete information to CSO representatives accepted as members of a working group, such as the date, time, and place of the tender evaluation session;
- 2) The centralized procurement conducted by the Center for Centralized Public Procurement in Healthcare (CCPPH) has been conducted through the old e-procurement system that does not allow access to tender documentation, bids and other documents (NOTE: As of 1 January 2021, procurements carried out by CCPPH have been incorporated in MTender system);
- 3) Conflicts of interest between CA public procurement working group members and one or more of the bidders are undisclosed and result in unethical behavior;
- 4) CAs ignore the recommendations of the PPA to correct illegalities/irregularities identified by the Agency;
- 5) CAs pay no penalty for breaking the PPL and/or other regulations, as PPA has no authority to sanction CAs for breaches of procurement legislation and regulation;

- 6) CAs do not report to the PPA for inclusion in the blacklist those contractors that have committed breaches in procurement rules.
- 7) There is a lack of professional training for staff of contracting agencies, which leads to errors in understanding and adhering to the rules and procedures for public procurement

High Risks identified require senior management attention and involve primarily deviations from good procurement practice and process. These include:

- 1) Failure to properly plan procurements;
- 2) Splitting requirements to use less formal procurement methods;
- 3) Improper description of requirements;
- 4) Locking out competent CSO representatives from the procurement;
- 5) Support of non-competitive actions; and
- 6) Other failures to adhere to the law and regulation.

The remaining **Medium and Low Risks** identified in Annex 6.1.1 help to round out the view of the shortfalls in how the procurement process is actually functioning in Moldova.

The combined set of risks provides a **framework for developing a curriculum for training** CSOs and investigative journalists under this project aimed at understanding and addressing these identified problems. The listed risks make clear that for CSOs to perform their monitoring role effectively, the PPA should be more aggressive in demanding compliance by CAs with the existing procurement legislation, regulations, and procedures. However, the authority of the PPA is limited in sanctioning non-compliant CAs and the information available now through the MTender eProcurement system does not provide fast, reliable information on important aspects of procurement transactions.

Correcting **structural and legal inadequacies** in the Moldovan procurement system is beyond the scope of this project. However, training under the project will concentrate on these identified risks so that CSOs and investigative journalists are aware of where potential problems lie and can identify and call attention to them when they are spotted through their monitoring activities.

Based on the analysis (Consolidated Recommendations of the MAPS Report, see Chapter 4, in particular Pillar II, Recommendation 3, and Pillar III, Recommendations 2 and 3, the Risk Analysis, as well as the Stakeholder Interviews) the following priorities apply to the context of this project:

- Lack of skills and resources, especially in local areas by both CSOs and CAs
- Lack of knowledge of and confidence in the system by Economic Operators (EOs) resulting in low competitiveness of tenders

Consequently, PTF and IDIS will set training and monitoring priorities as follows – in order to reach the main project objective of enabling CSOs and investigative journalists to conduct effective monitoring:

- Attempt, where feasible, to ensure the training reaches additional stakeholders, instead of limiting participation to CSOs – Including EOs is especially important in the local context.
- Provide, where possible, infrastructure and/or platforms networking, and exchange of ideas to foster dialogue that can increase confidence in addition to the knowledge acquired.

3.2 Procurement stakeholders

The objective of the stakeholder analysis is to answer the following **guiding questions**:

- Who are the relevant players in public procurement and CSO/ investigative journalistic monitoring?
- What is their position with regard to Public Procurement and to this project?

Procurement stakeholders are identified in Annex 6.2.

3.2.1 Control authorities

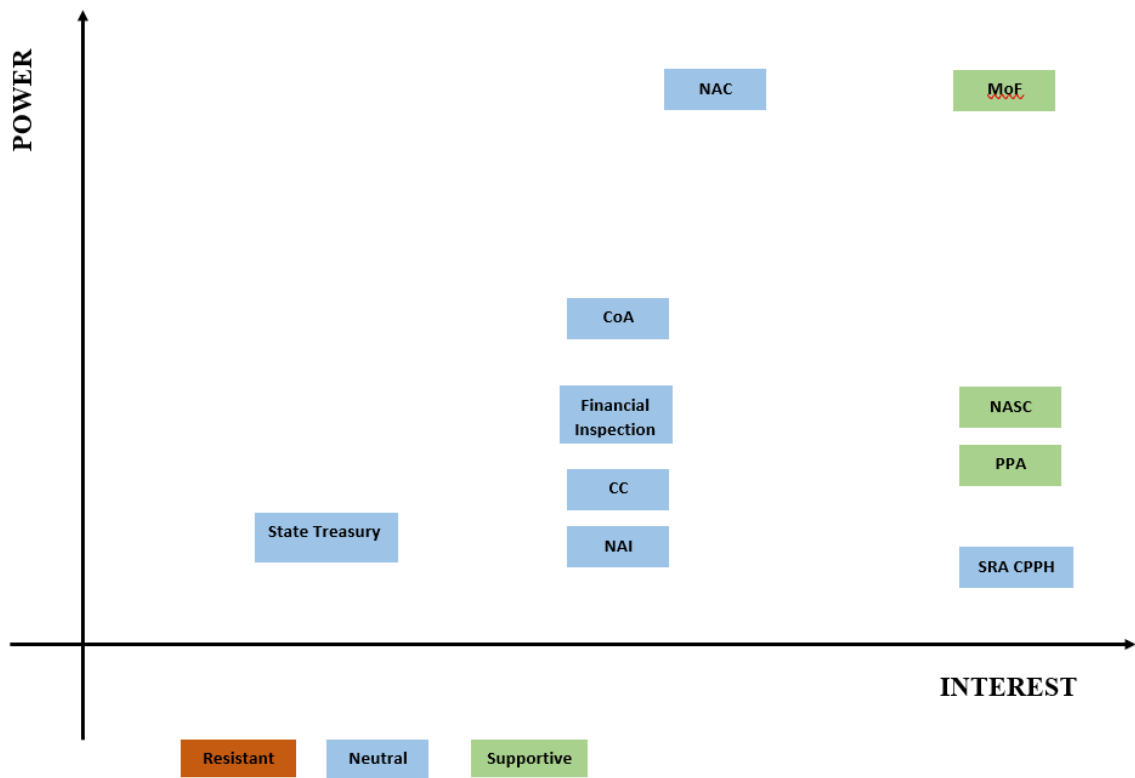
Most important control authorities | The key public control entities for procurement in Moldova are summarized in the table 1 below:

Table 1: Key control authorities in public procurement

Ministry of Finance (MoF) is responsible for ensuring a functional, efficient and transparent legal framework in the field of public procurement. MoF support for the project is essential to facilitate government entity involvement in project implementation and MoF is key to making improvements in the MTender system. State Treasury is a General Directorate within the Ministry of Finance. It has minimal impact on the project but can cause significant delays in completing contract actions because of delayed registration of contracts due to lack of electronic system. Financial Inspectorate (FI) under the Ministry of Finance is to ensure compliance with legislation on transactions that involve the national public budget. Contract actions are subject to review by the FI. CSOs may report systemic problems found through procurement monitoring to the FI. Public Procurement Agency (PPA) is an administrative authority under the Ministry of Finance. Key responsibilities of the PPA affecting the project are: 1) Establishing, updating and maintaining the List of Debarred firms; 2) Monitoring the compliance of public procurement tenders with the national legislation and analysing the performance of the public procurement system; and 3) Maintaining the official website for public procurement. National Agency for Solving Complaints (NASC) handles complaints related to public procurement procedures. The Agency has seven counsellors tasked with the resolution of appeals, including the general director and his deputy. NASC does not have mechanisms to enforce the execution of their decisions, which sometimes are ignored. Court of Accounts (CoA) is the supreme audit institution of the Republic of Moldova. Currently, the Court of Accounts is performing a compliance audit of procurement within all 9 existing Ministries, separately for each of the Ministries. National Anticorruption Center (NAC) is tasked with optimizing the procurement process, developing the capacities of contracting authorities in conducting public procurement, preventing corruption in the field, and strengthening internal control procedures in public procurement processes. Together with the PPA and MoF the NAC is to develop a set of indicators for the PPA to collect statistical data on procurement. National Integrity Authority (NIA) is responsible for resolving conflicts of interest and other wrongdoing by public officials or suspected breaches of integrity. At this time, the involvement of the NIA in the project appears to be minimal. Competition Council (CC) is an autonomous authority, subordinated to the Parliament, which ensures the enforcement and observance of the legislation in the domain of competition, state aid and advertising. While the CC has an interest in the overall system, it will have a minimal direct effect on the project. Center for Centralized Public Procurement in Health (CAPCS) was established for the organization and functioning regulation of the Center for centralized public procurements in health and regulation of the purchase of medicines, other medical products and medical devices. The Center is one of two centralized contracting authorities and will likely be a target of CSO monitoring under the project. State Road Administration (SRA) is a contracting authority responsible for the efficient management of financial resources allocated from the State Budget, Road Fund and external sources for rehabilitation, development, modernization and maintenance of the national public road network, according to policies and programs of the Ministry of Economy and Infrastructure. The SRA is expected to be a target for CSO monitoring under the project.
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Interests and Powers of Control Authorities | To understand the position of control authorities, including their expected disposition towards the activities of this project, the Stakeholder Analysis conducted by IDIS includes an assessment of their influence (Power and Interest) as well as attitude towards the project in form of a simple Power-Interest Matrix.

Graph 1: Power-Interest Matrix of Stakeholders



Source: IDIS

Strength, Weaknesses, Opportunities and Threats of Control Authorities | To understand the position of stakeholders, including their expected disposition towards the activities of this project, the Stakeholder Analysis conducted by IDIS includes an assessment of Strengths, Weaknesses, Opportunities and Threats (SWOT) as far as their involvement in this project is concerned.

The results are displayed below:

Table 2: SWOT Analysis of Controlling Authorities

Strengths	Weaknesses
● Public Procurement Law (PPL): Relatively good legislative framework ensured by Law 131/2015 and its subsequent modifications. ● Legislative and Institutional frameworks set up to address corruption risks in PP (GD. 370 of 21 April 2018) through the establishment of a sectorial anticorruption plan in the sphere of public procurement, and which defines the roles of the following institutions in its implementation and monitoring National Anticorruption Center (NAC), MoF, PPA, Center for Electronic Government (eGov), Competition Council, and NASC ● PPA reports suspect PP procedures to NASC ● NASC also submits to NAC information on cases in which actors in the PP system refuse to execute its decisions. ● PPA and NASC submit to National Authority for Integrity (NAI) cases suspected of conflict of interests. ● NASC: integrity of the institution's counsellors is ensured by Law 131/2015 which stipulates that the counsellors may not participate in the resolution of an appeal in the event of any potential conflict of interest. ● Competition Council (CC) has the power to analyze cases suspect to involve anti-competitive practices in the sphere of PP and to impose penalties. ● Strategy of public procurement system for 2016 - 2020 and the Action Plan on its implementation for 2016 – 2018 is implemented and the new one is in process of development (MoF is responsible for the coordination of its implementation) ● Center for Centralized Public Procurement Center in Healthcare (CCPPH) exists to conduct procurement for a critical sector in a centralized and ordered manner for hundreds of medical institutions (377 in 2019). ● State Road Administration (SRA): procurement in the roads infrastructure sector is conducted in a centralized manner. ● E-procurement system MTender covers the most common procurement procedures (Open Tender & RFQ) and can be used in manual monitor of public procurement processes	● MTender: Lack of technical functionalities of the MTender system that would ensure the entire procurement process to be carried out electronically and a number of inconsistencies between the existing functionalities and the legal framework. ● Centralization: Lack of actions from MoF and PPA towards centralization in certain areas of public procurement: Insufficient actions to evaluate the possibility to develop a centralized procurement system; it is needed to elaborate an evaluation of the benefits of centralization (in different fields/ regions) based on an analysis of international good practices from countries with a public procurement system similar one with the Republic of Moldova. ● MoF so far ensured only partial completeness of normative-secondary legal framework and harmonization with primary legislation, namely PPL. ● PPA: No ex-ante and ex-post control mechanism established. PPA has only monitoring attributes, and no ex-ante control is currently undertaken by any agency. ● PPA has no sanctioning competencies or mechanisms of coercion to enforce a correct way of conducting public procedures. ● PPA: low internal capacities (staff of 25 people) to properly ensure all legal responsibilities, including monitoring, trainings and being forced to work manually with a lot of data on awarded contracts. ● PPA did not participate in the creation of MTender system, which it considers to be rather useless for the PP system. ● PPA: Lack of information campaigns, on the part of PPA (in cooperation with the Competition Council), for economic agents about illegal anti-competitive practices in public procurement ● PPA: Necessity to elaborate a National Training Program in the field of public procurement and a certification system for procurement specialists. No mechanism for certifying PP specialists from PPA ● MTender: No Business Intelligence Tool currently existing in MTender that PPA (and other public bodies) could use to monitor and correctly assess the system. However, in April 2021 the OCP jointly with the PI and Ministry of Finance launched an OCDS BI tool which is available here Qlik Mashup (open-contracting.org) The current version is still under development and the final version it is to be finalized by the end of the year. ● MTender: e-system lacks a module (specific for centralized procurement) necessary to meet the needs of the healthcare sector (CCPPH) ● NASC doesn't have mechanisms to enforce the execution of its decisions, which sometimes are ignored. ● CC: investigations are lengthy and do not ensure timely intervention in a case of anticompetitive practices in a procurement procedure ● NASC has a limited connection to MTender, and the e-system does not reflect its entire work process. ● Coordination: mechanism of dialogue between the responsible public institutions in public procurement is not sufficiently developed

Opportunities	Threats
● MTender: An already existing e-procurement electronic system that can be improved and, its usage is already mandated by law (opportunity for CTIF, MoF, CAs, EOs and civil society organizations, monitors) ● PPA: The legal framework (PPL, Contravention Code) could be amended to give PPA (or another competent control institution) the power to sanction persons who commit administrative contraventions by violating the rules for initiating and conducting public procurement procedures etc. ● PPA: The overall situation in the system and the functioning of PPA in particular could be improved if it is enforced the usage of the electronic system by all contracting authorities and amended the legal framework in order to complete CAs to conduct SVPs in a transparent and regulated manner. ● MoF could use the expertise of civil society and procurement experts to work on further adjustment of the secondary legislation to the PPL. ● ANSC could develop and publish unified practices (with the support of civil society and procurement experts) following their experience in complaints settlement to create predictability and decrease of the unjustified complaints. ● PPA could partner with civil society organizations to ensure more specialized training in public procurement, both the CAs and EOs. ● Legal and Regulatory Framework: Continuous improvement of the legal and regulatory framework and harmonization with EU regulations (MF) ● MF and PPA: Orientation towards sustainable public procurement (MF and PPA) ● Capacity Building: Opportunities for stakeholders, CA and CSO to participate at programs, seminars, workshops (in country or abroad) with the participation with international experts specialized in public procurement. ● Exchange of information and experience on best practices and regulations in the field of public procurement. ● Integrity Pacts: PPA and CSOs in cooperation with selected Economic Operators could promote the use of instruments to enhance transparency and integrity, such as the adoption of a code of ethics by all parties and pilot the use of Integrity Pacts in procurement projects. An Integrity Pact is an enforceable agreement between bidders and the government to procure in an ethical manner with a monitor (often a CSO) to ensure the terms of the Pact are followed.	● Small value procurement: PPA unofficially estimates that between 90 and 95% of public procurements are small value purchases (SVPs – up to 20000 MDL). Sometimes, as CoA has found, procurement is divided by CAs into small direct procurement that would fit the SVP threshold. The conduct of SVPs is poorly regulated, and takes place outside the MTender (threat for the integrity of CAs) ● CoA (Court of Accounts): conducts only occasionally audits specifically focused on public procurement. ● CoA: audits prove that the phase of the execution of the PP contracts is unregulated and unmonitored which poses a major threat for CAs ● State Treasury (ST): Mechanism of mandatory contract registrations in PP by the State Treasury (ST) is unclear and confusing. ● NAI: Specific competencies of National Authority for Integrity (NAI) in PP not expressly stipulated in legislation, except the fact that NASC counsellors must have not been previously investigated by NAI. ● NAI is not mentioned altogether in the Sectoral anti-corruption plan in the sphere of PP for the year 2018-2020 ● Financial Inspection (FI): Specific competencies of FI in PP not expressly stipulated in law ● NAC: Aside from its role in sectoral anti-corruption Sectoral plan, NAC has no role precisely defined in the PP system. ● NASC currently does not use standards of the judicial practice of solving complaints in the public procurement system ● NASC has only very few (3) unified practices related to the filed appeals resulting in unpredictability of the complaints system both for CAs and Eos and leads to unjustified complaints ● CCPPH: Although the CCPPH started to use again the MTender system for procurement in January 2021, there is not yet developed a separate module (within or outside MTender) tailored for CCPPH. ● SRA: National regulatory framework does not clearly and in detail describe the status of the SRA as a contracting authority that performs centralized procurement.

Source: IDIS

3.2.2 Civil society actors

Civil Society Organizations (CSOs) in Moldova relevant to this project are split into two main groups: CSOs in Chisinau with solid organizational capacities and technical expertise, as well as national and international networks and sources of funding (Table 3). Secondly, there is a much larger group of local, community based CSOs that, unlike the first group, are often focused on a certain sector, such as education, health, or other. This group has much lower capacities, in all aspects, staff, technical expertise as well as funding.

As far as the **central group** is concerned, there is an informal group that is loosely networking without a fixed structure under the rubric Tender.Health. They are occasionally consulted by government agencies for input on policy, legal and institutional questions related to health procurement.

Table 3: CSOs involved in public procurement monitoring

- | |
|---|
| <ol style="list-style-type: none"> 1. AGER: is periodically monitoring public procurement and publishing their findings in two different ways: as procurement monitoring reports and separately per procurement. 2. LEX 21: is actively monitoring procurement in the north region of the country with more focus on Balti Municipality, both by publishing its findings on irregularities as well as by publishing monitoring reports. The most recent reports were presented in 2020. 3. Radio Orhei: has monitored the procurement conducted by Orhei Municipality during 2018 and is publishing findings on irregularities in the procurement process of the Orhei Municipality from time to time on their news portal. 4. ADR Habitat: is monitoring public procurement occasionally, mostly procurement of the Rezina City Hall and sometimes other local public authorities from the region. 5. AO Parinti solidari: is mainly monitoring public procurement of food in schools and kindergartens. Also in cooperation with AGER they monitor some procurement related projects. 6. Positive Initiative is monitoring health procurement and delivery of health services in cooperation with CCPPH |
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3.3. Training Needs

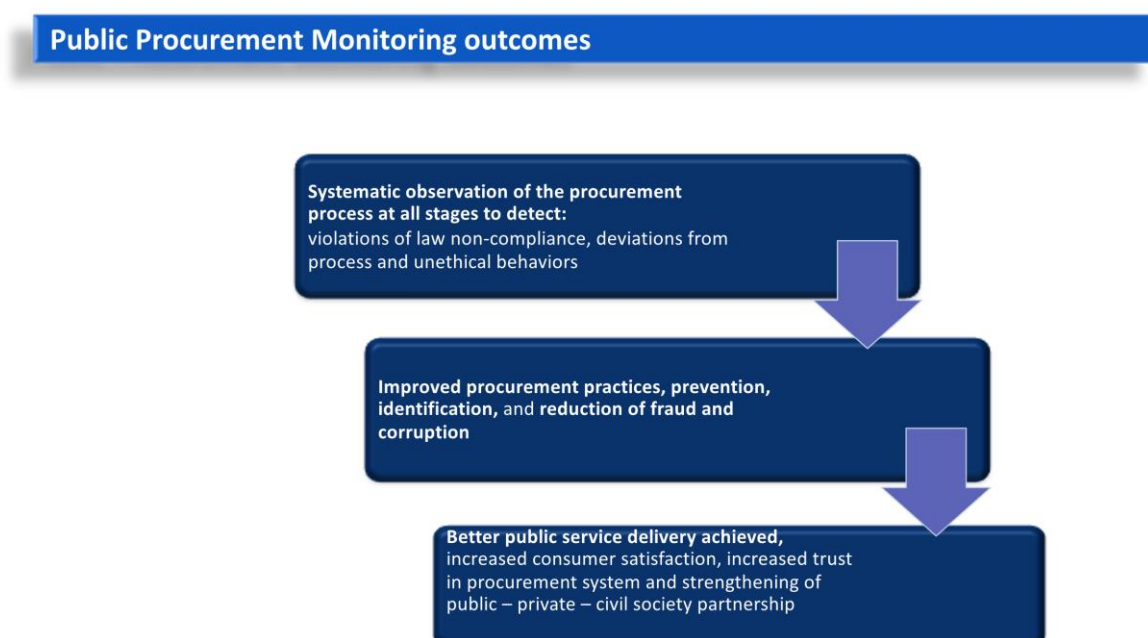
3.3.1 Target groups for the training

Answering this question requires defining: (i) what public procurement monitoring is; (ii) what the project objectives are; and (iii) how these objectives can be achieved.

- What is public procurement monitoring?
- What can it achieve?
- How can it be achieved?

Public procurement monitoring can be defined as a third-party observation, tracking or oversight of the public procurement process. For the purposes of this project, public procurement monitoring includes the procurement process proper as well as the monitoring of contract implementation/ delivery of goods and services procured. It can be carried out in different ways, with different tools and at different levels. For instance, at the macro level, civil society organizations (CSOs) or investigative journalists could be monitoring a set of procurement awards and associated spending patterns to analyze them in order to influence future legislation and government policies. Conversely, if CSOs or investigative journalists want to monitor at the micro level, they will concern themselves with specific public procurement processes (e.g., restricted or non-competitive awards) or specific stages of the procurement processes, identifying legal violations and/or warning signs (red flags) of potential fraud or corruption. When monitoring, CSOs and investigative journalists observe, review, analyze, disseminate, and discuss publicly available and investigative data and information, which they report and follow-up. Below is an illustration of what successful public procurement monitoring can achieve.

Graph 2: Public Procurement Monitoring Outcomes



Source: Partnership for Transparency (PTF)

There are also other actors which carry out some form of monitoring. For instance, Contracting Authorities monitor contractors, suppliers and service providers on a day-to-day basis, while government control entities

(such as procurement regulatory agencies) conduct selective independent monitoring. All these actors and the type of monitoring they conduct play a **complementary role** in making public procurement more efficient, transparent and competitive.

Meeting the project’s objectives as outlined below in Table 4, at a minimum requires providing training to CSOs already active or desiring to become active in public procurement monitoring and investigative journalists reporting or interested in reporting on public procurement-related topics. It also requires technical support to monitoring CSOs and journalist organizations in the monitoring phase.

Based on the work conducted during the project inception phase, PTF and IDIS came to the conclusion that providing training only to these two groups would probably not achieve the full potential of public procurement monitoring. Consequently, a decision was made to adopt a more inclusive approach by inviting the private sector (economic operators) to participate in some parts of the training relevant to their role.

Table 4: Project objectives

Objective 1: Moldovan Civil Society Organizations (CSOs) and investigative journalists are sufficiently equipped to conduct a meaningful monitoring of procurement processes. Objective 2: Procurement processes are appropriately monitored by Moldovan CSOs and investigative journalists, making use of the e-procurement system and other sources of information. Objective 3: Findings and recommendations resulting from credible and professional CSOs and investigative journalists monitoring are taken seriously and acted upon by contracting entities, contractors and government oversight and law enforcement entities, including the National Anti-Corruption Center.
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Having this wider audience participate in the training will increase the capacity of all parties involved. It will highlight the role that CSOs and investigative journalists can play to prevent and/or identify risks in procurement, reduce potential fraud and corruption – all issues that represent a sizeable risk and potential cost for the economic operators and civil society at large. This will contribute to increased transparency, efficiency and compliance, boosting the confidence of economic operators in the system and in the competence and objectivity of monitoring CSOs and journalist organizations. This will hopefully broaden EOs’ participation in the public procurement market.

This partly common training will allow a better mutual understanding of the private sector, CSOs, and investigative journalists. This will set the stage for a fruitful dialogue where government entities responsible for overseeing the public procurement system, including law enforcement agencies in the case of suspected criminal activities and corruption, will be more receptive to potential queries and requests for investigations submitted by CSOs and investigative journalists as a result of their monitoring activities.

3.3.2 Content of the training

To be effective the procurement monitoring training will have to take into consideration the context in which public procurement operates in Moldova, as outlined above. Also, interviews conducted during the Project Inception Phase with contracting entities, contractors, government oversight and law enforcement entities, including the National Anti-Corruption Center, economic operators and business associations such as the Alliance of Small and Medium Businesses (AIM) and the American Chamber of Commerce (AmCham) will help shape the curriculum.

Insufficient Resources for Procurement Training for Economic Operators and CSOs | As explained in the World Bank’s Methodology for the Assessment of Procurement Systems (MAPS) draft report of August 2020, existing resources and initiatives for procurement training for economic operators and CSOs are insufficient:

“The Public Procurement Agency (PPA) has included information and training for economic operators in its training curriculum, but the volume of such training actually provided is not large, reflecting a very weak demand from economic operators”. (page 86 of the MAPS report)

The same report mentions that: “In addition, both the PPA and the e-procurement platforms interfacing with contracting authorities and economic operators offer information and training in the mechanics of using the e-procurement system. There are no other public programmes for supporting private sector participation in public procurement.” (page 86 of the MAPS report)

The report also highlights training efforts by the Chamber of Commerce and Industry and CSOs:

“As a complement, to compensate for the relative weakness of the official Government programmes, NGOs (e.g., IDIS) and the business organisations, such as the Chamber of Commerce and Industry, organise information and training sessions on public procurement for their members, though not on a regular, permanent basis, and occasionally give advice in particular cases.” (page 87 of the MAPS report)

The way trainings for economic operators were conceived does not make for a sustainable approach, they were not necessarily systematic, had more of a theoretical focus than a practical one, and were not provided on a regular basis. As for CSOs, IDIS has already provided several trainings within a prior project "Cutting edge improvements in the public procurement system in Moldova through inclusiveness, creativity and law - abiding practices" (2017-2019). In total, 30 civil society representatives participated in 16 training sessions between 26 September and 16 November 2017, and 150 economic operators (those who wanted to participate in public tenders) participated in 8 workshops up to July 2018. Additionally, one field-tailored module of training for civil servants specialized in public procurement was developed, published and disseminated.

The type of training offered by IDIS to CSOs was more comprehensive, but it was not available on a recurrent basis. From the CSOs previously trained by IDIS, five have already engaged in public procurement monitoring.

The training planned under this project will seek to increase the number of CSOs and investigative journalists engaged in procurement monitoring, will update the knowledge of previously trained individuals/organizations in terms of legal and regulatory changes, familiarize them with new monitoring tools and deepen their analytical skills in risk identification and assessment. The funding of 8-10 organizations for a period of around 15 months following successful completion of the training and coupling this with ongoing monitoring and mentoring by IDIS and PTF will increase the likelihood that these organizations will develop a high level of competence in procurement monitoring that will be sustainable beyond the life of this project.

Providing a forum (roundtable event) to foster dialogue among CSOs, investigative journalists, contracting authorities and economic operators that ideally could lead to the use of **Integrity Pacts** and adoption of codes of ethics for all parties is a novel element of the training to be provided under this project. Integrity Pacts are agreements that are entered into between procuring authorities and bidding companies/selected contractors. Normally, a civil society organization monitors the compliance of all stakeholders with these agreements.

Integrity Pacts ensure transparency in all stages of the procurement process, from needs assessment to contract management and payment. Integrity Pacts prevent corruption by providing adequate incentives and sanctions for both the public authorities and the bidders. Integrity Pacts detect corruption, in particular through a whistleblowing system that both encourages and protects against potential retaliation. Integrity Pacts build confidence among all stakeholders.

Training needs assessment | To develop a robust, relevant curriculum adapted for the extended target population the following questions should be answered:

- What issues does our training target population encounter?
- How can we address these issues?
- How do we do that efficiently and in a practical way?

The baseline work with the interviews and the needs assessment carried out by IDIS during the Project Inception Phase (See Annex 6.3.1 to this report) are intended to answer these questions. The needs assessment, carried out in January 2021, provided good feedback in terms of the level of interest in training on public procurement monitoring, as well as yielding useful information to guide the scope and type of training needed. Surveys were sent to 326 individuals and responses were received from 79, a response rate of 24%. Of those responding, around 75% are active only at the local level, with the balance being active either at the central level (6%) or a mix of both. Out of the total, 59 respondents (74.7%) represent civil society organizations, 6 respondents (7.6%) represent media institutions, and other 14 (17.7%) are civic activists / independent monitors. Approximately 19% self-reported as having vast experience in public procurement monitoring, with the remainder indicating they had little to none. Just over two-thirds of respondents reported having adequate organizational capacity and human resources to engage in public procurement monitoring, and 92% of respondents expressed a willingness to participate in training in public procurement monitoring. This high degree of interest suggests there will be sufficient numbers of individuals from competent CSOs and media organizations to ensure an adequate number of qualified participants for the training. (Annex 6.3.1 survey and responses.)

Lack of transparency and openness on the part of the Contracting Authorities is a prominent issue identified in the survey. Lack of action by control/law enforcement bodies after being informed of monitoring results as well as insufficient level of knowledge and skills among CSOs and investigative journalists necessary to analyze and monitor procurement also scored high in the survey.

When asked which topics they would like to see covered in the training, several topics were identified as important. Among those, monitoring tools, methodologies and their application scored the highest, with the procurement process and procedures, the operation of MTender being next, followed by ways for civil society to collaborate with the authorities in the field of public procurement.

During the Project Inception Phase, PTF and IDIS conducted several brainstorming sessions to identify the appropriate content and format for the curriculum. There is a need for a competency-based practical and dynamic training with the different categories of trainees attending the sessions relevant to their responsibilities/roles in public procurement. The training will introduce the concept of effective and responsible procurement monitoring, highlighting possible corrective actions. It will emphasize risks in procurement, important red flags, risk indicators and risk evaluation. It will also stress the importance of a systematic approach with the use of checklists covering different stages of the procurement process, access to reliable data and analytical tools. Due to the inclusion of private sector participants (economic operators) in some of the sessions, topics pertaining to business ethics and the use of Integrity Pacts will be part of the program. An overview of the curriculum can be found at Annex 6.3.3 to this report.

3.3.3 Training modalities and training dates

It is anticipated that the training will take place between October and December 2021, with 12 Modules, two modules per month, consisting of 2 training sessions each imparted over two days. To take into consideration the expanded target training population, it was decided that a modular approach would be best to allow different categories of participants to attend what is relevant to them. Depending on the COVID situation, the entire training could be virtual or alternatively blended with some sessions being conducted online in the form

of webinars and others face-to-face in a classroom format. A decision on the format will be made closer to the planned starting date for the training.

The training will make use of working groups, discussions, experience sharing with examples and case studies, some of them to be developed by CSOs to showcase their work, issues faced, and results obtained. The online part of the training will take full advantage of tools conducive to a more active participation of the attendees such as polls and breakout rooms. To support their procurement monitoring activities, participants will be trained in the use of different monitoring tools in the MTender system as well as outside. They will also be provided with an updated version of IDIS's Monitoring Guide.

3.3.4 Procurement information and monitoring tools

The project team analyzed what important procurement information or documentation was readily available to monitors, whether in MTender or elsewhere.

Annex 6.4.3 discusses procurement information and monitoring tools currently available in Moldova and outside of Moldova. It identifies in table format key procurement information and documents and where they can be found (in the government's e-procurement system, MTender, or somewhere else). As can be observed from that table, essential documents such as Procurement Plans are not always available, contract notices are not available at all and neither are tender opening minutes.

Annex 6.4.3 also highlights different sources of information within the government and outside. It refers to the data available on the Public Procurement Agency web page, the information available on NASC's (the Procurement Complaint Agency) web page analysis showing reports on procurement complaints lodged by bidders and their resolution. It also mentions the audit reports available on the Court of Accounts web page and the decisions, investigations, and reports available from the web pages of inspection authorities, regulatory bodies and supervisory bodies.

Tools developed in Moldova in the MTender system and outside of the Government-mandated e-procurement system and an analysis of their potential usefulness in the training and in the subsequent monitoring.

Annex 6.4.3 reviews all tools developed in Moldova that can be used for procurement monitoring and details the information they can provide. It differentiates between tools developed for generic monitoring purposes such as the Open Contracting Portal and tools developed for a specific purpose such as the 2.0 Version of OpenMoney.md which shows connections between public procurement contracts and beneficiaries. It describes tools available for certain procurements such as Tender.Health for COVID 19-related procurements which is a tool designed by the Ministry of Health. *Revizia.md*, a platform developed by AGER, is built around red flags in procurement. The platform is designed to facilitate monitoring of public procurement by civil society actors. The risk indicators can be found here: <https://scoring.esempla.systems/statistics>. Other tools, are being developed, including a Business Intelligence Module (BI) which should be available in spring 2021.

Tools developed elsewhere that could be relevant and usable in the Moldova context and which tools are being planned for the future

Annex 6.4.3 describes the "Red flags Civil Society Monitoring Tool" developed by Transparency International USA, which sets forth examples of situations representing indicators of possible irregularities or fraudulent or corrupt practices and how to identify these indicators. The Annex explains how this methodology has been used as a base by AGER, one of the CSOs already conducting regular monitoring activities to develop its own methodology.

The analysis of all these sources of information, techniques and tools provides a comprehensive overview of what can be used for monitoring. This information will be covered in the future training to empower monitors in their future activities.

3.3.5 Conclusions

Based on the findings of the baseline study completed under this project, it is clear that there is a **need** – and an appetite – **for improving the fairness, transparency and efficiency of the public procurement** system in Moldova, with the ultimate goal of providing citizens with improved quality of goods and services and ensuring value for money. There is evidence of wide support for an expanded and enhanced role for civil society actors in contributing to these outcomes by serving as independent monitors of public procurement at all stages of the process.

There already exists in Moldova a small core of **highly competent and dedicated CSOs and investigative journalists engaged in procurement monitoring**. The potential exists to expand both the number and regional coverage of such monitors by training additional organizations and individuals, which this project aims to do. Strong interest in such training has been expressed by respondents to a survey of 326 individuals representing CSO and journalist organizations that was designed and carried out as part of this project.

While trainings of CSOs, investigative journalists and EOs have been done in the past, the most recent such efforts were in 2018, around the time of the launch of the pilot e-procurement platform MTender. Many developments have occurred since 2018, including legal and regulatory changes, launching or upgrading of new tools such as OpenMoney.md, Revizia.md, and Tender.Health. Most important, however, has been the removal of uncertainty around the future of MTender. Despite a negative assessment by European Dynamics, a company hired by the EU to carry out a review of MTender and evaluate whether it could be improved, upgraded and expanded, the Ministry of Finance of Moldova has decided not to abandon **MTender** in favor of a new system but rather to carry out the necessary work to ensure that the platform meets the standards and needs of all users, including contracting authorities, civil society actors, and economic operators.

The time is thus ripe to upgrade the knowledge and skills of previously trained CSOs and investigative journalists, as well as to train additional organizations and individuals in these categories to engage in competent and responsible monitoring of public procurement.

Many of the reports consulted for this project, including the MAPS, refer to the reluctance on the part of many **Economic Operators** to participate in bidding on public procurement opportunities, citing a mix of confusing regulations and procedures, and a lack of trust in the openness and fairness on the process. A well-trained cadre of CSOs and investigative journalists serving as watchdogs in public procurement can help increase the transparency of process. The plan to include Economic Operators in some parts of the training under this project, e.g., learning more about the legal and regulatory frameworks and control bodies, and to follow that with a roundtable dialogue among Contracting Authorities, Economic Operators and CSOs the value of codes of ethics and the use of Integrity Pacts, has the potential to lead to the formation of a multi-stakeholder group (outside of the scope of this project) that could serve as an ongoing forum for enhancing transparency in public procurement in Moldova.

An important conclusion from the inception phase is that in spite of **COVID-related restrictions on travel and physical meetings** lasting longer than expected, it has been possible to complete the work envisaged without major delays and achieving what we set out to do. In some cases, such as the development of the training program, the work program is ahead of schedule. The experience, hard work, competence and dedication of the local partner IDIS has contributed significantly to this positive outcome. The only delay that has occurred

due to the pandemic is the official launch event to be held with key stakeholders in Moldova. Originally planned for June 2021, this has now been moved to the latter part of September. If conditions do not at that time permit an event with the physical presence of participants and speakers, then a virtual event will be arranged instead.

4. Project implementation plan

The Project Implementation Plan below lays out the major activities to be undertaken under the project and identifies responsible parties. In setting out the respective responsibilities of IDIS and PTF for carrying out the activities in the implementation plan the terms “lead” and “support” partner have been used. “Lead” means being responsible for initiating the activity by drafting the initial proposal for what to do, to finalize the proposal after agreeing with the “support” partner and to ensure that the activity is brought to a successful completion. “Support” means review, comment and provide other support agreed with the “lead” partner. Decisions are consensual: the “lead” partner will not proceed without the consent of the “support” partner.

Table 5: Project Implementation Plan

Activity	Responsible		Deadline
	IDIS	PTF	
Phase 1. Inception Phase and Training Phase			
Preparation for training and implementation of training: Development of curriculum and teaching materials, updating of IDIS’s Monitoring Guide, selection and training of trainers, Launch Event, selection of training participants and training (1 May- 31 December 2021)			
1. Preparation of the training program: Curriculum development, preparation of training materials.			
1a. Select and contract CSOs and investigative journalists previously trained by IDIS and/or already engaged in procurement monitoring to provide examples of monitoring done by them. These entities and individuals will prepare such examples using guiding material provided by IDIS and PTF. How did they monitor? What did they monitor? When? Results obtained?	IDIS leads drafts guidelines, selects and contracts	PTF supports Drafts Terms of Reference and reviews guidelines.	15 April 2021
1b. Oversee the preparation of: (i) Case Support Documents by CSOs and investigative journalists. (ii) PowerPoint presentations by selected CSOs and investigative journalists.	IDIS leads. Reviews and provides feedback to CSOs and investigative journalists with the purpose of producing material suitable for the training.	PTF supports. Assists IDIS with review and feedback as requested by IDIS.	(i) 30 June 2021 (ii) 15 July 2021
1c. Based on the training curriculum drafted in March/April 2021, develop training materials drawing on the results of the baseline work, training needs assessment, case support documents and experiences from other countries.	IDIS leads Develops draft training material	PTF supports Reviews and comments based on PTF international experience	31 July 2021
1d. The training will be divided into twelve (12) modules as shown below and will possibly include the development of case studies (potentially developed jointly by PTF and IDIS). Other modules may be added or substituted, depending on the needs and level of preparedness of CSOs and journalists to undertake monitoring. The training will be delivered in the October 1 to December 20			1 October 2021- 20 December 2021

Activity	Responsible		Deadline
	IDIS	PTF	
period with two modules delivered on consecutive days every two weeks.			
<u>Module 1 (day 1)</u> Introduction to the importance and principles of monitoring public procurement; the legal and institutional framework in matters pertaining to public procurement	IDIS supports. IDIS+ selected trainer lead	PTF+selected trainer lead PTF supports.	
<u>Module 2. (day 2)</u> Legal and institutional framework in matters pertaining to public procurement (continuation)	IDIS+ selected trainer lead	PTF supports.	
<u>Module 3 (Day 3)</u> The public procurement process (pre-tender stage and tender stage)	IDIS+ selected trainer lead	PTF supports.	
<u>Module 4 (Day 4)</u> The post-tender stage and the Public Procurement Contract	IDIS+ selected trainer lead	PTF supports.	
<u>Module 5 (Day 5)</u> The remedy system: legal framework & complaints against the procurement procedure	IDIS+ selected Trainer lead	PTF supports.	
<u>Module 6 (Day 6.)</u> Transparency in public procurement; access to data & protection of personal data	IDIS+ selected Trainer lead	PTF supports.	
<u>Module 7 (Day 7)</u> Conflict of interests and corruption in procurement.	IDIS+ selected Trainer lead IDIS supports.	PTF supports PTF+selected trainer lead	
<u>Module 8 (Day 8)</u> Competition and anti-competitive agreements in public procurement	IDIS+ selected Trainer lead	PTF supports	
<u>Module 9 (Day 9)</u> Public procurement monitoring tools (red flags) and other tools	IDIS+ selected Trainer lead	PTF supports	
<u>Module 10 (Day 10)</u> Public procurement monitoring tools (red flags) and other tools (continuation)	IDIS+ selected Trainer lead	PTF supports	
<u>Module 11 (Day 11)</u> Post-monitoring actions: advocacy and notification of responsible authorities	IDIS+ selected Trainer lead	PTF supports	
<u>Module 12 (Day 12)</u> Engaging in effective procurement monitoring & Building a sustainable monitoring strategy	IDIS supports	PTF+selected trainer lead	
The training will introduce the concept of effective and responsible procurement monitoring, highlighting possible corrective actions. It will emphasize risks in procurement, important red flags, risk indicators and risk evaluation. It will stress the importance of a systematic approach			

Activity	Responsible		Deadline
	IDIS	PTF	
with the use of checklists covering different stages of the procurement process, access to reliable data and analytical tools. The training will be as practice oriented as possible, minimizing theoretic concepts to the amount necessary. To support their procurement monitoring activities, participants will be provided with implementable tools, including a compendium of "Guidelines and Resources for Procurement Monitoring", based on an updated version of IDIS's Monitoring Guide.			
1.e. Update the Monitoring Guide prepared earlier by IDIS, introducing recent improvements to the MTender system by the Ministry of Finance, relevant findings from the MAPS assessment, IDIS analysis of recently amended and/or adopted legislation and regulations, and from the assessment of existing monitoring tools (including from case support documents, see 1(i) above) and the necessity/feasibility to develop new ones. The monitoring guide will continue to be updated on a regular basis reflecting among other improvements in the MTender system, the results of the training and of the monitoring by grantees (see phase 2 below).	IDIS leads	PTF supports. PTF has provided an early draft including some content from a similar guide produced for Ukraine, some content from IDIS earlier monitoring guide, suggestions for updates as well as a new proposed structure and approach.	1st up-date 30 June 2021 2nd up-date October 1, 2021 3rd update 15 January 2022 4th up-date 1 June 2023
2. Selection and training of trainers (May 31,2021-June 30,2021). In consultation and cooperation with PTF IDIS will:			
2a. Select the trainers based on agreed objective criteria. The trainers will be a combination of international procurement "topic experts", investigative journalists and local and international experts on Moldovan procurement law, secondary legislation, practices and institutions and the existing e-procurement system.	IDIS leads. Develops selection criteria and selects trainers	PTF supports including providing and suggestions for international trainers if applicable	May 31,2021
2b. Design organize and conduct training of trainers' sessions to ensure commonality of concepts and views around the training curriculum, materials, training methods (theoretical training and use of case studies) and format. Depending on the COVID situation these sessions might be face-to-face or online.	IDIS leads. Designs, organizes and conducts training of trainers.	PTF supports including providing experiences with training of trainers from other countries.	June 30, 2021
3. Selection of training participants and delivering training to selected participants:			
3a. Conduct a selection process for training participants including CSOs, investigative journalists and economic operators For CSOs and investigative journalists, this will be done through an open and competitive call, keeping in mind that the aim is to have a minimum of 25 participants (including	IDIS leads. Develops selection criteria and selects all training participants. In the case of Economic operators selection will be based mostly	PTF supports	31 August 2021

Activity	Responsible		Deadline
	IDIS	PTF	
national, regional and local civil society monitors and journalists) representing at least 15 organizations which could be candidates for support in the monitoring phase. For economic operators, they will be approached through the Chamber of Commerce or another business association to encourage their participation in the training. However, other firms may self-select. For CSOs and investigative journalists, the criteria for selection will be informed by the results of the training needs assessment. Examples of criteria to be used are: – Knowledge of procurement and MTender; – Experience in monitoring procurement with or without MTender; – Knowledge and experience in investigative journalism; – Motivation, meaning CSO or investigative journalist is serious about procurement monitoring as a public service; – Regional dispersion: The target will be to have CSOs, and investigative journalists based in or working in as many regions of Moldova as possible; and – Sustainability, meaning having the capability to mobilize the human and financial resources to sustain monitoring over the long run.	on recommendations by business associations but there will also be an option to self-select.		
4. High Profile Launch Event:			
4a. Organize a high-level project launch event in Chisinau championed by the Ministry of Finance and moderated by IDIS. Depending on the COVID situation at the time, the event might be face-to-face or virtual. A decision in that respect will be made at the end of July 2021. The high-level launch event will help draw attention to the project and enlist support from the government and the public. The event will include specialists in procurement, CSOs, journalists, government officials, private sector representatives and representatives of international donors as speakers and participants. The event will bring together key actors in charge of procurement and of monitoring procurement from government, the private sector, civil society and the donor community with those designing, implementing and operating the MTender system.	IDIS leads, Identifies and invites champion, speakers and participants from Moldova, proposes the venue and content and organizes the event and publicity around the event in Moldova.	PTF supports. Identifies and invites international speakers and participants.	29 Sep 2021

Activity	Responsible		Deadline
	IDIS	PTF	
During the high-level launch event the outline of the round-table event (Phase 2, 1d) will be announced by the Ministry of Finance (scheduled for February 2022, once CSOs and investigative journalists who will be involved in monitoring under the project have been selected). As part of the organization of the event, the following arrangements will need to be made: In case of a face-to face-event: (i) Selection of venue at least three (3) months prior to the event; In case of a virtual event: (i) a moderator to moderate each session (separate from the presenter(s)) In case of a face-to-face or virtual event: (i) Agreeing on program at least two (2) months prior to the event; (ii) Finalization of dignitaries' list and send out invitations at least two (2) months prior to the event; (iii) Agreeing on presentations/interventions content, at least two (2) weeks prior to the event; (iv) Appointing a Master of Ceremony/Moderator (v) Ensure appropriate media coverage.			
5. Provision of training to selected participants			
5a. Based on the curriculum, structure and format agreed, using the training materials developed and building on IDIS's and PTF's previous experience, ensure the organization and provision of training to the selected CSOs, investigative journalists and Economic Operators (EOs) in the 12 modules shown in 1 (d) above. The training will be delivered between October 1 and December 20, 2021, with two modules delivered on consecutive days every two weeks. Depending on the COVID situation, the training might be face-to-face, virtual or a blend. EOs will only participate virtually. A decision about face-to-face or virtual training will be made at the end of July 2021.	IDIS leads. Organizes the training ensuring that all facilities, equipment, trainers and training material are in place. IDIS also teaches some of the training	PTF supports. Teaches modules 1.1, 7.2 and 12 (see above 1d.). Guides international trainers including presenters of international case studies. International trainers could come from PTF or OCP for procurement monitoring, from CIPE for ethics and from PTF or Transparency International for Integrity Pacts.	1 October until 20 Dec 2021

Activity	Responsible		Deadline
	IDIS	PTF	
Phase 2. Monitoring Phase Selection of monitoring organizations to receive sub-grants, conduct the monitoring, presenting of monitoring results to respective authorities-funding and quality assurance of monitoring projects (January 2022-June 2023)			
1. To ensure the long-term impact of the training and promote engagement in public procurement monitoring Select and provide sub-grants to monitoring CSOs and investigative journalist organizations to conduct procurement monitoring, provide support to their monitoring activities, formulation of recommendations for the government and liaison with bilateral and multilateral donors			
1a. Launch a call for Expressions of Interest (EOIs) to select up to 10 CSOs and investigative journalists' organizations. Establish evaluation criteria for final selection among those which have successfully completed the training and other CSOs and investigative journalists' organizations with monitoring experience and can undertake procurement monitoring at the national, local or municipal level for a period of 18 months. The selection criteria will include financial and human capacity and a commitment to long-term procurement monitoring.	IDIS leads. Develops criteria.	PTF supports.	15 January 2022
1b. Select the CSOs/investigative journalists' organizations based on selection process as mentioned in 1.a above.	IDIS conducts selection process	IDIS PTF jointly review applications and agree on selection	10 February 2022
1c. Develop and agree with the selected CSOs and investigative journalists' organizations on a monitoring methodology and a specific sector to monitor. Develop contract documents for each sub-grantee based on template provided by DRL. Obtain DRL approval before signing contract.	IDIS leads. Develops proposal for methodology to be agreed by selected monitors and PTF. IDIS develops contract documents	PTF supports. Reviews and comments on methodology and contract documents. Obtains approval from DRL.	28 February 2022
1d. Organize and hold a 1-day roundtable meeting, ideally under the auspices of the Ministry of Finance. The roundtable will be convened with contracting authorities (CAs), Economic Operators (EOs) and selected CSOs and investigative journalists to increase understanding of actions needed to make the procurement system more transparent and effective and of the constructive role trained and objective CSOs and investigative journalists can play as independent monitors of procurement. Participating CSOs will be those sub-grantees selected under the project as well as other CSOs that were not part of the training but already engaged in monitoring public procurement. The Roundtable will discuss instruments to enhance transparency and integrity, such as the adoption of a code of ethics by all parties and the	IDIS supports. IDIS identifies and invites champion, speakers and participants from Moldova, conducts and chairs the roundtable and is responsible for publicity around the event in Moldova.	PTF leads. Proposes venue, content and organization of the roundtable. PTF summarizes findings, decisions and recommendations from the roundtable in a report which could be used as a starting point for a future government/private sector/ civil society dialogue and action plan on CSOs and	15 February 2022

Activity	Responsible		Deadline
	IDIS	PTF	
role that integrity pacts can play in fostering transparency and good practice in procurement. An Integrity Pact is an enforceable agreement between bidders and the government to conduct public procurement(s) in an ethical way abstaining from bribery, collusion and other corrupt practices for the extent of a particular contract, project or program. To ensure accountability Integrity Pacts include a monitor (often a CSO) to ensure the terms of the Pact are carried out.		investigative journalists. (support for such dialogue is not included in this plan nor in the project)	
2. To ensure effective results of sub-grantees' operations, provide support to their monitoring activities, formulation of recommendations for the government and liaison with bilateral and multilateral donors			
2a. To facilitate that the findings and recommendations from the monitoring result in effective action to improve the procurement process, in cooperation with monitoring CSOs, develop tools and approaches for CSOs to use in communicating findings and recommendations to contracting entities and when appropriate government control bodies. For such communication to be effective and credible it is essential that it is based on a correct understanding of the facts of the case and the relevant laws and regulations.	IDIS leads. Proposes tools and approach	PTF and IDIS agree on the tools and approach	February 28, 2022.
2b. Provide mentoring to the selected CSOs and investigative journalists in their monitoring activities, assisting them in analyzing procurement data and preparing queries and requests for investigation to Moldovan entities responsible for overseeing the procurement system, including law enforcement agencies in the case of suspected criminal activities and corruption.	IDIS appoints a project manager for each sub-grant who has weekly or bi-weekly meetings with sub-grantees during which issues arising from monitoring will be discussed and resolved and findings analyzed and verified to ensure that only well-documented queries and recommendations are made to contracting authorities and control and law enforcement bodies. If needed IDIS will assist monitoring entities in formulating queries and recommendations	PTF supports. In the course of assisting monitoring entities IDIS will turn to PTF for advice on technical, policy and institutional matters where PTF's international experience and contacts can be of value. If needed PTF drafts reports with recommendations to bilateral and international donors and establishes contacts and conducts dialogue with such donors.	February 2022-June 2023

Activity	Responsible		Deadline
	IDIS	PTF	
2c. Sub-grant manager reports directly to the general IDIS project manager on ongoing monitoring activities.	IDIS reviews, comments and approves the final communications to relevant authorities	PTF reviews and comments on the reports and uses them as a basis for the quarterly reports and discussions with DRL.	February 2022- June 2023
2d. IDIS PTF and sub grantees will hold a formal meeting every six months to review progress	Sub-grant manager produces quarterly reports on the progress of the monitoring activities. IDIS reviews reports, revises them as needed and submits to PTF	PTF provides comments on reports if needed and participates in formal meetings every six months to review progress achieved in the monitoring and issues encountered.	August 2022 February 2023 Final review meeting June 2023
Phase 3. Reporting, final survey and Project Completion Event			
1a. Preparation of quarterly reports and the final Project Completion Report. The final Report will include recommendations for how to improve communication among monitoring CSOs/investigative journalists and contractors, procurement contracting entities, oversight and law enforcement agencies and how such agencies can be made more responsive to queries, requests and recommendations from Civil Society Organizations and investigative journalists. The final Project Completion Report will also provide suggestions for government officials managing the e-procurement system. These suggestions might pertain to the type of information that should be collected in the system, how to populate the business intelligence module, all based on the results of the monitoring and observed needs for improvement.	IDIS reviews and comments	PTF leads. Meets quarterly with DRL and prepares brief reports for these meetings. PTF drafts the final Project Completion Report	30 June 2023
2b. Design and administer a final survey to participants in the training and to sub-grantees. The final survey will be conducted to determine: (1) what participants who were part of the training but did not subsequently participate in the project-sponsored monitoring did with the training; and (2) how those CSOs and investigative journalists that did engage in project-sponsored monitoring would self-assess their work and what comments and recommendations they would offer.	IDIS leads. Designs and implements the survey ensuring that participants in the training, including those selected to receive sub-grants for monitoring, take the survey. IDIS documents the results of the survey for inclusion in the final Project Completion Report	PTF supports. Reviews and comments on survey design and execution and on the report of the survey	15 June 2023

Activity	Responsible		Deadline
	IDIS	PTF	
2c. Organize a final Project Completion Event involving all stakeholders, ideally under the auspices of the Ministry of Finance to take stock of actual monitoring activities, and the findings and recommendations of the final Project Completion Report. During the Project Completion Event, project achievements (based on the monitoring indicators) will be discussed and followed-up actions agreed. The completion event will also follow-up on the roundtable meeting and report (see above) assessing the quality and usefulness of the monitoring conducted and the lessons learned for future cooperation among EOs, CAs, and CSOs in the use of Integrity Pacts. The Project Completion Event will also discuss areas to focus on when developing Codes of Ethics for the three parties	IDIS supports. IDIS identifies and invites champions, speakers and participants from Moldova, conducts and chairs the event and is responsible for publicity around the event and Final Project Completion Report in Moldova.	PTF leads. Convenes, proposes venue, content and organization of the event to be agreed with IDIS. PTF proposes international speakers and participants as appropriate and is responsible for international publicity around the event and Final Project Completion Report. PTF updates the report from the Roundtable (see above phase 2 1(d)) with relevant findings, decisions and recommendation coming out of the final Project Completion Event PTF prepares a report on the conclusions and recommendations from the event to become part of the Final Project Completion Report	15 June 2023

5. Monitoring and Evaluation (M&E)

The primary indicators and measures to record outputs and outcomes expected to result from this project are contained in the attached M&E matrices contained in Annex 6.5.

6. Annexes

6.1 Risk assessment

6.1.1 Analysis of risks in public procurement in Moldova

General analysis of risks in public procurement with a direct or indirect negative impact on procurement monitoring by CSOs or on possible dialogue with the government to raise issues and/or suggest changes based on their observations and findings. We applied the methodology of the International Organization of Supreme Audit Institutions - INTOSAI (www.intosai.org) which categorises risks into extreme (E), high (H), medium (M), and low (L). The following risks were identified in every single stage of the procurement process:

Table 6: Risks in public procurement

PLANNING STAGE		
Steps of the process	RISKS	INTOSAI Risk measurement
Needs assessment	Contracting authorities (CAs) may be “manipulating” the needs by envisaging procurement of goods, services or works that do not correspond to their real necessities.	M
Procurement Planning	The procurement plan (to be mandatory published on the web page of the contracting authority within 15 days since its approval, or in 5 days starting with the day of its amendment) is either not published by the CA, or published in an incomplete or incoherent manner which does not allow monitors or economic operators to assess clearly what are the goods, services and works that the CA intends to purchase for the whole budget year, and/or how these goods/works/services are intended to be purchased (ex: through conclusion of one or several public procurement contracts)	H
	The plan contains excessive, unnecessary or otherwise useless goods, which may indicate corruption, personal interests, or the intent to resell the goods.	M
	Purposeful overestimation of the value of envisaged purchases with the goal of obtaining later, at the stage of public procurement contract awarding, of some personal benefits.	H
	Procurement being deliberately split into smaller batches of up to 200,000 lei (for goods and services) and up to 250,000 lei (for works) whose procurement is not mandated to be conducted through the electronic system. Such procurements, defined as small value procurement (SVP), are less transparent, poorly regulated (by a separate regulation) and therefore very difficult to monitor.	H
	Procurement being planned in conformity with personal interests of certain individuals or groups, rather than in conformity to CAs previously identified needs.	M
	The CA does not have certified / knowledgeable procurement specialists that could precisely assess the CA’s needs related to goods, services and works, or cannot estimate the financial resources (capacity) of the authority in relation to the existing prices on the market.	M
Advertising	Notice of intent separately for each procurement procedure envisaged to be awarded during the year is not published in the Public Procurement Bulletin (PPB) within 30 days from the date of approval of the contracting authority’s budget.	M
	Not all the information stipulated in a mandatory way by Annex 3 of the Public Procurement Law (PPL) no. 131/2015 is being included in the notice of intent of procurement.	M

PLANNING STAGE		
Steps of the process	RISKS	INTOSAI Risk measurement
Tender documentation	The tender documentation is not complete, or it is compiled in an irregular fashion. According to the PPA statistics , 26% of procurement procedures featured irregularities or illegalities in the stage of compiling the tender documentation	H
	The tender documentation and notice of participation have inconsistencies (for example, that was one of the irregularities found by the PPA during monitoring process in the case of 54 out of 230 cases or 23% of procurement procedures monitored during the first semester of 2020) ¹	M
	The tender documentation is compiled by individuals who do not qualify as PP specialists, which may result in a confusing/erroneous/redundant document, contained a list of poorly calculated quantities of goods, services and works, and/or incomplete technical specifications, or specifications and items/data that are not necessary for the provision of the requested works/goods/services.	M
	The tender documentation may stipulate a wide variety of goods grouped in a single procurement (that means a single bid), without splitting it into lots (the PPL provides that the CA should explain the decision of not splitting procurement into lots – art. 39, para (3). This does not allow the access to procurement for specialized economic operators or SMEs (it might indicate collusion between the CA and a specific EO who would bid precisely as requested). Sometimes, that leads to complaints lodged by economic operators interested in procurement but unable to participate due to the above.	H
	The PP working group may stipulate a too narrow definition (in terms of specified origins, type, patent, sketch, etc) of the requested product in the tender documentation, or even a specific brand name of a product may be outright stipulated, both scenarios creating conditions for the emergence of non-competitive and biased practices.	H
	The tender documentation may envisage too loose specifications, something that would let otherwise unqualified bidders qualify for this specific tender.	M
	Data sheet (FDA)/instructions to bidders may be drafted by individuals who do not qualify as PP specialists, which may result in confusing and contradictory instructions, difficult to follow and comprehend by both economic operators and monitors.	M
Launching the procurement procedure	CA selecting inappropriate procurement methods for a specific tender.	M
	The CA does not publish the notice for participation in the Public Procurement Bulletin and on the website of the PPA (PPL 131/2015, art. 29, par. 1)	L
	The notice for participation in procurement procedures does not contain all the mandatory information set forth in Annex 3 of the Law on public procurement 131/2015.	M
	The deadline specified in the notice for participation may purposefully be set in a manner that would discriminate certain economic operators, while favoring others (PPL 131/2015, art. 29, par. 6).	L

¹ <https://tender.gov.md/ro/content/raport-privind-exercitarea-atribu%C8%9Bilior-de-monitorizare-de-c%C4%83tre-agen%C8%9Bia-achizi%C8%9Bii-publice>

PLANNING STAGE		
Steps of the process	RISKS	INTOSAI Risk measurement
	The CA may refuse (even in an illegitimate fashion) the inclusion in the working group tasked with the bid evaluation of CSO representatives who have the legal right to submit an official request to this end after the tender participation announcement is published and two days before the deadline to submit the offers.	H
	CSO representatives accepted as member of a working group may not be informed about the date, time, and place of the tender evaluation session.	E
	Unjustified use, by CAs of emergency procedures (particularly now with the covid-19 pandemic)	H
Economic operators bidding	Stipulating unrealistically short deadlines for bid submission, in breach of existing regulatory framework (for example, this was one of the irregularities found by the PPA during monitoring process in the case of 24 out of 230 cases or 23% procurement monitored during the first semester of 2020) ²	M
	The CA may amend the deadlines, terms of references and technical specifications stipulated in the notice for participation without announcing the amendments to potential bidders (as it should, in accordance with (PPL 131/2015, art. 29, par. 7), nor to the monitors, and without extending the deadline for bid submission, so as to allow enough time to potential tenderers to adjust their offers accordingly.	L
	Members of the procurement working group, or other employees of the CA may improperly disclose information related to the procurement procedure to potential bidders, with the goal of helping the latter to gain an unfair advantage over their competition.	M
	Members of the procurement working group, may improperly disclose information related to already submitted bids to certain economic operators, with the goal of helping the latter to gain an unfair advantage over their competition.	L
	Economic operators may collude with one another in order to influence the result of the tender. They may refrain from submitting bids in order to secure the selection of one bidder, or they may come to agreements concerning market sharing, bid rotation or complementary bidding practices (such as submitting non-compliant, or overly-expensive bids) leading to a pre-established result in a non-competitive manner and that might be hard to detect for CSO representatives part of the working group tasked with the evaluation of submitted bids.	M
	Bids may be submitted by companies previously suspected of lack of integrity, or by newly set-up („screen”) companies whose end beneficiaries may have previously been owners of blacklisted economic agents (barred from participating in PP procedures).	H
	Distinct bids may be submitted by distinct companies with the same end beneficiaries.	H
	In order to be awarded the contract, bidders may purposefully submit bids with unrealistically low prices, below existing market estimates, which will later result in a faulty contract execution.	M

² <https://tender.gov.md/ro/content/raport-privind-exercitarea-atribu%C8%9Bilor-de-monitorizare-de-c%C4%83tre-agen%C8%9Bia-achizi%C8%9Bii-publice>

PLANNING STAGE		
Steps of the process	RISKS	INTOSAI Risk measurement
	The CA intentionally does not provide clarifications requested by certain economic operator with regard to the tender documentation	L
	The PPA privately alleges risks of collusion between the front-end MTender platforms, on one hand, and economic operators, on the other hand, based on the current situation in which bids are submitted electronically in a non-encrypted manner.	L
	The procurement within health sector, namely the centralized procurement conducted by the Center for Centralized Public Procurement in Healthcare is conducted through the old e-procurement system which is far from being transparent and does not allow the access to tender documentation, bids and other documents.	E
Preliminary examining of bids and their classification	The CAs can manipulate the bids and evaluation process when applying other award criteria than the lowest price because of the lack of such other criteria in the MTender system, as well as because of a lack of e-evaluation module.	H
	Acceptance of non-compliant/improper/unqualified bids which is demonstrated by the frequent complaints lodged by other bidders for acceptance of such bids by the CAs, but also by the PPA monitoring reports.	H
Bids evaluation	The evaluation working group has the same composition for several years, which raises the risk of its members having undisclosed conflicts of interests.	H
	Existence of undisclosed conflicts of interests between CA public procurement working group members – on one hand, and one or more of the bidders – on the other hand, resulting in unethical behavior.	E
	Breach of confidentiality of information in submitted tenders.	L
	Deviation, during evaluation procedure, from the criteria established in the tender documentation.	M
	Failure to address requests for clarifications from bidders, where necessary.	L
	During the evaluation process, the CA does not request that the economic operators suspected to lack integrity be included in the blacklist.	H
Bid evaluation report	Failure, by the CA, to make public a procurement procedure, or to report to the PPA the cancelation of the procedure, within five days from the conclusion of the contract, or from the day of issuance of the decision of cancelation of the public procurement procedure.	L
Contract awarding	Selecting an inappropriate/non-competitive supplier.	H
	The CA has been selecting the same winner for the same type of procedures for some years now, which may indicate collusion.	H
	Failure by the CA to publish in the PPB and on its website the notice of contract award (within 30 days) since the day when the contracting	M

PLANNING STAGE		
Steps of the process	RISKS	INTOSAI Risk measurement
	authority informs about the conclusion of the procurement procedure and awarding of the procurement contract.	
	The contract award notice does not contain all the mandatory information (as stipulated in the Annex 3 to the PPL 131/2015): the date of award of a public procurement contract; award criteria; the number of offers/bids received; the name and address of the winner of the tender; the price or the range of prices actually paid; the value of the highest and of the lowest bids/tenders; if appropriate, the value of the contract and its part that will be subcontracted; the date when the tender participation announcement was published;	M
	The CA does not properly inform the rejected bidders about the grounds that underpinned the decision of rejection.	M
	Awarding the contract to a bidder who failed to submit a performance guarantee, or if the one submitted does not cover the full period of contract execution.	M
	The CA signs the procurement contract with the designated winner of the procedure without observing the period of time necessary to pass before the designation of the winner and the conclusion of a public procurement contract (as stipulated in art. 31 of the PPL No 131/2015), so that the competitors have enough time to lodge an appeal to NASC;	M
	Contract is awarded most of the time (above 90%) based on the lowest price criteria, which may result in poor quality goods/works/services being delivered.	H
	Contract is awarded to a company whose end beneficiaries are known to have run entities previously blacklisted and barred from participating in PP procedures, a particular high risk on small value contracts.	H
	The non-execution of the NASC decisions (mandatory according to the law) by the CAs. NASC doesn't have mechanisms to enforce the execution of their decisions with regard to a contested contract awarding, which sometimes are ignored by the CAs.	H
	CAs may not implement the recommendations of the PPA, formulated in the Agency's PP monitoring reports. According to the PPA statistics, 53% of total number of illegalities/irregularities identified by the Agency have not been addressed by the CAs.	E
	The PPA can monitor procedures solely based upon certain documentation available in MTender. It does not have access to all the documentation of the procedure. As such does not have the ability to monitor the full spectrum of the actions taken by the CA to award a contract.	L
	The non-sanctioning of CAs for breaking the PPL and/or other regulations, as PPA is not entitled to sanction CAs for procurement legislation and regulation breaches.	E
Contract implementa	CAs admitting delays/refuses related to delivery of goods/services, or to the completion of the works in contradiction with the contractual terms and conditions.	H

PLANNING STAGE		
Steps of the process	RISKS	INTOSAI Risk measurement
tion	Unwillingness, on the part of CAs, to submit claims against the contractor, specifying the obligations that have not been met;	H
	Unwillingness, on the part of CAs, to implement penalties stipulated in the PP contract for delays.	H
	CAs admitting increases in contract value stipulated in the original bids by amending the procurement contract exactly under the legal limits (up to 15%)	H
	The CA does not ask the PPA to include contractors in the blacklist for: non-compliance with contractual obligations; delivery of goods, provision of services or execution of works that differ from those foreseen in the contract; delivery of goods, services and works of a lower quality than the one stipulated in the contract and the documents regarding the unfolding of the public procurement procedure.	E
	CAs admitting noncompliance with the quality standards;	H
	The CA accepts an extension of the contract execution timeframe without a sound justification (typically in contract for execution of works)	H
	Partial or complete noncompliance with the requirements of the tender documentation and the contractual provisions.	M
	The increase in the contract value exceeds the legal limit of 15% of the initial value of the contract.	L
	Deviation from the objectives set in the contract;	H
	Emergence of unpredictable situations that impede successful conclusion of the public procurement contract etc.	M
	Additional agreements amounting to modification of contractual clauses, with terms and/or conditions which may be used to unjustifiably augment the original contract price.	H
	Public Procurement Working Groups do not have the necessary competencies and lack the conditions to be able to monitor the execution of the contracts, this being their obligation, as per PPL 131/2015.	H
	PP working groups may not issue quarterly, bi-annual or annual reports on the execution of the contract, or such reports may not be published on the CA's website.	H
	Failure of the contract execution monitoring reports to contain law-mandated information such as information regarding the stage of contract execution, the reasons for non-execution, the filed claims/appeals and the applied sanctions/penalties, notes on the quality of execution of a contract.	H
	CSO representatives admitted as part of the monitoring group may lack motivation/skills necessary to monitor the execution of a contract for a relatively long period of time.	M

PLANNING STAGE		
Steps of the process	RISKS	INTOSAI Risk measurement
Contract execution audit	The CA does not ensure the elaboration of the public procurement execution report and keeping such a record for the next 5 years after the initiation of the public procurement procedure;	H

6.2 Procurement stakeholders

6.2.1 Moldovan stakeholders

6.2.1.1 Journalist groups

- **Journalists** (as identified by the US Embassy and others)
- **RISE Moldova**, with the financial support of the US Embassy in Moldova
- **Center for Journalistic Investigations** with the support of the National Endowment for Democracy.
- **Independent Press Association** www.api.md

The Independent Press Association implements the project “Accountability and civic engagement for good governance” (1 September 2020 – 30 August 2021), financed by Konrad Adenauer Stiftung/European Union.

The project goal is to promote good governance and accountability of local authorities for the transparent management of public affairs through a comprehensive information, monitoring and civic engagement campaign.

Activities related to Public Procurement: (1) Monitor transparency in decision-making, including the budget process, and the fairness of public procurement procedures in six localities in different geographical areas; (2) Document and publish journalistic investigations on the use of public money and procurements in the regions.

Besides, it implements the project “Program of assistance for regional independent media outlets (July 2020 – June 2021), financed by US Embassy in the Republic of Moldova. The project goal is to contribute to the sustainability and functionality of regional independent media outlets in the Republic of Moldova through a targeted assistance program. Activities include establishing a technical database for facilitating procurements.

6.2.1.2 Other monitoring CSOs

Association for Efficient and Responsible Governance (AGER)

AGER works to promote good governance through consultancy and policy reform in public administration. AGER’s main activities are: Producing studies and research to promote the rule of law; Assisting public authorities for efficient implementation of reforms; Designing and implementing projects at local, national and international levels, aimed at developing Moldova’s socio-economic and human potential; and Cooperation with national and international organizations to implement policies and practices to advance the reform agenda. In the area of public procurement, they have found that in smaller localities, the Contracting Authorities intimidate the CSO monitors, especially in villages where everyone knows everybody. AGER has noticed that there is also not too much interest on the part of the CSOs to implement monitoring activities. AGER is in the process of implementing a project that will provide sub-granting and training for ten CSOs in the coming years. The focus will be on building a basic understanding of the way the procurement system works. Special attention is needed on procurement of healthcare, construction and repairs because they are difficult to monitor from a technical standpoint and the large amount of public money being spent on them.

Positive Initiative (PI) is a CSO focused on monitoring in the health sector. It leads an informal coalition of CSOs (see below) monitoring health sector procurement and delivery of health services. With assistance from the Open Contracting Partnership and working in cooperation with the Center for Centralized Public Procurement in Health (CCPPH), PI has developed and used world class tools for monitoring health procurement. These tools are adapted from similar tools developed and used by TI Ukraine and other Ukrainian CSO in Ukraine. PI has also developed and used tools for monitoring delivery of health services and equipment, particularly for the HIV program.

6.2.1.3 “Informal coalition” on Tender.Health

Tender.Health – is an open online platform that allows the analysis of data on public procurement in the field of health to combat COVID-19 in the Republic of Moldova. <https://www.tender.health/> was launched by the health ministry to support constructive cooperation with civil society as the government digitizes medical procurement in Moldova. Online meetings are organized periodically, information is distributed and current topics are discussed. Tender.Health enables rapid analysis of spending, including what has been bought by specific procuring entities and product prices. This serves as a useful tool not only for citizens, but also for public entities, since they can see the best prices and thus find the best suppliers. Activists plan to further develop this platform to use it for all under-threshold procurement in the future. Tender.health gives everyone access to contract and invoice data in the form of clear tables and graphs, with filtering functions for analysis and monitoring. The platform allows one to view and interpret information about centralized procurement, procurement of separate medical institutions, suppliers, product categories, unit prices and more. It is useful for buyers to identify the suppliers with the best prices; for civil society to see how effectively buyers use public money; and for supervisors to identify good purchasing practices, as well as possible irregularities and abuses in the use of public money. Currently, the tender.health platform uses three data sources:

1. The Center for Centralized Public Procurement in Health (CCPPH) provides regular updates of data on the platform.
2. Public Procurement Agency (PPA) and the
3. Procurement Working Group within the World Bank Project “Emergency Response to COVID-19 in the Republic of Moldova”.

tender.health - has the following members in an informal coalition:

- AO „Inițiativa Pozitivă”
- IDIS „Viitorul”
- PN „Programe medical sociale”
- BCU „Miloserdie”
- AO „Liga persoanelor care trăiesc cu HIV din Republica Moldova”
- AO „Credința”
- CCOE „Respirația a doua”
- PN „Alianța de sănătate publică”
- Centrul de sprijin social „Trinity”
- AO Centrul de informatii ” GENDERDOC-M
- Centrul de Resurse Juridice din Moldova
- AO AGER
- AO „Pentru Prezent și Viitor”
- AO SMIT
- AO „Adolescentul”
- Consiliul Național al Tineretului din Moldova (CNTM)
- AO „Centrul Regional pentru Politici Comunitare”
- AO „Institutul pentru o Guvernare Deschisa”
- AO „Pas cu Pas regiunea Sud”
- Centrul de Sănătate și Dezvoltare Comunitară AFI
- Comunitatea WatchDog.MD
- Transparency International – Moldova
- CENTRUL PENTRU POLITICI ȘI ANALIZE ÎN SĂNĂTATE
- Institutul de Politici Publice
- AO Parinți Solidari
- Institutul pentru Drepturile Omului
- A.O. „Cetățean Activ”
- Centrul de Politici și Reforme

- Primaria mea
- Grup de inițiativă "PULS

6.2.1.4 IDIS informal CSO network

When required, IDIS can, for example, develop a public appeal paper and send it to other civil society organizations in order to create an informal coalition/ common voice and to stress attention to some issues, such as transparency of some processes and decisions taken by the authorities. For example recent appeals were developed by IDIS and signed by the following CSOs.

*IDIS „Viitorul”

*Asociația pentru o Guvernare Eficientă și Responsabilă (AGER)

AO Inițiativa Pozitivă

Parteneriatul Necomercial Programe Medico-Sociale

Centrul de Analiză și Prevenire a Corupției (CAPC)

Asociația pentru Democrație Participativă ADEPT

Liga of the People that are living with HIV

Asociația Presei Independente (API)

Asociația Lex XXI

ADR Habitat

Fundația Est - Europeană

* Institutul pentru Politici Publice (IPP)

Transparency – International Moldova

Serghei Merjan – consultant achiziții publice

* Centrul de Resurse Juridice din Moldova (CRJM)

Promo – LEX

Expert – Grup

* A.O. Centrul de informații “GENDERDOC-M”

A.O. "PULS COMUNITAR"

* Institutul pentru Dezvoltare și Inițiative Sociale (IDIS “Viitorul”)

Asociația pentru Guvernare Eficientă și Responsabilă (AGER)

* Transparency International - Moldova

AO “ADR Habitat”

ONG “Terra - 1530”

Expert - Grup

* Centrul de Politici și Reforme

* AO “Asociația pentru Drepturile Omului – Lex XXI”

Asociația Promo - LEX

Serghei Merjan, expert achiziții publice

Institutul pentru Politici și Reforme Europene (IPRE)

Centrul de Investigații Jurnalistice

Asociația pentru Democrație Participativă (ADEPT)

* AO Comunitatea "WatchDog.MD

* Also participates in tender.health forum

6.2.1.5 Private Sector Representatives

Alliance of Small and Medium Businesses (AIM) – AIM is a non-governmental, membership-based business association of about 40 companies with the mission to advance and protect the general welfare and prosperity of small businesses and those doing business with small businesses in the Republic of Moldova, so that the business community and its citizens shall prosper. While sceptical of the public procurement system due to corruption, AIM has promoted legislation to develop a Small Business Bill of Rights, which would be enforced through the office of a Business Ombudsman.

American Chamber of Commerce (AmCham) – AmCham Moldova is a not-for-profit non-governmental organization. AmCham Moldova received official accreditation and recognition from The US Chamber of Commerce in February 2008 and has since grown to encompass 120 member companies representing a wide range of business and commercial activities. Some of their members have taken part in public procurement procedures and some companies have a success rate of about 50%. The main issue they have is with poorly written tasks and untrained procurement officials in the smaller contracting activities that have no specialists.

6.2.2 Donors supporting public procurement in Moldova

EBRD - *Implementation of E-procurement (MTender) in Moldova*

EU - *Building a transparent and sustainable public procurement system through efficient and permanent monitoring processes under a regional program managed by the Policy Association for an Open Society (PASOS)*

European Union and the Konrad Adenauer Foundation – *Development of the Civil Society at the local level*

EU and co-financed by HSS and UK Government's Good Governance Fund (GGF) – *The project „Cutting edge improvements in the public procurement system in Moldova through inclusiveness, creativity and law-abiding practices” (2017-2019)*

GIZ - *“Enabling citizens in the Republic of Moldova” (2019-2021), financed by the EU and implemented by the German Agency for International Cooperation (GIZ Moldova)*

Ministry of Foreign Affairs of the Czech Republic - *CSO monitoring of public procurement implemented by the Association for Efficient and Responsible Governance (AGER)*

National Endowment for Democracy - *AGER project “Public Budget is My Money Too!” (Implementation time: 01.10.2019 – 30.09.2020; Promoting transparent use of public money in Balti municipality, 2019-2020)*

National Agency for Research and Development -- *Consolidating sustainable public procurement in the Republic of Moldova*

Open Society Foundations and Soros Foundation Moldova – *Develop interdisciplinary anti-corruption course for the Academy of Economic Studies of Moldova open to students from all universities from Moldova, and journalists, bloggers, opinion leaders etc. (2019 – August 2020)*

OSI, Transparency International Secretariat – *“A Case - Based Approach to Fighting Grand Corruption”*

United Nations Development Program (UNDP) – *UNDP Moldova is helping to develop the Open Money Platform so that citizens will be able to track down how public money is spent, and who the beneficial owners are, under contracts awarded by state institutions. The Platform uses open data, which are automatically processed to reveal the connections between the public procurement contracts and final beneficiaries. The initiative belongs to the Institute for European Policies and reform (PRE) and “SENSMEDIA Company, being supported by UNDP Moldova*

US Embassy in Moldova - *project aims at educating 200 young people in ethics and anti-corruption matters, and mobilizing at least 10 of them in 2 watchdog groups who will learn to take legal action on corrupt practices. June 2019 – May 2020*

Western NIS Enterprise Fund (WNISEF) – *Electronic module Business Intelligence (BI)*

World Bank - *Developing Open Contracting in Moldova through informational and capacity building activities for participants in public procurement process;*

World Bank and the government of Moldova-*Assessment of the procurement country systems using the Methodology for Assessing Procurement Systems (MAPS) Report*

World Bank and the European Bank for Reconstruction and Development (EBRD) - *Moldova's open contracting efforts are supported by them through a technical cooperation project and the OCDS helpdesk*

6.3 Training needs

6.3.1 Results of the survey on the procurement monitoring training needs

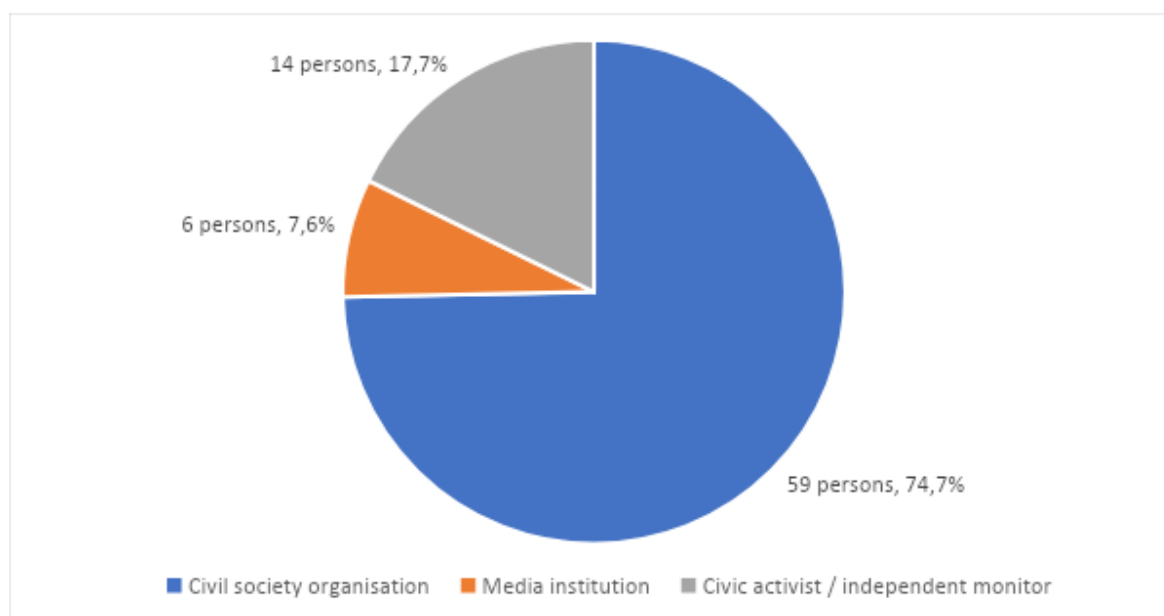
Survey methodology | The online questionnaire was sent on 14 January 2021 to 326 potential respondents; reminders were sent on 20 and 25 January 2021. Between January 14-26, 2021, 79 persons completed the questionnaire (CSO representatives, mass media representatives / journalists and civic activists / independent monitors). The response rate was at a high 24%.

The purpose of the survey was to collect the information and to determine the level of knowledge and experience of civil society organizations and journalists in public procurement monitoring activities, as well as to assess the stakeholders' interest to participate in a complex training and sub-granting program in the field of public procurement monitoring.

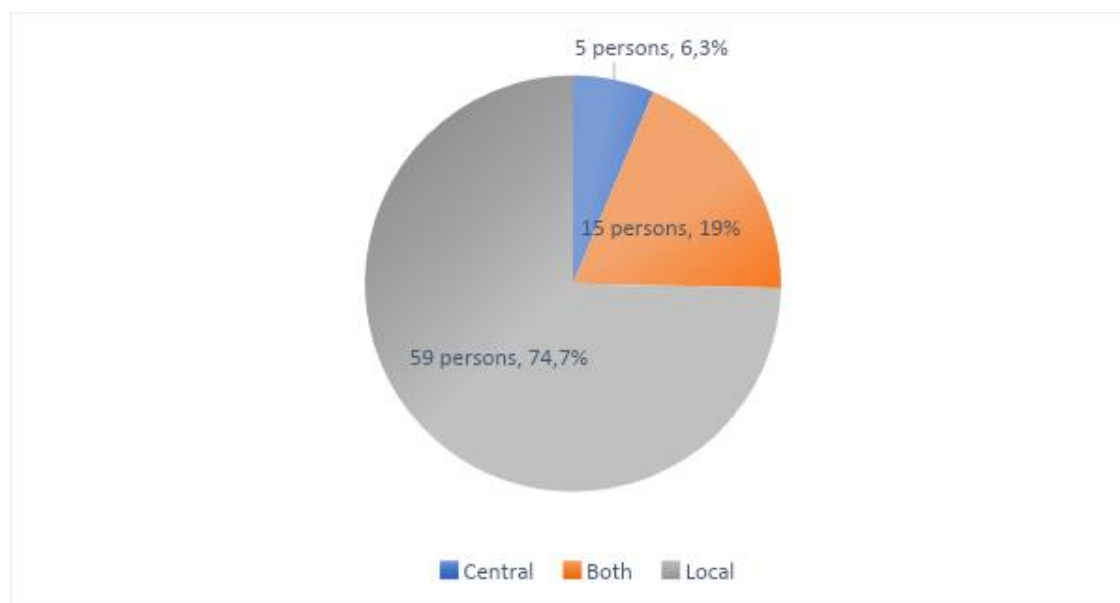
The survey was composed of two sections: (1) general information about the respondent and questions about the respondent's needs. The total number of questions was 13, out of which 4 questions were optional.

Survey results | The following answers were provided to the proposed questions:

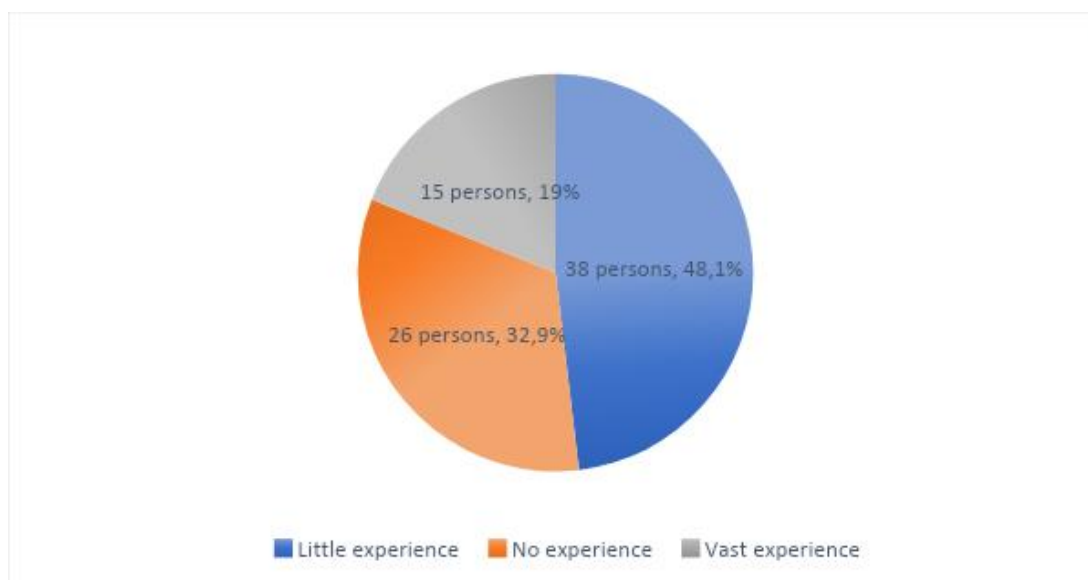
1. Please indicate the type of organization / institution you are affiliated with.



Survey answers: The majority (59 respondents, 74.7%) represents civil society organizations, 6 respondents (7.6%) represent media institutions, and 14 (17.7%) are civic activists / independent monitors.

2. At what level do you, or does your institution activate?

Most of the respondents (59) work on local level (74,7%), 15 respondents (19%) work at both, at the central and local level, and other 5 respondents (6,3%) work at the central level.

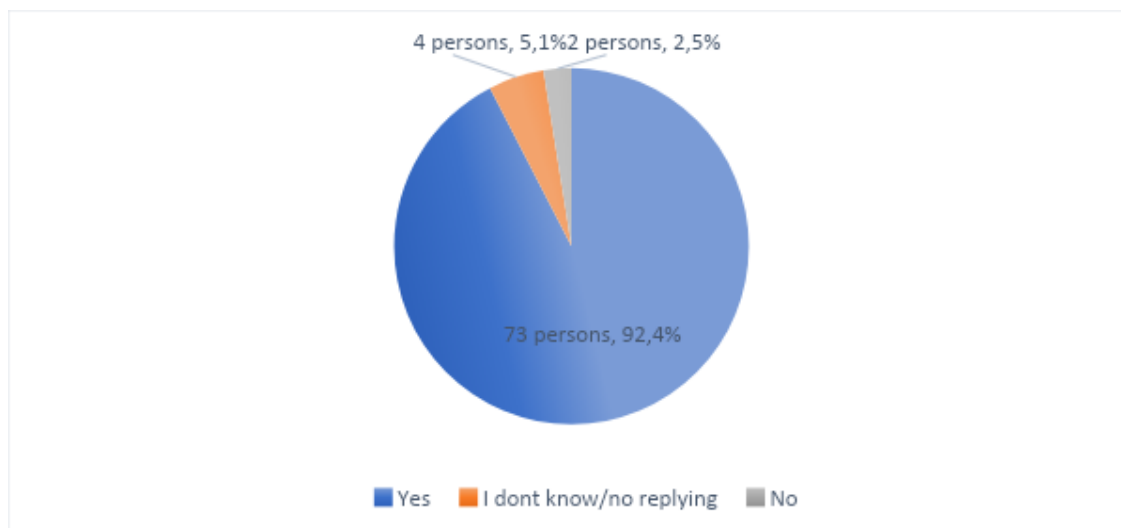
3. What is your experience or that of your organization/institution in monitoring public procurement procedures (at a national and/or local level)?

According to the results, 38 respondents (48,1%) have little experience in procurement monitoring, 26 respondents (32,9%) have no experience and other 15 participants (19%) have vast experience in procurement monitoring at national and / or local level.

4. Please indicate your e-mail address (optional)

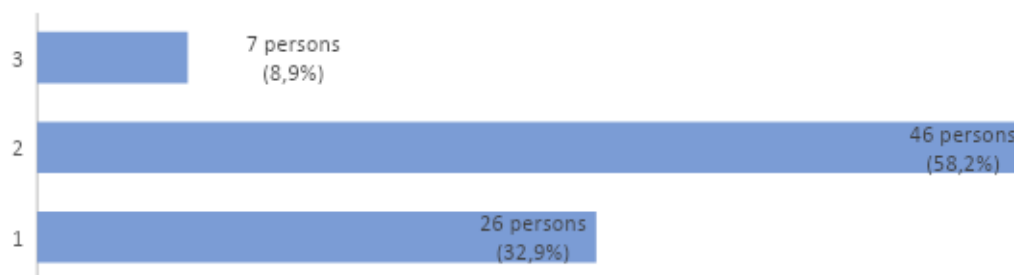
Sixty-six addresses were received. These are all potential participants in the future trainings. We will later send the announcement with regard to the training program to the entire database and the Evaluation Committee will select the participants based on the evaluation criteria.

5. Are you willing to participate in a comprehensive training program in the field of public procurement monitoring in 2021?



73 respondents (92.4%) expressed their willingness to participate in a comprehensive training program in the field of public procurement monitoring in 2021, while only 6 persons (7.6%) responded that they did not know and declined to participate.

6. On a scale of 1 to 3, how do you assess the adequacy of your organization's capabilities and human resources in terms of monitoring public procurement? (1 - low, 2 - medium, 3 - high)

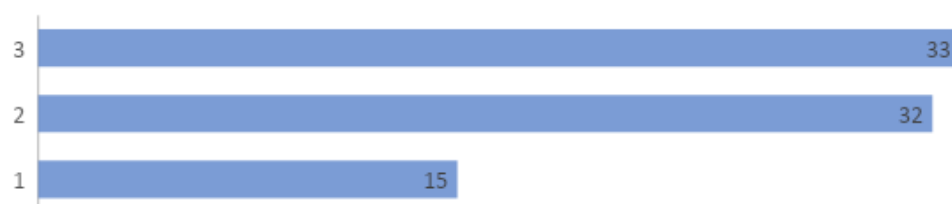


7. On a scale of 1 to 3, how do you assess the adequacy of your organization's financial capabilities and resources from the perspective of monitoring public procurement? (1 - low, 2 - medium, 3 - high)

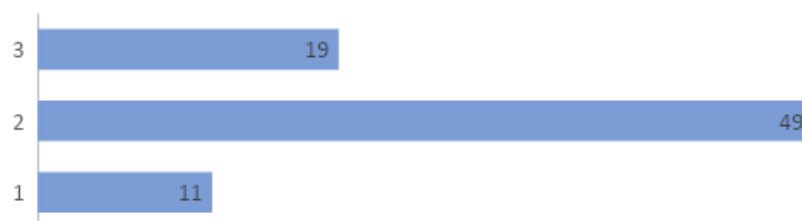


8. What are the main difficulties you faced in the process of monitoring public procurement? (1 - insignificant difficulty, 2 - medium, 3 - important)

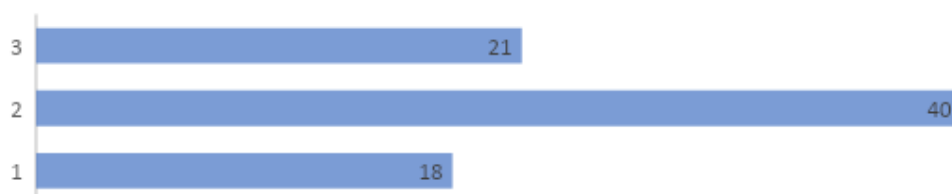
8.1. Lack/insufficiency of transparency and openness on the part of contracting authorities



8.2. Lack/insufficiency of Monitoring instruments



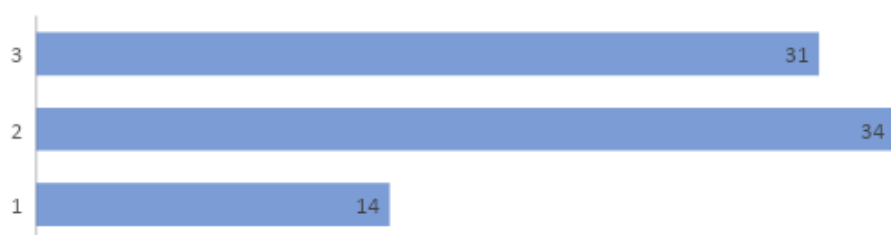
8.3. Insufficient / unclear / outdated provisions of the legal framework regarding the conduct of procurement procedures and their monitoring process



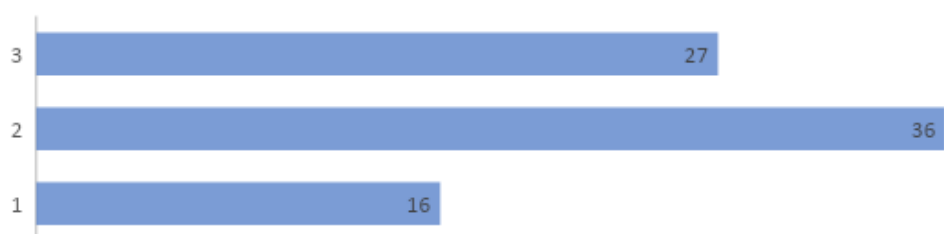
8.4. Lack of action by control/law enforcement bodies following the publication of monitoring results



8.5. Insufficient level of knowledge and skills NECEssary to analyze and monitor procurement



8.6. The complex and bureaucratic process through which public procurement takes place



8.7. Lack of a single source of data that would cover the entire procurement process



9. Please specify other additional difficulties you encountered during your procurement monitoring activity

Twenty-nine responses received (some responses offered multiple answers), out of which:

- Often the civil servants responsible for procurement themselves do not know the procedures and legislation – 4.
- Lack of transparency of the Authorities, especially from an electronic standpoint - 4
- Restriction of access to information – 2
- No other difficulties – 6
- The non-application of the legal framework – 1.
- Lack of knowledge / expertise in this field – 3
- Reluctance, on the part of contracting authorities, to cooperate with NGOs – 1
- Difficulties in monitoring foreign investments in our infrastructure – 1
- The e-licitatie platform is poorly developed – 1
- Poorly compiled tender documentation - 1
- Poor quality of submitted documentation and poor formulation of the bid by the economic agent – 1
- the lack of digitization of other procurement procedures than RPQ or Open Tender in the MTender system, as well as the registration of all contracts (additional agreements) in the electronic system – 1

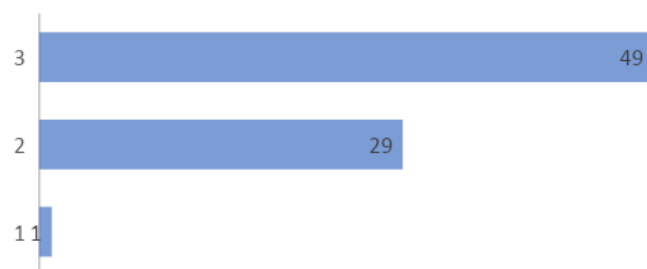
- Lack of a technical tool that would extend the functionality of the MTender platform regarding the display of concluded contracts per economic operator -1
- The access to procurement dossiers – 1
- Difficulty finding a licensed Technical Manager who monitors the works -1
- The fact that there is no easy way to monitor the acquisitions of a particular institution – 1

**10. Which topics do you think should be addressed in a public procurement monitoring training program?
(1 – low relevancy of the topic, 2 – medium relevancy of the topic, 3 – high relevancy of the topic)**

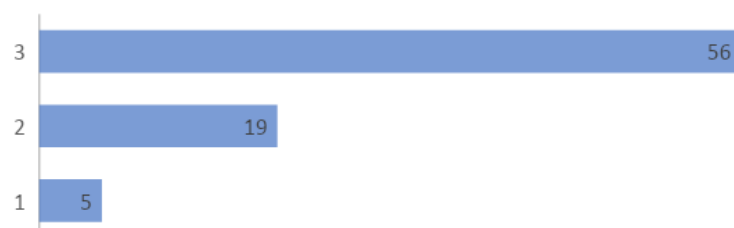
10.1. Monitoring tools / methodologies, and their employment



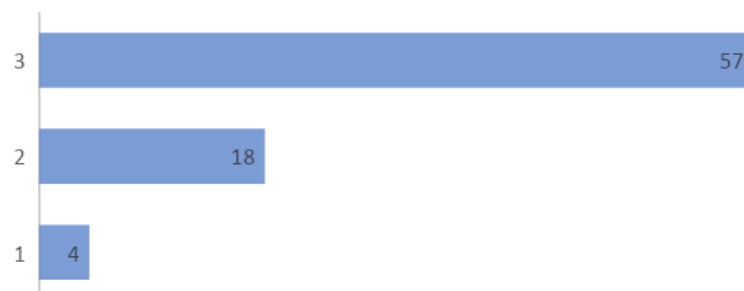
10.2. Legal and normative-secondary framework in the field

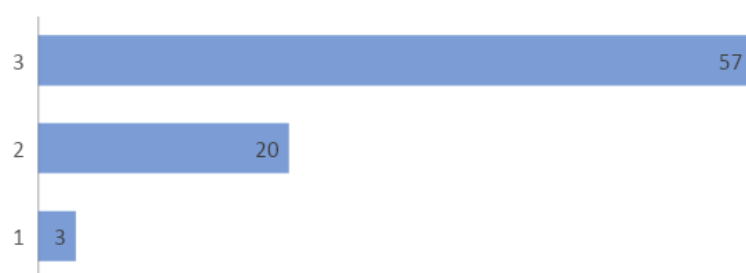
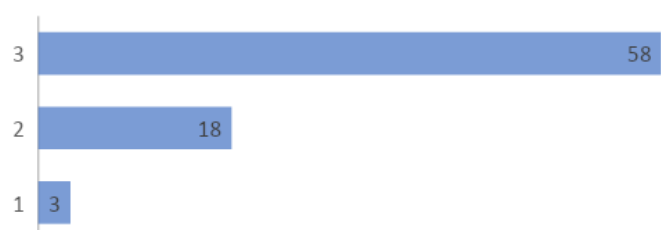
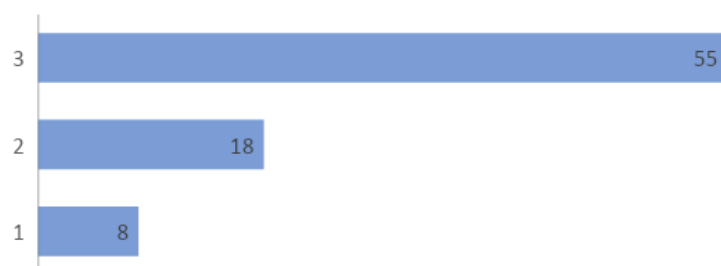
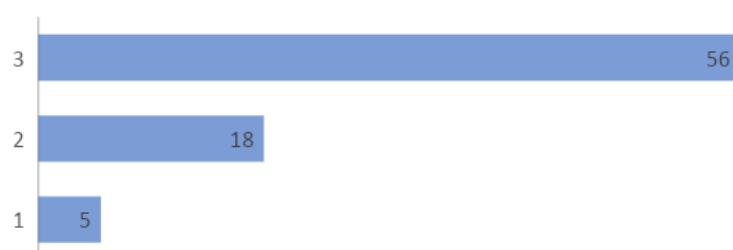


10.3. role and responsibilities of institutions in the public procurement system



10.4. Ways of collaboration of the civil society with the authorities in the field of public procurement



10.5. Operation of the electronic procurement system**10.6. The process and procedures by which public procurement takes place****10.7. Appeals system and Appeals filing procedure****10.8. Post-monitoring actions (referral to competent bodies, advocacy, etc.)****11. Please specify other topics you would be interested in (optional)**

Sixteen responses:

- Nothing to add – 9.
- Digital data skills -1
- Monitoring tools - 1
- Collaboration between institutions - 1
- Public procurement organization - 1
- The main stages of public procurement - 1

- The monitoring of low-value contracts - 1
- Training of LPA employees to be able to use the public procurement procedure - 1
- Topics related to the awarding of small value contracts - 1
- The procedure for conducting tenders through the MTender platform – 1

12. Assess the importance of the areas of public procurement of goods, services and works, on which you intend to focus in your public procurement monitoring activity (1 - very important, 3- not very important)

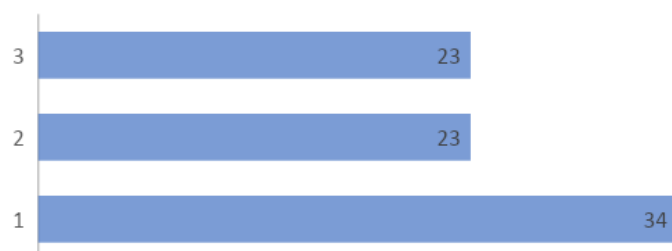
12.1. Healthcare sector



12.2. Construction and infrastructure development

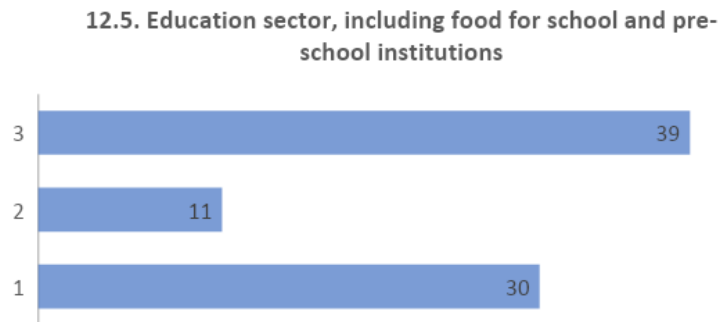


12.3. The goods necessary for the daily activity of local public or national authorities



12.4. Transportation sector





13. Please identify other areas on which you intend to focus your work in the area of procurement monitoring (optional – 28 answers received; some responses included multiple replies)

- Culture, sports and youth - 4
- Spending of grants and technical assistance – 1
- The field of social assistance – 3
- Companies with state capital – 1
- IT services and products – 3
- No other sectors than those listed in the previous question – 4
- Salaries and awards of civil servants – 1
- Implementation of the youth budget – 1
- Public services in the field of water supply and sanitation – 1
- Don't need any – 1
- Goods and services for beneficiaries in the social sphere (work tools, clothing, footwear, food, hygiene supplies) – 1
- Local budget, long-term strategy of LPA – 1
- Public institutions of LPA 1 and LPA 2 levels – 1
- Capital repairs, computer technology, furniture – 1
- Methods for verifying the legality of the use of financial sources in the procurement and the quality of the works – 1
- Healthcare – 2
- Urbanism - 1

6.3.2 Improving the Response of Economic Operators in Public Procurement

An approach to improve the response of economic operators/contractors (EOs) in public procurement to increase their participation and thus enhance competition was set out in “Main substantive gaps and recommendations for Indicator 10” in the MAPS report (pp89-93). Our analysis documents specific actions/interventions, responsible parties and expected outcomes.

Outcome of this exercise: (i) a better understanding of the issues and their underlying causes; (ii) specific suggestions for actions/interventions to achieve the recommendations; (iii) identification of responsible parties and expected results; (iv) proposals for how CSO monitoring can support Private Sector efforts to improve training in public procurement and adherence to ethical conduct.

For this analysis the results from the second edition of the **Confidence Index in the Public procurement (PP) system of the Republic of Moldova³** elaborated by IDIS “Viitorul” experts is very relevant. The main findings of this analysis were built upon the empirical data gathered between July 2018 and January 2019 from *sixty-seven questionnaires filled in by economic agents and citizens, four in-depth interviews with representatives of the businesses taking part in PP procedures, as well as ten surveys filled in citizens who are taxpayers and beneficiaries of the PP procedures.*

The employed questionnaires asked the participants a number of questions related to **various aspects of the national PP system.**

While 9%, 17%, and 40% appreciated their **knowledge of the PP system** as very high, high and respectively medium, 26% and 8% of them assessed it as low and very low. For the lack of knowledge, the economic agents identify the lack of information as the main cause.

Respondents and economic agents interviewed highlighted the most serious problems in the public procurement system:

1. Insufficient information

- unclear specifications;
- evasive answers of specialists;
- providing late requested information;

The award documentation, including the specifications, aims to provide economic operators with complete, correct and explicit information on the requirements or elements of the procurement, the object of the contract and the conduct of the award procedure.

Moreover, the legal framework (law 131/2015) provides that:

- The technical specifications of the goods, works and services requested by the contracting authority shall be an accurate and complete description of the object of the procurement, so that each requirement and criterion, established by the contracting authority, is met.
- the contracting authority has the obligation to respond, clearly, completely and unambiguously, as soon as possible, to any clarification requested, in the terms prescribed by law depending on the procedure.

2. Restrictive conditions for participation in public procurement procedures

The following aspects that limit participation in the public procurement procedure were most frequently

³ <http://www.viitorul.org/files/library/Raport%20nr.2%20Indice%20Achizitii%20m.pdf>

mentioned: the short / minimum deadline for submitting the tender; technical specifications that unduly limit potential bidders, including by indicating specific products; requesting guarantees, requesting a large number of documents / certificates.

3. Discrimination / Favoritism / Corruption

Respondents most often feel discriminated against before the launch of the public procurement procedure. They mentioned that the ads that contain unachievable conditions (short delivery time, indication of the type of good) from the start exclude some of the participants.

- previous agreements (between the contracting authority and one of the participants in the public procurement process);

According to some respondents, some public procurements are designed to mimic prior "agreements" between the contracted authority and the winning economic operator.

Even if they feel discriminated by the authorities in relation to other companies, economic operators prefer not to file complaints, arguing that the procedure is complicated, time consuming and unsure that filing complaints will lead to discrimination in the future. There were also some economic operators who filed appeals, some of them were accepted, others were rejected.

- corruption (bribery)

In various contexts, it has been emphasized that there is corruption in public procurement, with particular reference to those involving big amounts of money. The bribe is deeply rooted in the culture of the citizens of the Republic of Moldova, so some economic operators offer it, the representatives of the contracting authority get used to these "thanks" and expect favors from other economic operators who in turn give in to these practices.

The actions of discrimination, favoritism, corruption cause the restriction of free competition in public procurement. Economic operators are discouraged and unmotivated to participate in public procurement procedures. Without real competition, the efficiency of procurement, the quality of goods, services, works and the efficient use of public money cannot be ensured.

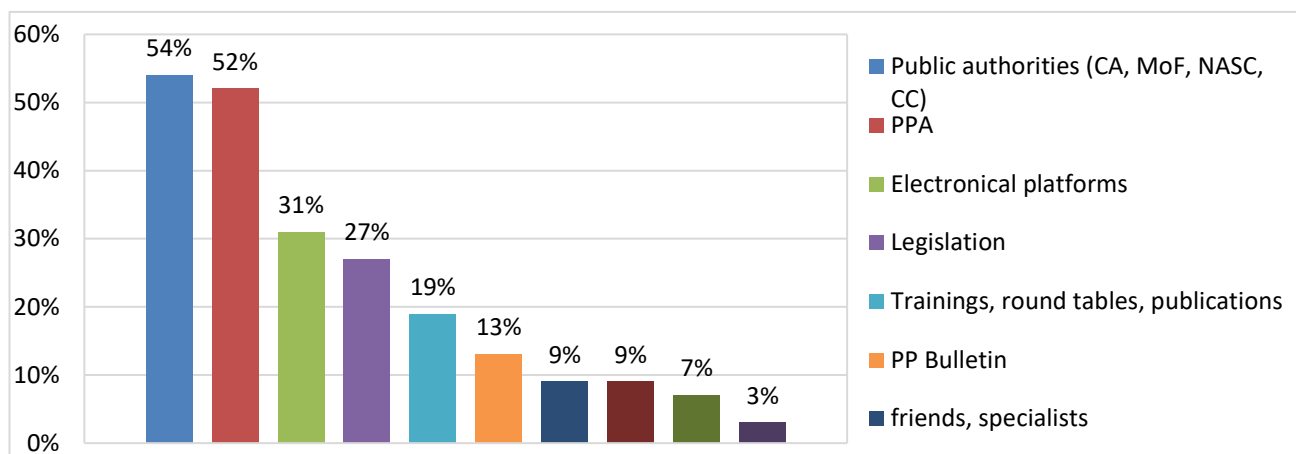
The efficiency of the whole system is believed to be either low or very low by 41% of the participants, 32% deemed it to be average, while other 27% said it was high or very high, this data indicating a significant improvement of perception compared to the one of the previous edition of the Index.

A slightly better picture was offered concerning the **legal framework** in which the system is operating, as only 22% of the respondents rated it at a very low or low level, and 45% said it was just average while another 33% rated it at a high or very high level.

The institutional framework for the PP system was rated at a low and very low level by 34% of the participants, 25% - said it was at an average level, while 41% believed it was working at a high level. Among the institutions with the lowest index of trust is the Council for competition – 45%, the National Anti-corruption Center – 37%, the Public Procurement Agency – 37%. On the other hand, trust in the national system for solving public procurement complaints is comparatively higher, as 52% appreciate it highly or very highly.

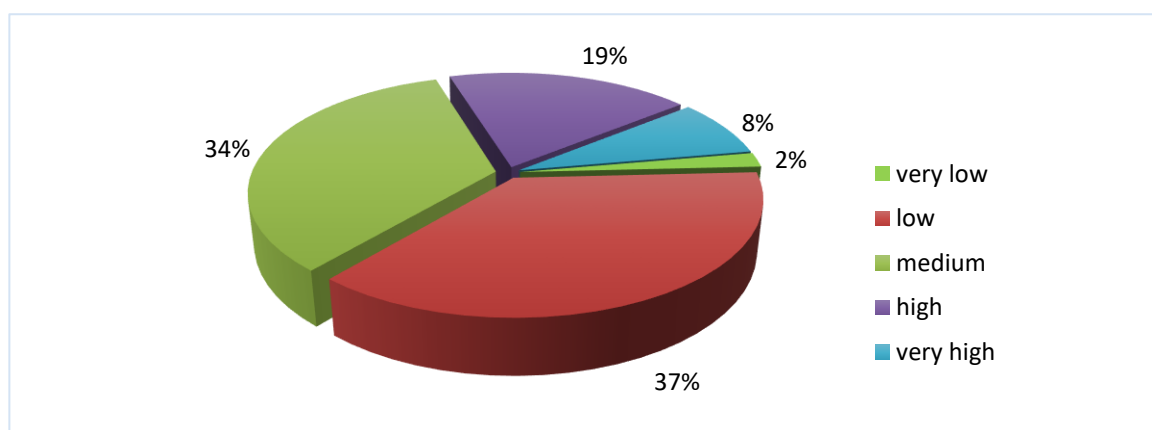
Concerning **the sources of information about the activities conducting in the system**, 52% of the respondents indicated the Public Procurement Agency as their main source, while another 31% said for them this was the SIA RSAP MTender.

Graph 4: Sources of information about procurement



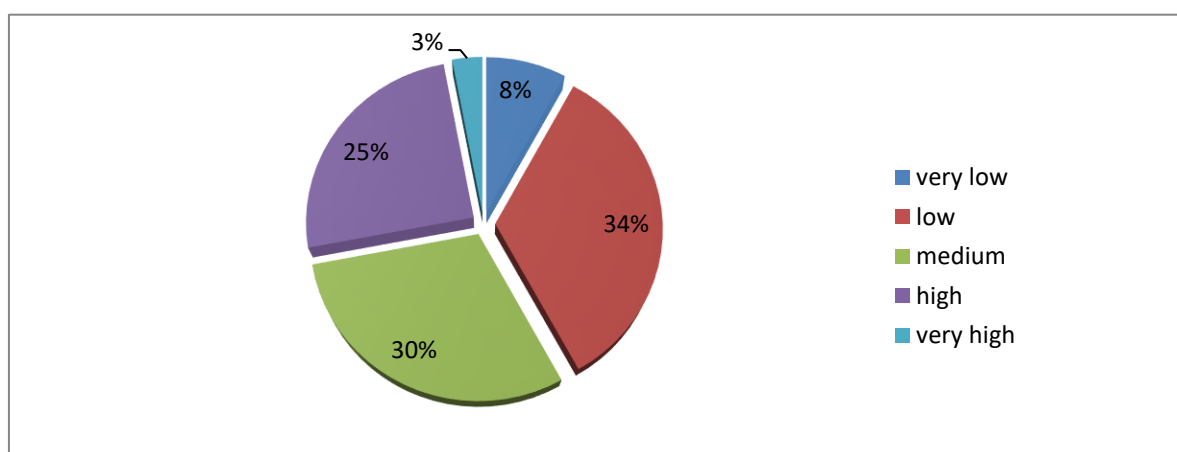
With regard to the **transparency and access to data concerning PP**, 39% mentioned a low and extremely low level; 34% - a medium level and 27% - a high and extremely high level in the public procurement system.

Graph 5: transparency and access to data on public procurement



The general level of trust in the public procurement system and the use of public money for procurement are as follows - 42% of respondents have a low and extremely low level of trust, another 30% noted an average level of trust, and 28% of survey participants have a high and extremely high confidence in the public procurement system.

Graph 6: level of trust in public procurement system



Regarding the **trust in the public procurement system**, compared to 1-2 years ago, the respondents see certain positive trends, the level of trust increasing slightly. This is mainly due to the implementation of e-procurement, which has helped to increase the level of transparency and reduce the possibilities for fraudulent procurement.

In interviews with economic operators, other positive changes in the public procurement system were mentioned, including:

- legislative improvements;
- the more qualitative elaboration of the specifications by more professional contracting authorities, Less ambiguities in the conditions of participation indicated in the specifications for the economic operators;
- conducting public procurement through the electronic system SIA RSAP MTender, which led to the reduction of transport costs incurred by economic operators to receive materials and information on public procurement, as well as saving time;

Although the field of public procurement has significantly advanced during the past few years by adoption of Law No.169/2018 and amending Law No.131/2015 on public procurement, the situation has not changed significantly on the ground.

According to the Strategy for Development of Public Procurement System⁴ the PPA is responsible for organizing trainings for contracting authorities (CA) and economic operators (EO), following harmonization of the legislation. Also, PPA, as part of its duties, shall provide the CA with methodological support and consultations in public procurement.

By the end of quarter IV, 2017, the PPA conducted a series of seminars aimed mainly at contracting authorities, but some of them were also for economic operators, state-owned enterprises and at the request of public authorities, on such topics as: general provisions of the public procurement process, carrying out public procurement of air tickets, purchasing of foodstuff, applying the legislation when amending contracts, the agreement on public procurement of the WTO.

The training did not include local events in each district.. No printed and distributed materials were identified for familiarizing the CA and EO with the provisions of the amendments to the law No. 131/2015.

In 2018 PPA has carried out 135 training and information activities developed for both contracting authorities, economic operators and for civil society with 5464 participants registered. In 2018, PPA held the following seminars:

- 43 training seminars on the topic “General provisions regarding the stages of the public procurement process in the Republic of Moldova” - 1763 people (including 17 seminars in districts);
- 2 seminars for economic operators, on the topic “Responsibilities and rights of the economic operators participating in the public procurement procedure” - 58 participants;

⁴ Government Decision No. 1332/14.12.2016 on the approval of the 2016-2020 Public Procurement Development Strategy and the Action Plan on its Implementation. Monitorul Oficial [Official Gazette] No. 459-471/1442 as of 23.12.2016.

More information about the evaluation of the activities from the Strategy please see

http://www.viitorul.org/files/Eval_Report.%20Strategy%20for%20the%20development%20of%20the%20public%20procurement.pdf

And <http://www.viitorul.org/files/Monintoring%20Report.%20ANTI-CORRUPTION%20ACTIONS%20c.pdf>

- 28 informational seminars on the topic “New legislative amendments related to public procurement, according to the Law No. 169 of 26.07.2018, which entered into force on October 1, 2018 ”- 1004 participants (including 16 seminars in districts);
- 8 training seminars held in collaboration with other institutions such as:
 - MoF, NAC, Court of Accounts and Financial Inspection - 3 training courses for internal auditors within the CPA and LPA of the second level, as well as for the internal auditors holding qualification certificates in the field, on the topic “General aspects of public procurement and management of corruption risks. Collaboration of internal auditors with insurance providers”. (78 internal auditors from the public sector).
 - The General Directorate of Education, Culture, Youth and Sports in the municipality of Chisinau, the Institute of Standardization of Moldova and the National Agency for Food Safety; there were held 2 training seminars on the topic “Procurement of food products and catering services” (102 participants)

In 2019, 6 announcements were published on the website of the Public Procurement Agency, informing economic operators about the organization of training seminars. Most of the seminars were on "Participation of economic operators in public procurement procedures", and one seminar was thematic, conducted as part of a broader campaign, for economic operators participating in public procurement procedures for food for educational institutions. At the same time, in the PPA Report on the activity carried out during the first, second and third quarters of 2019⁵, we find information about the trainings carried out during that period.

As regards the organization of information campaigns for economic operators on anti-competitive practices in public procurement procedures, the Council's website information is available on 3 events held in 2019, but these did not seem to have had much of an impact on economic operators.

According to the MAPS Report, the main problems for indicator no. 10 dealing with economic operators are the lack of an efficient public-private dialogue and public procurement conducted without fair competition.

⁵ [Report of the Public Procurement Agency for the first, second and third quarters of 2019](#)

Table 7: Main substantive gaps and recommendations for Indicator 10

No.	Substantive gaps / Red flags	Risk	Recommendations
10.1.	The opportunities for policy dialogue at the level of specific sectors of the economy, from the perspective of enhancing the benefits from and for public procurement, have only been little used.	High	Continue the public-private sector dialogue at the level of the various authorities concerned, with focus on making its importance and advantages more clear, and correspondingly adapt its form and contents for greater pertinence, effectiveness and efficiency
10.2.	Perceptions of unfair competition, both for objective reasons (shortcomings in the e-procurement system) and based on unproven presumptions, may discourage well qualified and competitive firms from participating in public procurement	High	Examine in further detail the reasons why economic operators would or would not participate in public procurement, including for perceived reasons of unfair competition, corruption or otherwise inadequate practices, and prepare and implement policies for mitigating any barriers identified

Problem: *Elaboration and adoption of normative acts without consultation or with formal business consultation.*

The legal requirements regarding the transparency of the decision-making process are not fully and effectively implemented at the level of the Parliament, the central public authorities, but also at the local level. Arrears and deficiencies are recorded at all stages of the decision-making process. Efforts are being made for public information rather than consultation. Failure to comply with legal provisions in the field of decision-making transparency leads to the adoption of rules that harm business.

Actions for public authorities

1. Both the Government and subordinate authorities should make further efforts to recover their arrears related to:

- developing and publishing internal procedures for transparency in the decision-making process;
- designating those responsible for coordinating the public consultation process;
- establishment of institutional telephone lines for informing the public;
- drawing up, updating and publishing stakeholder lists;
- drawing up and publishing the programs for elaborating the draft decisions, indicating the projects to be submitted for public consultation;
- informing the public about the draft decision at all stages of the decision-making process, in compliance with the established modalities, conditions and deadlines;
- maintaining the compartments dedicated to decision-making transparency on the web pages according to the rigors;
- diversification of public consultation modalities;
- the establishment and use of advisory boards and working groups to streamline public consultations, which will include the associative environment, business, experts, academia, interest groups and other stakeholders;
- monitoring the finality of the decision-making process (publishing the results of public consultations and informing the public about the decisions taken);

- preparation and publication, in due course, of the annual reports on decision-making transparency;
- monitoring compliance with the legislation on decision-making, identification and sanctioning of infringements;
- ensuring, through the Academy of Public Administration, the initial and continuous training of civil servants regarding decision-making transparency.

2. At Parliament's level it is necessary:

- the inclusion of clear and comprehensive provisions on transparency in parliamentary decision-making in Parliament's Rules of Procedure, or in the draft Code of Parliamentary Rules and Procedures, which is being considered in Parliament;
- express regulation of the need to publish on Parliament's website and public consultation the amendments tabled by MPs;
- making all key actors involved in the legislative process accountable, including identifying a sanctioning method for non-compliance with transparency rules in the legislative process;
- publishing on the official website of the Legislature all the documents contained in the file accompanying a legislative initiative registered in Parliament (summaries of objections and proposals of public authorities, summary of recommendations of civil society representatives, opinions of ministries, expert reports, analysis of regulatory impact etc.);
- identification by the standing committees for each draft law examined of stakeholders and target interest groups and inform them in a targeted way, in all possible ways (e-mail, social networks, electronic tools, mail, etc.) about the need (opportunity) to comment on a draft law (in the case of legislative initiatives governing entrepreneurial activity - it is mandatory to inform and consult with business associations, employers' and professional associations, other stakeholders);
- take several measures to improve the process of organizing and conducting public consultations in standing committees (early announcement of the next committee meeting, with the publication of the agenda; preparation and publication of minutes after the end of committee meetings; video / audio recording of committee meetings);
- the use of cooperation and partnership mechanisms with civil society, such as permanent expert councils composed of representatives of civil society organizations and working groups of experts and specialists in the field, representatives of stakeholders;
- preparation and publication on the website of the summary of the recommendations received during the public consultation;
- implementation of the e-Parliament Information System, which must ensure for the public to follow on the web the route of a draft law from the moment of its registration until the vote in the plenary of the Parliament.

Actions for the private sector

1. Strengthening the capacities of business associations, employers' and professional associations to participate in the process of public consultations of draft decisions, by:

- training on the provisions of the normative framework on transparency in the decision-making process;

- training on how to prepare, formulate and submit recommendations to draft decisions;
- identifying and establishing the persons responsible for the permanent monitoring of the draft decisions elaborated and published on the web by the public authorities, which may affect the business;
- participation in advisory boards and working groups / experts set up by public authorities;

The problem: *Public procurement won by interest, political affiliation and corruption schemes.*

According to businessmen, only some economic operators can win public competitions / tenders and conclude contracts with the public sector. The privileged are either politically affiliated with the governing parties, or they obtain contracts through illegal / corrupt methods. In addition, in the private sector there is still no culture and ethical behavior in business for public procurement, as standards of integrity have not been developed and implemented within companies (special anti-corruption procedures, on bribery prevention and sanctioning, provisions on conflicts of interest, gifts, etc.)⁶.

Actions for public authorities

1. Adjusting the normative framework for carrying out all online public procurement, using electronic platforms (low value public procurement; public procurement carried out by state and municipal enterprises; public procurement carried out through all procedures provided by law no. 131/2015).
2. Improving the current MTender electronic public procurement system , by:
 - eliminating technical gaps and deficiencies in the use of the MTender system⁷;
 - integration of corruption risk identification tools in the electronic public procurement system;
3. Ensuring transparency at all stages of the procurement process, with open information in particular on the execution and monitoring of public procurement contracts - publication on the web of all public procurement contracts, tax documents, and reports on monitoring the execution of public procurement contracts.
4. Creating the necessary conditions (improving the electronic public procurement system and improving the regulations and practices on civil society participation in public procurement working groups), providing the necessary support (including training), implementing existing mechanisms to allow civil society to monitor public procurement.
5. Intensify the efforts of public entities to carry out internal audit more effectively (training of internal auditors in the field of integrity; identification of solutions for hiring internal auditors within local public authorities).
6. Establishing expedite procedures for reporting cases of fraud, corruption and other prohibited practices in public procurement.
7. The implementation by the National Anticorruption Center of the provisions of the legal framework regarding the protection of whistleblowers and the establishment of viable practices for the protection of persons who denounce acts of corruption in public procurement.

⁶ [Study "Fighting corruption in Moldova: what can business do?", 2017](#)

[Impact assessment study of the National Integrity and Anticorruption Strategy - Moldova 2019](#)

⁷ [Policy analysis: Constraints in the use of the electronic public procurement system MTender, IDIS "Viitorul"](#)

8. Implementation by public authorities of procedures for disclosing illegal practices (which will also refer to the field of public procurement), internal reporting channels and whistle-blower protection mechanisms.
9. Intensification by the National Anticorruption Center of the consultative and methodological support to the public entities (contracting authorities), but also to the private sector, regarding the implementation of the corruption prevention mechanisms and the standards / integrity procedures.
10. Systematization and publication of information on corruption and corruption-related causes in public procurement, from the notification stage of the National Anticorruption Center, detection of crimes by the NAC, followed by the criminal investigation stage, with the initiation, management and completion of criminal cases by the NAC and the Anticorruption Prosecutor's Office, until the stage of transmitting the cases to the court, including monitoring the results of criminal proceedings. Similarly, it is necessary to process the information on public procurement, held by the National Integrity Authority.
11. Carrying out by the Public Procurement Agency jointly with the National Anticorruption Center the training activities in the fields of integrity and anti-corruption for civil servants, economic operators, civil society organizations.

Actions for the private sector

1. Elaboration and implementation of norms and standards of anti-corruption compliance, integrity and business ethics by business associations - codes of business ethics and anti-corruption compliance programs, which will put into practice international and national anti-corruption standards and principles.
2. Training of the members of the business associations regarding the standards of anti-corruption compliance, integrity and business ethics, as well as assistance to the members in their elaboration and implementation.
3. Strengthening the role of business associations as watchdogs of corruption and reporting to oversight authorities. Business associations shall establish effective and confidential reporting channels among its members and legal and oversight authorities.
4. The provision by business associations of legal assistance to their members in the case of acts of corruption encountered in practice, whether it is primary assistance and consultations, or legal aid in the courts.
5. Companies must develop and implement standards of anti-corruption compliance, integrity and business ethics, which must include at least the following:
 - a. Code of ethics / conduct;
 - b. Protection of the integrity of whistle-blowers;
 - c. mechanism for reporting and resolving conflicts of interest;
 - d. procedures for declaring, evaluating and recording gifts, services, benefits, etc.;
 - e. Establish the positions of compliance advisor ;
 - f. training / education / information in the field of integrity and anti-corruption;
 - g. internal control and audit systems, with mechanisms for the prevention and detection of fraud and errors;
 - h. other relevant actions (eg ISO 37001: 2016 Anti-bribery Management System, etc.)
6. Creation of anti-corruption coalitions by private companies / business associations / launch of anti-corruption initiatives at branch, sector, region or national level.

Based on the gaps and specific recommendations for indicator no. 10 according to the MAPS report, the following possible actions could be considered.

Table 8: Specific gaps and corresponding recommendations for Indicator 10 (according to the MAPS Report)

No.	Specific gaps/shortcomings	Specific recommendations	Action / Interventions	Responsible Parties	Expected outcomes
10.a)	There is room for improvement in the ways public consultations are held and their outcomes are put to good use	Monitor compliance with provisions in the legislation on public consultations and seek ways to improve its effectiveness.	To organize workshops, discussions, round tables (by PPA/ CSO) related to the importance to participate in public consultations MoF need to send to EO/ CA and CSO the documents for public consultations, not only to be published Create a common platform (EO, CA, CSO) in order to monitor compliance with provisions in the legislation on public consultations Publication of public appeals / materials in mass media in case is not in compliance with provisions in the legislation on public consultations	MoF, PPA, CA, EO, CSO	The ways how the public consultation are held are improved Compliance with provisions in the legislation on public consultations monitored Authorities more responsible as a result of the monitoring process
10.b)	Although firm evidence is lacking, there may still be significant misconceptions about public procurement among economic operators and the general public	Survey the knowledge and understanding of public procurement policies and practices and the attitudes towards them among economic operators and the general public, and take corresponding steps to raise awareness and acceptance of public procurement principles	To organize workshops, discussions, round tables (by PPA/ CSO) related to the public procurement realities but also of the public procurement principles. Elaborate, published and disseminate best practices, examples from the country. Raise awareness through different activities (infographics, press releases, publications, participation at TV and radio etc.)	MoF, PPA, EO, CSO, mass media	Knowledge and understanding of public procurement policies and practices and the attitudes of the EO and the general public increased EO are more confident in public procurement and participate in procedures ensuring real competition
10.c)	The high administrative complexity of the	Raise contracting authorities' skills in preparing and	To organize workshops, discussions, round tables, trainings (by PPA/ CSO) for	PPA, EO, CSO	The skills and capacities of CA related to the

No.	Specific gaps/shortcomings	Specific recommendations	Action / Interventions	Responsible Parties	Expected outcomes
	public procurement procedures, as often perceived by the business community, and the limited possibilities to compete on quality and performance create disincentives for many enterprises	carrying out procurement with greater focus on value for money, using simple and practical approaches tailored to the supply market in question, and ensure that the e-procurement system can properly allow the use of other award criteria than price	CA related to the preparation and carrying out procurement with greater focus on value for money, using simple and practical approaches tailored to the supply market		preparation and carrying out procurement with greater focus on value for money, using simple and practical approaches tailored to the supply market improved
10.d)	Contrary to the provisions of the PPL, tenderers' qualifications and the conformity of the tenders are only verified after the electronic auction (when held), and only for the winning tenderer; this allows unqualified tenderers to participate and to do so with tenders not meeting all requirements, which constitutes unfair competition that strongly discourages the otherwise most suitable and competitive enterprises from participating	Revise the workings of the e-procurement system in order to comply with the sequence of evaluation steps prescribed by the PPL, so that only fully qualified tenderers having submitted fully compliant tenders are invited to an electronic auction, if held (which may not necessarily be suitable, depending on the nature of the contract and the market situation)	Formulate recommendations (from CSO, EO, CA, PPA) for MoF to revise the workings of the e-procurement system in order to comply with the sequence of evaluation steps prescribed by the PPL, so that only fully qualified tenderers having submitted fully compliant tenders are invited to an electronic auction Publish materials in mass media in order to raise awareness of the subject Organize discussion with MoF and in order to promote the modification (to revise) EO to adopt and implement Codes of Ethics ⁸ in order to avoid the unfair competition	MoF, CSO, EO, CA, PPA	The public procurement procedures improved and the unfair competition strongly discourages
10.e)	It is not clear to what extent the importance of the public	Analyse the Moldovan supply market from the	Elaborate an analysis related the Moldovan supply market from the point of view of	MoF, PPA, CSO	The Moldovan supply market from the point of view of

⁸ The adoption of Codes of Ethics by the private sector we consider that is necessary and can be tested in the first phase by several economic operators (4-5) from different sectors.

No.	Specific gaps/shortcomings	Specific recommendations	Action / Interventions	Responsible Parties	Expected outcomes
	procurement market and its significance for economic development are recognised by the Government and reflected in economic policy	point of view of public procurement and take measures to proactively develop the competitiveness of enterprises in sectors of importance to public procurement	public procurement and take measures to proactively develop the competitiveness of enterprises in sectors of importance to public procurement Formulate recommendations and organise a public presentation		public procurement and take measures to proactively develop the competitiveness of enterprises in sectors of importance to public procurement analysed and recommendations made

6.3.3 Procurement monitoring training program

Program Duration: October – December 2021 (2-days training sessions, twice a month)

Program objectives: To enhance the capacity of civil society and other stakeholders to improve the transparency and integrity of public procurement in Moldova

Beneficiaries: Representatives of civil society organizations (CSOs), journalists, monitors / civic activists, and economic operators (EOs) and/or business associations

Topics of training sessions and participants

Participants	Session	Topic	Duration	Trainers/ Guest speakers
CSOs Journalists monitors/civ il activists Economic Operators	Module 1. Introduction to the importance and principles of monitoring public procurement; Legal and institutional framework in matters pertaining to public procurement.	Session 1.1.(PTF) Introduction to the importance and principles of monitoring public procurement. The opening session should focus on why monitoring public procurement is important, e.g., reduce corruption, increase efficiency and contribute to delivery of high-quality goods and services to citizens. It should include a presentation of what % of Moldovan GDP is spent on public procurement. This session could also include discussion of the nature of monitoring public procurement as a „long-haul” process in view of the time from planning and budget to contract award and execution. This would also be a good place to introduce CSOs that have been active in monitoring public procurement in Moldova to share briefly what they have done and with what results. (This would not be incompatible with the same CSOs sharing later in more detail the challenges they have encountered.) Session 1.2. Legal and institutional framework in matters pertaining to public procurement. The presentation of the legal framework in public procurement, including: – list of normative acts; – scope and application of the PPL; exceptions; – the subjects and the object in public procurement; – the procurement working group and its duties; – the role and activity of monitors in the working group; – qualification data and award criteria; – the life cost cycle and the sustainability in the public procurement process; – public procurement contract Case no. 1: Monitoring procurement of works, infrastructure	Day 1: 10:00 - 16:00	PTF Trainers: Viorel Pîrvan, Vadim Țurcan Guest speakers: CA represen tativa Case no. 1: Lilia Zaharia, API

Participants	Session	Topic	Duration	Trainers/ Guest speakers
CSOs Journalists monitors/civil activists Economic Operators	Module 2. Legal and institutional framework in matters pertaining to public procurement (continuation)	Session 2.1. Law on utilities and subsequent normative acts: – scope and application of the PPL, exceptions; – the subjects and the object in sectoral procurement; – the thresholds and sectoral procurement procedures; – the procurement working group within procurement entities and its duties; – qualification and qualitative selection; – awarding of the sectoral procurement contract – sectoral procurement contract; – reviews and appeal procedure in the sectoral procurement Session 2.2. The role and duties of the institutions with responsibilities in public procurement, including: 1. Ministry of Finance; 2. Public Procurement Agency; 3. National Agency for Solving Complaints 4. State Treasury; Institutions with responsibilities related to the field (control, audit, integrity, anti-corruption): 1. Court of Accounts; 2. National Anticorruption Center 3. Financial Inspection; 4. Competition Council.	Day 2: 10:00 - 16:00	Trainers: Viorel Pîrvan, Andrei Rogac Guest speakers: Ministry of Finance Courts of Accounts NAC
CSOs Journalists monitors/civil activists Economic Operators	Module 3. The public procurement process (pre-tender stage and tender stage)	Session 3.1. – Procurement planning and the procurement plan: deadlines for drafting and publishing; – types of procedures; – -procurement documents (awarding documentation, specifications, the notice for participation, ESPD); – sustainable aspects in the procurement process; Session 3.2. – the guarantee for participation and the guarantee of good execution; – contract awarding criteria; – electronic auction; – practical examples (of awarding criteria) Case no. 2: Case on monitoring procurement at the local level	Day 1: 10:00 - 16:00	Trainers: Viorel Pîrvan Vadim Țurcan Case no. 2: Diana Grosu, LEX 21
CSOs Journalists monitors/civil activists Economic Operators	Module 4. The post-tender stage and the Public Procurement Contract	Session 4.1. – evaluation of bids and compliance with the qualification and selection criteria. – legal reasons for exclusion. – short cases on valid and bias exclusions – financial and technical aspects of the bid, the ESPD Session 4.2. – the procurement contract and additional agreements;	Day 2: 10:00 - 16:00	Trainers: Viorel Pîrvan Vadim Țurcan

Participants	Session	Topic	Duration	Trainers/ Guest speakers
		- subcontracting in procurement; - Short cases on sub-contracting - the execution and monitoring of the implementation of the procurement contract; Case no. 3: Presentation of the tender.health platform and Case on monitoring procurement in the healthcare sector.		Case no. 3: Constant in Cearanov schi Positive Initiative
CSOs Journalists monitors/civil activists Economic Operators	Module 5. The remedy system: legal framework & complaints against the procurement procedure	Session 5.1. - the subject of an appeal against a procurement procedure; - exceptions under the PPL; - legal provisions regarding the formulation of an appeal; - procedures for lodging appeals; - open meetings with the stakeholders; - Case Study. Analysis of an appeal and of the NASC solution. Session 5.2. - the procedure through which NASC examines and settles appeals; - the solutions that NASC can pronounce; - settlement of disputes before the courts (number of cases pending before the courts, % of NASC decisions reaffirmed by court decisions, etc.) - unified practices of NASC; - compliance with NASC decisions by the contracting authorities	Day 1: 10:00 - 16:00	Trainers: Viorel Pîrvan Guest speaker: NASC counselor
CSOs Journalists monitors/civil activists Economic Operators	Module 6. Transparency in public procurement; access to data & protection of personal data	Session 6.1. - legal provisions on transparency and publicity under the PPL; - access to public information under the Law on access to information; - data sources in procurement and access to documents related to the procurement process (MTender platform, revizia.md platform, openmoney.md platform; tender.health platform); - contract data analysis using the tender.gov.md; - availability of information in MTender. This would include among other things the Business Intelligence Module which is being developed by Open Contracting Partnership and Ministry of Finance (should be available starting with April, 28) Session 6.2. Legal provisions on protection the personal data in public procurement. Case no 4: Presentation of the platform Open Money	Day 2: 10:00 - 16:00	Trainers: Viorel Pîrvan, Sergiu Bozianu (protection of personal data) Guest speaker: Pavel Novac open-money.md

Participants	Session	Topic	Duration	Trainers/ Guest speakers
CSOs Journalists monitors/civil activists Economic Operators	Session 7. Conflict of interests and corruption in procurement	Session 7.1 - procurement rules on conflicts of interest; - the obligations of the working group; - identification of conflicts of interest; - requirements included in normative acts regarding conflicts of interest and acts of corruption in procurement; - the obligations of the working group and of the participants in the procurement procedures in case of conflicts of interest and acts of corruption; - preventing, identifying and sanctioning conflicts of interest and acts of corruption in public procurement; - definition of prohibited practices (i.e., fraud, corruption, collusion, coercion, obstruction, others). Session 7.2. (PTF) - Codes of ethics; - Private Sector Partners: use of codes of ethics and integrity pacts to enhance transparency and fairness for economic operators. - Short cases/examples of practices in procurement procedures or requirements in solicitation documents that could indicate and/or lead to Prohibited Practices (some of these examples could be provided by the Economic Operators).	Day 1: 10:00 - 16:00	Trainers: Viorel Pîrvan Guest speaker: NASC counselor or NAC representative (Olga Țîju /Ghenadi e Brînză) PTF
CSOs Journalists monitors/civil activists Economic Operators	Module 8. Competition and anti-competitive agreements in public procurement	Session 8.1 - competition in public procurement under the PPL; - anti-competitive practices: types and methods of detection; - identification of the anti-competitive practices in public procurement; - short cases / examples of anti-competitive agreements Session 8.2. - general provision of the Law on competition; - the role of the Competition Council in combating anti-competitive agreements in public procurement; - short cases / examples of the anti-competitive agreement in public procurement investigated by the Competition Council.	Day 2: 10:00 - 16:00	Trainers: Andrei Rogac, EBRD public procurement consultant, lawyer Guest speaker: Competition Council
CSOs Journalists monitors/civil activists	Module 9. Public procurement monitoring tools (red flags) and other tools	Session 9.1. - identification of irregularities and violations at the pre-tender stage, namely planning process and elaboration of tender documentation; - identification and analysis of red flags: manipulating needs, „adjusted” technical specifications and others - the functionalities and use of BI module within MTender (launched in April 2021 but still under	Day 1: 10:00 - 16:00	Trainers: Viorel Pîrvan Case no. 4: Olga

Participants	Session	Topic	Duration	Trainers/ Guest speakers
		development -https://bi.open-contracting.org/moldova/) - data analysis and indicators; Session 9.2 presenting the monitoring tool revizia.md and risks indicator for corruption (AGER) Case no 5. Monitoring public procurement		Diaconu, AGER
CSOs Journalists monitors/civil activists	Module 10. Public procurement monitoring tools (red flags) and other tools	Session 10.1. - identification of irregularities and violations at the tender and post-tender stage, namely launching of the tender, bids submission, opening of tenders, evaluation and awarding - identification and analysis of red flags: ungrounded disqualification, acceptance of non-compliant offers, unfounded cancelation of procedure, contract amendments and others. Session 10.2 - red flags during contract implementation including unjustified contract amendments for increasing the contract value or extending the term, deviations from the contract provisions accepted by the authority, payments for the unfinished works among others. Case no 6. Monitoring public procurement at the municipality level	Day 1: 10:00 - 16:00	Trainers: Vadim Țurcan Case no. 5: Diana Grosu, LEX 21
CSOs Journalists monitors/civil activists	Module 11. Post-monitoring actions: advocacy and notification of responsible authorities	Session 11.1 - the sanctions provided in the Contravention Code; - Management of the Prohibition Lis and the procedure to notify the PPA) - Notification of the control/law enforcement bodies, and other responsible authorities; - Advocacy actions of the report conclusions and findings Session 11.2 - Checklist/Guidelines for how to convey findings most effectively from procurement monitoring to those who should take decisions and, in case no decisions are taken, how to bring issues to the attention of higher-level bodies with a mandate to intervene. Case no. 6. Monitoring public procurement with focus on post-monitoring actions and notification of responsible authorities	Day 2: 10:00 - 16:00	Trainers: Vadim Țurcan Case no. 6: Olga Diaconu, AGER

Participants	Session	Topic	Duration	Trainers/ Guest speakers
CSOs Journalists monitors/civil activists EOs (Session 12.2)	Module 12. Engaging in effective procurement monitoring & Building a sustainable monitoring strategy	Session 12.1 (PTF for part of session 12.1) – presentation by CSOs of monitoring strategies they have adopted in the past and results obtained. – creating networks of those monitoring; – the fact that our project will be soliciting proposals for funding of actual monitoring activities. – checklist/guidelines for how to plan and finance procurement monitoring over the longer term in cooperation with the government, private sector and international donors and CSOs Session 12.2 The ceremony of handing diplomas of participation	Day 2: 10:00 - 16:00	PTF Trainers: Carolina Ungureanu Diana Enachi

6.4 Procurement Monitoring

6.4.1 Stages of the public procurement process

The tools that exist in public procurement monitoring vary in accordance with the succeeding series of stages and sub-stages of the process, at the end of which a public authority obtains a product, a service or has works performed following a public procurement contract being awarded to a certain economic operator. Meticulous understanding of such tools by sectors such as infrastructure, health, education as well as of their relevance to each stage of the process, starting from identification of needs and ending with the delivery of goods, services or works is essential for civil society organizations and monitors in the process of overseeing the public procurement.

The whole procurement process, as currently taking place in the Republic of Moldova, with all its' sub-processes, can be divided into the following main stages: the planning stage, the procurement planning and bidding stage, bid evaluation and contract awarding, contract execution and monitoring stage.

Graph 3: Stages of the procurement process



6.4.2 Roles of monitors

Challenges that monitors encounter | Monitoring the way in which public funds are used, including the conduct of public procurement procedures, poses a series of challenges for civil society. On one hand, insufficient transparency and limited access to information on public procurement are the most commonly encountered barriers. On the other hand, the information that is made accessible and public, in compliance with the law, is not sufficient for the monitors to be able to identify corruption risks such as bid rigging, procurement fraud, as well as other corruption schemes, including collusion, bribery, embezzlement/misappropriation of public funds, pressure and coercion exerted by a head of an institution or political party, clientelism, nepotism/cronyism, etc. This situation is further complicated by the fact that there are tens of thousands of procedures and public procurement contracts conducted and concluded by the public authorities at all levels.

As such, the monitors should take into account all the enumerated aspects, and, first and foremost the fact that it is impossible to monitor all public procurement no matter how good the monitoring tools and capacities are. But even so, the impact that the monitoring results, findings, irregularities and identified frauds may have on the public procurement process could be considerable. First and foremost, this has to do with raising awareness of the whole society about the degree of irresponsibility the authorities display when it comes to public funds spending, while channeling the attention of the public opinion on cases of corruption and public funds embezzlement, as well as providing relevant information to law enforcement bodies so that these agencies can investigate cases as mentioned above.

Forms of monitoring | Monitoring can take many forms, depending on the monitors' priorities and capacities. The most simple and accessible form of monitoring is observation, which means that any citizen could observe whether a commodity was efficiently procured, or if a work was properly executed. For example, it is possible to monitor the procurement of furniture for a school according to a pre-established agreement, the procurement of medicines that should always be available for the needs of the patients, or the construction of a stretch of road promised by authorities. However, efficient monitoring that could bring about visible results (increased transparency, public accountability, improvement of the procurement process, reporting of acts of corruption, enforcing accountability for those involved in illegal actions, etc.) implies overseeing the public procurement process from planning to contract execution, interaction with the contracting authorities, as well as taking actions with the aim of ensuring remedies for the identified breaches. Efficient monitoring also requires a deep analysis of the documents pertaining to each stage of the public procurement process, a comparison between the quality/quantity of delivered goods, services and works with the contractual provisions, monitoring the delivery of goods and services to ensure they reach intended beneficiaries and the employment of certain tools needed in order to identify the corruption risks.

Monitoring approaches | In the process of monitoring, it is also recommended that CSOs set clear objectives and employ adequate procedures so as to be sure that the time and allotted resources are used to the fullest, and that the results, including the data, analytical reports, and monitoring reports are credible and reliable. Therefore, in order to make the monitoring activities more efficient, the following approaches might be suggested:

- focusing on a certain stage of the public procurement process, which is considered less transparent;
- focusing on high value contracts;
- focusing on certain economic sectors, prone to illegalities and corruption schemes and with significant impact on vulnerable populations;

- focusing on sectors with the largest share of public spending and the highest amount of public procurement contracts (health, education, infrastructure, etc.);
- focusing on certain contracting authorities (for example those which undertake the largest amount of public procurement; those that lack transparency or have previously committed violations attested by audits or civil society within the framework of other monitoring activities);
- focusing on goods, services and works with the largest share in the total amount of procurement at the national level (building works, maintenance and repair of roads, medicines and medical equipment, etc.);
- focusing on the domain of activity and expertise capacities the CSOs have (for example, the organizations that are active in the field of education could monitor public procurement conducted by educational institutions);
- focusing on certain regions or administrative-territorial units (the local organizations know better the situation at the local level and could monitor all, or a part of the contracting authorities from the locality/region in which they operate, for instance, the mayoralty, local councils, budget institutions, municipal enterprises, etc.).

Selection of the type of public procurement to be monitored | Proper selection of procurement for monitoring by CSOs and monitors is important due to the fact that it is impossible to monitor all public procurement procedures that are being conducted in extremely large numbers. According to the Public Procurement Agency activity report for 2020⁹, 4355 procurement procedures were conducted in that year alone. As a result, 12 416 contracts were concluded amounting to a total of 9.4 bn MDL. These numbers do not reflect also the low value procurement and contracts.

A deep analysis of the documents at each stage of the public procurement process, comparison of quality/quantity of goods, services and works with contractual provisions and use of certain tools to identify the corruption risks are some of the methods used in the process of monitoring.

6.4.3 Information sources, monitoring tools and monitoring techniques

6.4.3.1 Information sources: legal documents

A new e-procurement system, the “State Register of Public Procurement” (usually referred to as “MTender”) was established by Government decree 986/2018 of 10 October 2018. As a result, the system became mandatory for all contracting authorities. The technical concept of the automated information system “The State Register of Public Procurement” (MTender) was approved through Government Decree no. 705 of July 11, 2018. With the official launch of the new e-procurement system in 2018 (MTender), public procurement became overall more transparent in relation to the civil society and average citizens. However, MTender is not fully functional, meaning that on this platform only the notice for participation, the tender documentation and the submitted offers can be published. The system does not have the possibility to generate documents related to the procedure, procurement contracts and award notices. Procurement plans cannot be published in the system, and so the contracting authorities publish them on their institutional web pages.

Table 9 shows whether key procurement information and documentation is available and if so where it can be found:

⁹ [Agentia Achizitii Publice \(gov.md\)](https://www.gov.md/ro/achizitii-publice)

Table 9: Key legal documents as sources of information

Document	Legal reference	MTender	Other sources
Procurement plan	GD 1419/2016 13), 17), 18); Annex 1	No	Contracting authority web page (if any; not always the case!)
Prior information notice	PPL, Art. 28	No	Public Procurement Bulletin (tender.gov.md)
Contract notice	PPL, Art. 29	Yes	No
Tender documents	PPL, Art. 40; Ministry of Finance Orders 173, 174, 175, 176/2018	Yes	No
ESPD form	PPL, Art. 20; Ministry of Finance Order 177/2018	Yes	No
Tenders received	PPL, Art. 44	Yes, partially	No
Tender opening minutes	GD 9/2008, 667/2016, 705/2018	No	No
Evaluation reports ("award decisions")	PPL, Art. 69 (10)	No	PPA's website and BAP based on reports per procedure (Art. 78)
Award notices	PPL, Art. 30 and Annex 3.	No	Public Procurement Bulletin (tender.gov.md)
Complaints; NASC rulings	PPL, Art. 80-88	Reference to NASC web page	NASC web page (ansc.md)
Contracts	PPL, Art. 74	No	Only basic information (tender.gov.md)
Contract amendments	PPL, Art. 76 (7)	No	Information published on tender.gov.md based on reports submitted
Invoices, payments	Law 181/2014, Art. 66, 117; Ministry of Finance Order 215/2015; Ministry of Finance Order 118/2017	No	No
Contract execution reports	PPL, Art. 15; GD 667/2016, point 34	No	Contracting authority web page

6.4.3.2 Procurement monitoring tools

A. The “Red flags” procurement monitoring tool

A monitoring tool, broadly used worldwide, is based on the identification of “red flags” at each stage of the procurement process; this methodology is based on a tool elaborated by the Transparency International USA – Civil Society Procurement Monitoring Tool¹⁰. The red flags represent types of signs or indicators of possible irregularities, fraud or corruption. It is important to note that a red flag is not necessarily indicative of the presence of an irregularity or corruption act, but rather points to such a possibility. Sometimes, a red flag could be the result of a human or technical error committed without bad intention, and not a sign/indicator of corruption. That is why, it is important for monitors to be aware not only of the methods employed in order to identify red flags, but also of actions they might take which require a profound analysis; among such possible actions are the notification of the responsible supervisory/oversight and inspection bodies in the domain of public procurement, the notification of the bodies responsible to investigate anti-competitive practices, conflicts of interest, corruption etc.

The procurement process begins with the identification of the needs by the contracting authority, their assessment and prioritization. The planning stage of public procurement is important for the contracting authority: the better planning it has, the fewer efforts during the subsequent stages of the procurement process it will make, and the better results - after implementation of the contract - it will obtain. We refer here to the multiple amendments which appear at the stage of awarding and execution of a public procurement contract as the result of faulty planning, or of waste of financial resources which entails increases in the final cost of the procurement. One of the principles that should be followed by the authority at the planning stage is “*value for money*”, which means that from the very beginning the costs should be evaluated for the entire life cycle of products, services or works, taking into consideration the quality-price ratio, product warranty, assessment of maintenance costs, etc.

For adequate monitoring of the procurement planning process, the monitors need to:

- know exactly the needs relating to goods, services and works;
- have knowledge of the available financial resources;
- have knowledge of the estimate of the public procurement contract value, and in case of simultaneous award of contracts in the form of separate lots – of the estimate the cumulative value of all lots.

For the monitoring activity purposes, the monitor shall distinguish four main stages of the procurement process:

- Planning and elaboration of tender documents;
- Launching of the procurement procedure;
- Evaluation of tender documents and award of contracts;
- Implementation and monitoring of contracts;

¹⁰<http://monitoring.coalitionforintegrity.org/>

6.4.3.3 Procurement monitoring sources: online platforms

B. The E-procurement system MTender

A monitor can access the following data through the MTender system (without being able to generate reports or extracting the data for further analysis outside the system):

- the planned value of the procurement;
- the estimative value of the procurement;
- the number of bidders;
- the number of bids;
- the value of bids;
- the value of the bids after the electronic auction;
- the number of disqualified bidders;
- the notification about the cancellation of the procedure;
- the existence of a lodged appeal (which redirects the user to the NASC web page for further analysis of the NASC decisions on the lodged appeals).

Other documents and information available in the system for analysis:

- the contract notice;
- the ESPD form;
- the tender documentation;
- the clarification questions;
- the answers from the contracting authorities to the clarification questions;
- the bids (only partially).¹¹

C. Open Contracting Data - <http://opencontracting.date.gov.md/>

The Open Contracting Portal has been connected to the MTender system since 2020¹². The Open Contracting Portal was developed by the Public Procurement Agency (under the Ministry of Finances) in partnership with the E-Government Center and with support from the Open Contracting team of the World Bank.

The concept of open contracting is to publish and largely use open data, accessible in real-time for the whole public contracting process, along with the involvement of citizens and the private sector in the identification and settlement of matters of concern.

D. The portal openmoney.md

The first version of the platform was launched in 2016 and was developed by a group of young people with the support of the UNDP Moldova. The goal of the project was to publish information about the final beneficiaries of the procurement contracts and the relations between them and the civil servants, officials, or members of the public procurement working group within contracting authorities.

Monitors are able to track down how public money is spent, as well as who the beneficial owners of contracts granted by state institutions are, thanks to the OpenMoney 2.0 platform, which was relaunched in a new edition, in December 2020. The platform uses open data, which is automatically processed, to reveal the connections between the public procurement contracts and final beneficiaries. OpenMoney 2.0 is an updated

¹¹ <http://www.viitorul.org/files/EN-Constraints%20on%20the%20use%20of%20MTender%20public.pdf>

¹² [MTender Public Portal \(gov.md\)](http://MTenderPublicPortal.gov.md)

version of the OpenMoney platform. After its relaunch, the platform received several new functionalities, including the integration of public data from available governmental online platforms and the provision of information about public procurements in categories corresponding to the administrative territorial units of the Republic of Moldova. At the same time, the system for collecting and presenting data was improved, and a wide use platform was developed and became available for citizens.

E. Platforms on economic operators and contractors

The information about the economic operators, participating in public procurement procedures, can be accessed, for a fee, in the State Register of Legal Entities. However, there are a number of free available tools containing data and information on the activity of economic operators, such as:

- <http://companii.md>
- <http://idno.md>
- <http://www.bizzer.md>

These data platforms provide access to certain information about companies, such as:

- IDNO/ state identification number;
- status;
- legal form;
- registration date;
- legal address;
- founders;
- directors;
- licensed and unlicensed types of activity.

F. The monitoring tool developed by AGER based on the „red flags” methodology [Revizia.md](#)

The purpose of the platform Revizia.md is to facilitate the civic monitoring of public procurement, by identifying possible errors, signaling them and contributing to their remedy by addressing responsible authorities. The established risk indicators can be found here: <https://scoring.esempli.systems/statistics>

The risk criteria consist of:

- number of requests for clarification;
- appeal filed; appeal accepted;
- appeal rejected;
- batch without an offer;
- batch with one offer;
- repeated appeal filed;
- repeated appeal accepted, withdrawn appeal;
- repeated appeal rejected;
- procedure canceled until the opening of bids;
- procedure canceled after the opening of bids;
- additional agreement.

G. The portal [Tender.Health](#) for Covid-19 related procurement

The portal was launched at a regular Health Ministry press briefing on the coronavirus situation, at which the health minister confirmed the importance of constructive cooperation with the civil society as the government

digitizes medical procurement in Moldova. Tender.Health is an open platform that allows the analysis of data on public procurement in the healthcare field to combat the COVID-19 pandemic in the Republic of Moldova.

The portal Tender.Health enables rapid analysis of spending, including that which has been bought by specific procuring entities, and the product prices. This serves as a useful tool not only for citizens, but also for public entities, since they can see the best prices and thus find the best suppliers. Activists plan to further develop this platform in the future in order to use it for all under-threshold procurement.

Also, Tender.Health gives everyone access to contract and invoice data in the form of clear tables and graphs, with filtering functions for analysis and monitoring. The platform allows to view and interpret information about centralized procurement, procurement of separate medical institutions, suppliers, product categories, unit prices and more.

Currently, the data available (which is updated quite regularly) on the Tender.Health portal refers to:

- procurement conducted by the Center for Centralized Public Procurement in Health (CAPCS) - responsible for centralized procurement in healthcare;
- procurement conducted by any other contracting authority in the country that is purchasing Covid-19 related goods or services, according to the provisions of Government Decision no. 493 of 08.07.2020 for the approval of additional transparency measures regarding public procurement carried out in order to prevent, reduce and eliminate the consequences of the Coronavirus pandemic (COVID-19) for 2020 (published in the Official Gazette no. 165-176 of 10.08.2020). Thus, the contracting authorities that have been carrying out public procurement in order to prevent, reduce and eliminate the consequences of the coronavirus pandemic (COVID-19), will prepare and present to the PPA the relevant procurement information.
- procurement conducted within the World Bank Project “Emergency Response to COVID-19 in the Republic of Moldova”. On May 21, 2020, the project was ratified by the Law of Parliament No. 220 on the Financing Agreement between the Republic of Moldova and the International Development Association for the implementation of the project "Emergency Response to COVID-19" with a total value of 52.9 million euros, provided in the form of a loan, signed on April 28, 2020. The IDA credit has subsequently been extended and increased by 24.8 million Euro.

H. Public Procurement Agency [webpage - https://tender.gov.md/](https://tender.gov.md/)

The data on the procurement contracts¹³ (details below) is available for download (in xls., csv., and doc. format), and, as such, can be used for further analysis.

The data on the procurement contract which is available for analysis refers to:

- the number of contracts;
- type of contract (primary contract, contract amendments);
- the number of bidders;
- the conclusion date;
- the subject-matter of the contract (type of goods, services or works);

Other available data refer to:

¹³ [Contracte atribuite](#) | [Agenția Achiziții Publice \(gov.md\)](#)

- the blacklist of economic operators;
- the list of frequently asked question and the respective answers;
- the list of the most common mistakes, committed by the contracting authorities;
- the analytical reports;
- samples of tender documents, samples of requested forms.

I. National Agency for Solving Complaints (NASC) webpage - <https://www.ansc.md/>

In order to monitor the complaints lodged by the economic operators within the public procurement procedures and the related NASC decisions, the monitors have access to the following data, which is yet not available for exporting and further analysis:

- The complaints under examinations (the contracting authority, the economic operators, the procurement procedure);
- The subjects of the appeals;
- NASC decisions.

Another tool for civil society is its' right to participate in the public sessions organized NASC for the complaints' review (the information regarding the date and time of sessions is published on the NASC' web page 3 days prior to the day on which they will take place).

6.4.3.4 Procurement monitoring techniques

J. The market analysis

The market analysis is for market prices of the goods / services / works that are being monitored, and compare the price of the goods / services / work purchased by certain authorities with the average on the market;

K. The comparative analysis

Monitors can

- compare the prices of goods / services / works that are being monitored with the prices of the similar goods / services / works procured recently by other contracting authorities;
- compare the estimative value of the goods / services / works included in the annual procurement plan with the estimative value of the procurement at the bid launching stage and, further, with the actual values included in the signed contract. The comparison can eventually be extended to the final contract value in the case of contract amendments.

L. The analysis of the international benchmarks, statistics, indices, ratings, etc.

Analysis of international benchmarks, statistics, indices, ratings relevant to public procurement performed by international organizations that assess various aspects of procurement. For example, the level of corruption relating to countries, specific sectors, authorities' openness, and other parameters (for instance: MAPS Assessment by the World Bank, Corruption Perceptions Index by TI, Benchmarking Public Procurement Index, Open Government Index, Human Development Index, Global Competitiveness Report, etc.).

The 2020 MAPS Report for Moldova developed by the World Bank is to be published soon and consists of a comprehensive (quantitative and qualitative) assessment based on 4 pillars:

- legal and regulatory framework;

- institutional framework and management capacity;
- procurement operations and market prices;
- accountability, integrity and transparency.

M. The analysis of the audit reports of the Court of Accounts on the performance or conformity of the national procurement system, or of the procurement of a specific contracting authority. The CoA audit reports and its decisions are fully available for analysis on its [web page www.ccrm.md/en](http://www.ccrm.md/en)

N. The analysis of decisions, reports, statements, and investigations of the inspection authorities/regulatory bodies, supervisory bodies under the national law (Public procurement Agency, Competition Council, National Anti-corruption Center, Anticorruption Prosecutor's Office, National Integrity Authority).

O. The analysis of other reports, case studies, analytical reports and investigations carried out by civil society organizations, mass-media, investigative journalists/reporters.

6.5 Monitoring and evaluation plan

Overall Goal: Increased public procurement transparency and integrity through citizen monitoring and reporting.						
Objective 1: Moldovan CSOs and journalists are sufficiently equipped to conduct meaningful monitoring of procurement processes.						
Activity	Indicator	Description	Indicator Type and Source	Schedule and reporting	Baseline	Target
Phase 1: Inception Phase Baseline study Design of the Project plan	Number of interviews held Number of CSOs and journalists completing the online survey	Quality of the baseline study conducted by an external expert	Type: Output Source: meeting list, baseline study	Inception phase Reporting: interview questionnaire Report on the online survey	0 activities	≥ 10 interviews conducted ≥ 1 online survey conducted
Phase 2: Training Phase 1: Needs Assessment 2: Launch event 3: Preparation of monitoring and investigative tools 4: Preparation of training program	A formal project launch event organized	Substantive dialogue among roundtable participants	Type: Output Source: participant lists; photos, agenda	Training phase Reporting: IDIS quarterly reporting, training experts reporting	0 activities	1 formal project launch event organized

Activity	Indicator	Description	Indicator Type and Source	Schedule and reporting	Baseline	Target
5: Selection of training participants and trainers	Number of participants trained					≥ 25 participants trained
6: delivery of training						
7: translation of training materials	Number of training sessions held					≥ 12 training sessions over 3 months held
8: Roundtable with CSOs, contracting authorities (CAs) and economic operators (EOs) to foster dialogue among public procurement	Number of roundtables organized					≥ 1 roundtable held

Objective 2: e-procurement procedures and practices are appropriately monitored by Moldovan Civil Society Organizations (CSOs) and journalists making use of the e-procurement system.

Activity	Indicator	Description	Indicator Type and Source	Schedule and reporting	Baseline	Target
Phase 3: Monitoring Phase Call for EOIs from CSOs and journalists for sub-grants (including guidelines and criteria)	Number of grant facility guidelines	The grants process will be guided by a robust and transparent series of guidelines developed by PTF and IDIS Unit: guidelines produced for selection of grantees and awarding of grants	Type: Output Source: Guideline document	Monitoring phase Reporting: Quarterly reports	0 grant facility guidelines	≥1 small grant facility guidelines document produced
	Number of civil society organizations (CSOs) receiving USG assistance engaged in advocacy interventions	Profile of grantees, e.g. gender, diversity of staff and management Number and type of monitoring projects undertaken by grantees Unit: grant recipients	Type: Output; Standard DRL.4.2-2 and DRL 6 Source: Grant agreements	Monitoring phase Reporting: Quarterly reports; final report; mid-term and final evaluation	0 grantees	≥ 5 grantees/ projects for total of US\$200k

Activity	Indicator	Description	Indicator Type and Source	Schedule and reporting	Baseline	Target
	Number of mentoring sessions provided to each grantee Number of reports provided by grantees	The number of mentoring sessions per grantee will be documented in action plans whose progress will be tracked. Unit: mentoring sessions Measuring the outputs, outcomes, and impacts of the grant projects is not only critical for achieving the program objectives but also for generating crucial lessons learned and experience for ongoing coalitional and network activities Unit: indicators defined in the project proposals	Type: Output Source: action plans Type: Outputs and/or outcomes and/or impacts Source: project proposals	Monitoring phase Reporting: Quarterly reports Implementation phase; Reporting phase Reporting: Delivery of findings and SMART recommendations to relevant authorities	Progress reported in meaningful monitoring 0 reports with action-oriented recommendations	Mentoring improves effectiveness in procurement monitoring ≥2 reports per grantee with action oriented recommendations

Objective 3: Findings and recommendations resulting from credible and professional CSO monitoring are taken seriously and acted upon by contracting entities, contractors and government oversight and law enforcement entities including the National Anti-Corruption Center

Activity	Indicator	Description	Indicator Type and Source	Schedule and reporting	Baseline	Target
Phase 4: Reporting Grantees' recommendations to monitored contracting authorities to address irregularities identified in the monitoring process. Grantees' recommendations to control/monitoring/ anti-corruption/ legal bodies, to address a defective procurement process	Number of grantee recommendations for contracting authorities and control bodies formulated and submitted to relevant authorities Number of corrective actions taken by contracting authorities and control bodies	Grantee recommendations as core outputs of the monitoring activities as well as key inputs to the reporting phase Unit: recommendations produced	Type: Output Source: Table tracking recommendations accepted and / or implemented	Reporting Phase Reporting: Quarterly reports	0 grantee recommendations formulated and submitted to contracting authorities and control bodies 0 corrective action taken by contracting authorities and control bodies based on the grantee recommendations	≥10 grantee recommendations formulated and submitted to contracting authorities and control bodies ≥5 corrective action taken by contracting authorities and control bodies based on the grantee recommendations

6.6 Sources of information

6.6.1 List of interviewees

Procurement specialists outside the Republic of Moldova

1. World Bank Bangladesh (26.01.2021)
2. Open Contracting Partnership, Ukraine (several meetings throughout the inception phase))

Development partners of the Republic of Moldova

3. World Bank (21.09.2020)
4. EBRD (14.12.2020)
5. EU Delegation (17.12.2020)
6. US Embassy (15.12.2020 and 09.03.2021)
7. UNDP (26.01.2021)
8. CLDP (09.03.2021)
9. Konrad-Adenauer-Foundation (22.12.2020 and 28.01.2021)

State institutions:

10. Ministry of Finance (21.12.2020)
11. National Agency for Solving Complaints (NASC) (26.11.2020)
12. Public Procurement Agency (PPA) (26.11.2020)
13. National Anti-corruption Center (NAC) (11.12.2020)
14. Court of Accounts (CoA) (30.11.2020)

Civil Society Organizations and monitors

15. "Asociația Pentru o Guvernare Eficientă și Responsabilă" - AGER (10.11.2020 and 23.11.2020)
16. "Inițiativa Pozitivă" (27.11.2020)
17. OpenMoney (16.12.2020)

Private platforms supporting MTender

18. Achizitii.md (02.12.2020)
19. E-licitatie (01.12.2020)

Private entities and business associations:

20. Alliance of Small Enterprises from Moldova - AIM (30.11.2020)
21. AmCham Members: Moldcell, Orange, Premier Energy, Scop Distribution (29.12.2020)
22. National Confederation of Employers of the Republic of Moldova (also representing "Arventa" company)
23. "Polimer Gaz Construcții" (29.12.2020)
24. Center for International Private Enterprise (CIPE) (30.09.2020 and 05.02.2021)

6.6.2 Further readings

6.6.2.1 IDIS publications

- IDIS: Monitoring Report “The sectorial Plan for anti-corruption actions in public procurement for the years 2018-2020”, 2020, <http://viitorul.org/ro/library>
- IDIS: Evaluation Report “Strategy for the development of the public procurement system for the years 2016-2020 and its implementation action plan for the years 2016-2018, 2019 <http://viitorul.org/ro/library>
- IDIS: Position paper “ Complaints settlement panels in public procurement – between transparency and personal data, 2019, http://viitorul.org/files/Pisition%20Paper_Complaints%20Settlement%20Panels.pdf
- IDIS: Policy recommendations for the Parliament to have a transparent, effective and participative budgetary process in Republic of Moldova, 2019, http://viitorul.org/files/library/IDIS_Propuneri%20pentru%20Parlament%20privind%20%C3%AEmbunat%C4%83%C8%9Birea%20Procesului%20Bugetar.pdf
- IDIS: Monitoring Report “The sectorial Plan for anti-corruption actions in public procurement for the years 2018-2020”, 2019 <http://viitorul.org/files/Monintoring%20Report.%20ANTI-CORRUPTION%20ACTIONS%20c.pdf>
- IDIS: Position Paper “An efficient remedy system is the key to an efficient public procurement system”, 2019 - <http://viitorul.org/ro/library-books/1713>
- Policy Recommendations for the Regulation on the activity of the working group for public procurement, , 2019 - <http://viitorul.org/ro/library-books/1702>
- IDIS: Policy Recommendations for the Regulation on public procurement of works, 2019 - <http://viitorul.org/ro/library-books/1660>
- IDIS. Confidence Index in the Public Procurement System in Moldova (II edition), 2019 - <http://viitorul.org/ro/library-books/1629>
- IDIS: Summary of the best and worst local and regional 10 development policies in Moldova, co-author (4 editions in 2018-2019) - <http://viitorul.org/files/EN-Summary%20FINAL.pdf>
- IDIS: Evaluation of the Remedy System in Public Procurement Sector and recommendations for the improvement of the system, 2018 - <http://viitorul.org/ro/library-books/1488>
- IDIS: Confidence Index in the Public Procurement System in Moldova (I edition), 2018 - <http://viitorul.org/ro/library-books/1384>
- IDIS: Strategic Plan for Integrity and Anticorruption actions 2018-2020 of Strasen Municipality, 2018 - <http://www.straseni.md/planul-strategic-local-de-integritate-si-actiunile-anticoruptie-ale-primariei-municipiuluistraseni>
- IDIS: Guide: Appeals in Public Procurement, 2017 - <http://viitorul.org/ro/library-books/1113>
- IDIS: Public Procurement Guidebook for contracting authorities, 2017 - <http://viitorul.org/ro/librarybooks/1053>
- IDIS: Model of Local Anticorruption Plan 2018 – 2020 for National Anticorruption Center, 2017 - <https://www.cna.md/tabview.php?l=ro&idc=64&t=/Strategia-nationala-anticoruptie/Strategia-nationala-anticoruptie>
- IDIS: Handbook for Monitoring Public Procurement. Instrument for civil society, 2017 - <http://viitorul.org/files/Ghid%20Achizitii%20Societate%20Civila%20%202017%20-%20ENG.pdf>
- IDIS: Policy Analysis “Constraints on the use of MTender public procurement electronic system” 2019, <http://viitorul.org/files/EN-Constraints%20on%20the%20use%20of%20MTender%20public.pdf>

6.6.2.1 Publications of Moldovan Authorities

- **Guide on Sustainable Public Procurement** for contracting authorities (English and Romanian versions), <https://tender.gov.md/ro/content/ghid-privind-achizi%C8%9Biile-publice-durable>
- **Standard Documentation on public procurement of doors and windows that meet sustainable criteria**, <https://tender.gov.md/ro/content/documenta%C8%9Bie-standard>
- **Ban List in public procurement** (the list containing the information of the banned economic agents), <https://tender.gov.md/ro/lista-de-interdictie>
- **Training Curriculum of the Public Procurement Agency**, <https://tender.gov.md/ro/tip-de-pagin%C4%83-avansat%C4%83/curricula-de-instruire>
- **Annual Training Plans of the Public Procurement Agency**, <https://tender.gov.md/ro/tip-de-pagin%C4%83-avansat%C4%83/plan-de-instruire>
- Activity Reports for 2016, 2017 and 2018, 2019 of the Public Procurement Agency, the National Agency for Settlement of Claims, the Ministry of Finance
- See also
 - [-www.tender.gov.md](http://www.tender.gov.md);
 - [-www.app.gov.md](http://www.app.gov.md);
 - [-www.NASC.md](http://www.NASC.md)
 - [-www.mtender.gov.md](http://www.mtender.gov.md);
 - [-www.cna.md](http://www.cna.md);
 - [-www.mei.gov.md](http://www.mei.gov.md);
 - [-www.particip.gov.md](http://www.particip.gov.md);
 - <https://tender.gov.md/>
 - <https://www.legis.md/>
 - <https://eur-lex.europa.eu/>

6.6.2.3 Publications of international stakeholders

- World Bank and Government of Moldova: Moldova: Assessment of the public procurement system (MAPS) (draft 30 August 2020)
- Konrad Adenauer Stiftung: Civil society organizations from the Republic of Moldova: Evolution, sustainability, capacities. (August 2019)
- European Dynamics: Technical Assistance for Developing an e-Procurement system in the Republic of Moldova, Inception Report (February 2020).

6.6.3 Analysis of relevant secondary legislation, regulations and policies in public procurement

Note: the legal and normative acts in public procurement are available in a single source: web page of the Public Procurement Agency¹⁴

I: International agreements and EU Directives

Association Agreement between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and their Member States, on the other hand, ratified by the Law no. 112 of 02.07.2014¹⁵

The English version of the Agreement can be accessed on the following link: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.260.01.0004.01.ENG)

Directive 2014/24/EU of the European Parliament and of the Council of 26.02.2014 on **public procurement**¹⁶;

The English version of the text of the Directive can be accessed at the link in the footnote.

Directive 2014/23/EU of the European Parliament and of the Council of 26.02.2014 on **the award of concession contracts**¹⁷

The English version of the text of the Directive can be accessed at the link in the footnote.

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 **on procurement by entities operating in the water, energy, transport and postal services sectors**¹⁸

The English version of the text of the Directive can be accessed at the link in the footnote.

Agreement on Government Procurement of 15.04.1994 (Marrakech) and Protocol amending it from 30.03.2012 (Geneva), ratified by the Law no. 125 of 02.06.2016¹⁹

The English version of the text of the agreement can be accessed at:
<https://treaties.un.org/doc/Publication/UNTS/Volume%201915/volume-1915-I-31874-English.pdf>.

United Nations Convention against Corruption²⁰, ratified by the Law no. 158 of 06.07.2007²¹

The English version of the text of the Convention can be accessed at:
https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

II: Primary legislation

Laws in the public procurement sphere:

1. **Law No. 131 of 03.07.2015 on public procurement**²²

Recent significant amendments to the Law 131/2015 (2018):

- Increased thresholds for small value acquisitions: for public procurement contracts for supplies and services, other than those mentioned at the Article 2, para. (1) c) - the threshold has increased from 80,000 Lei to 200,000 Lei; for public procurement contracts for works - the threshold has increased from 100 000 Lei to 250,000 Lei;

¹⁴ <https://tender.gov.md/ro/con%C8%9Binut/legisla%C5%A3ie>

¹⁵ https://www.legis.md/cautare/getResults?doc_id=83489&lang=ro

¹⁶ <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A32014L0024>

¹⁷ https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=OJ%3AJOL_2014_094_R_0001_01

¹⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0025>

¹⁹ https://www.legis.md/cautare/getResults?doc_id=93379&lang=ro

²⁰ https://www.unodc.org/unodc/en/corruption/tools_and_publications/UN-convention-against-corruption.html

²¹ https://www.legis.md/cautare/getResults?doc_id=12297&lang=ro

²² <http://www.legis.md/cautare/rezultate/113104>

- Increased thresholds for the RfQ procedure: for supplies and services – up to 800 000 Lei (without VAT); for works – up to 2 000 000 Lei (without VAT) (Article 57, para. (1))
- Each economic operator may submit one single price quotation, without having the right to change it, except the case when the award of a public procurement contract for supply and services (by RfQ) is preceded by an electronic auction (Article 57, para. (3)).
- If the CA intends to acquire similar supply, services or works, but divided into lots, and the aggregated value of all the lots exceeds the threshold set out under Art. 2 par. 3, the CA shall have the right to apply the RfQ procedure only if the estimated aggregate value of the lots, for which RfQ procedure is applied, does not exceed 20% of the total estimated value of the supply, services or works to be rendered (Article 4, para. (7), (9), (15))
- Increased thresholds for the obligation to publish the prior information notice: for supplies and services – if the estimated value is equal to or higher than 800 000 Lei; for works – if the estimated value is equal to or higher than 2 000 000 Lei (Article 28, para. (4))
- Increased thresholds for the obligation to request the guarantee for the tender: for supplies and services – if the estimated value is equal to or higher than 800 000 Lei; for works – if the estimated value is equal to or higher than 2 000 000 Lei (Article 68, para. (5), (11))
- Changing timescales for clarification period, Art 35: 9 days – in the case if the estimated value of the public procurement contract is equal to or higher than 2; 300 000 Lei for supplies and services and 90 000 000 Lei for works;
- 6 days - in the case if the estimated value of the public procurement contract is less than 2 300 000 Lei for supplies and services and 90 000 000 Lei for works; 3 days – in the case of RfQ procedure;

2. **Law No. 74 of 21.05.2020 on procurement by entities operating in the water, energy, transport and postal services**²³ (will enter into force in June 2021);

The law partially transposes in the national legislation the Directive 2014/25 / EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport, and postal services sectors and on repealing Directive 2004/17 / EC, published in Official Journal of the European Union L 94 of 28 March 2014, as amended by Delegated EU Regulation 2017/2364 of 18 December 2017 amending Directive 2014/25 / EU of the European Parliament and of the Council as regards concerns the application thresholds for procedures for the award of public contracts.

The law regulates the way of contracting purchases of goods, works, or services in the energy, water, transport, and postal services sectors, the estimated value of which, excluding value-added tax, is equal to or greater than the following thresholds: for the contracts for the acquisition of goods and services, as well as for the solution competitions - 800000 lei; for works procurement contracts - 2000000 lei; for procurement contracts having as object social services and other specific services - 1000000 lei; Licensed activities in the thermal energy sector and natural gas, licensed activities in the power sector, licensed activities in the public water supply and sewerage sector, sectoral activities in the field of transport, sectoral activities in the field of postal services, sectoral activities related to oil and gas extraction, prospecting and extraction of coal or other solid fuels.

The law defines the procedures for sectorial procurements: open tender, restricted tender, negotiation with prior publication of a contract notice, negotiation without prior publication of a contract notice, competitive dialogue, innovation partnership. The special procedures for contract awarding in sectoral procurements are defined as the framework agreement, the dynamic procurement system, the electronic auction, electronic catalog, centralized procurement activities, occasional joint procurement, and the sectoral procurement file. The requirements defined by the law for sectoral procurement procedures are the market consultation, prior involvement of bidders or candidates, rules on the description of goods, works and services, labels, availability of the award documentation in electronic format, the offer, and the alternative offers, the division into lots. The law also makes provisions for the publicity and

²³ https://www.legis.md/cautare/getResults?doc_id=121896&lang=ro

transparency of such procedures, for the qualification and qualitative selection, for the contract award, as well as for the contract itself, and for the appeals solving procedures.

Legal acts of the Parliament:

- Parliament Decision no. 271 of 15.12.2016 regarding the **establishment, organization and functioning of the National Agency for Complaints Settlement (NACS)**²⁴

The law adopts the regulation on the organization and functioning of the National Agency for Complaints Settlement, establishes the structure of the NACS, establishes staff of the NACS to a number of 30 individuals. The law stipulates that the agency is an autonomous public authority, accountable to the Parliament, having the competence to resolve the appeals formulated within the procurement procedures in accordance with Law no. 131 of July 3, 2015 on public procurement, and that it has the status of a legal entity under public law and is not subordinated to another public or private authority. The law makes provisions governing the procedures of examination and the solving complaints, and for ensuring the transparency of the Agency.

Complementary laws which are relevant to the public procurement sphere:

1. Law no. 121 of 05.07.2018 on concessions of works and services²⁵

The law regulates the manner of awarding the works concession and the service concession, the legal regime applicable to them, as well as the specific aspects of the award and execution of the respective concessions. The law partially transposes Directive 2014/23 / EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, published in the Official Journal of the European Union L 94 of 28 March 2014, as last amended by the Delegated Regulation (EU) 2017/2366 of the Commission of 18 December 2017. The law aims at the creation of the basic normative framework for the award and execution of the works and concession of services by the contracting public authorities; ensuring the integrity and transparency of the procedure for awarding the works and concession of services; the use of public resources in conditions of efficiency, economy and effectiveness; promoting competition between economic operators.

2. Law no. 139 of 19.07.2018 on energy efficiency²⁶

The law creates the legal framework for the application of European Directive 2006/32 / EC of the European Parliament and of the Council of 5 April 2006 on energy efficiency to final consumers and energy services and repealing Council Directive 93/76 / EEC, published in the Official Journal L 114 of 27 April 2006, as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008. It regulates the activities meant to reduce the energy intensity in the national economy and to diminish the negative impact of the energy sector on the environment. The purpose of this law is to create the premises for improving energy efficiency, including by founding and supporting the activities of structures involved in developing and implementing programs, plans, energy services, and other energy efficiency measures. The law also applies to energy service providers through which measures are taken to improve energy efficiency, energy distributors, distribution system operators, energy suppliers, final consumers, and the armed forces, but only to the extent that the implementation of this law does not interfere with the duties of the armed forces.

3. Law no. 122 of 12.07.2018 on integrity warnings²⁷

The law regulates disclosures of illegal practices by public and private entities, the procedure for examining such disclosures, the rights of whistleblowers and their protection measures, the obligations of employers, the powers of the authorities responsible for examining such disclosures, and the authorities responsible for the protection of the whistleblowers' integrity. This law seeks to increase the number of cases of disclosure of illegal practices and other disclosures of public interest by promoting the climate of integrity in the public and private sectors; ensuring the

²⁴ https://www.legis.md/cautare/getResults?doc_id=107157&lang=ro

²⁵ https://www.legis.md/cautare/getResults?doc_id=105485&lang=ro

²⁶ https://www.legis.md/cautare/getResults?doc_id=106556&lang=ro

²⁷ https://www.legis.md/cautare/getResults?doc_id=105486&lang=ro

protection of whistleblowers against revenge in the context of examining disclosures of public interest of illegal practices; preventing and sanctioning revenge against whistleblowers.

4. **Law no. 246 of 22.11.2017 on state owned enterprises and municipal enterprises**²⁸

The law establishes the legal, organizational, and economic conditions of the founding, functioning, and cessation of the activity of the state enterprise and the municipal enterprise. The law defines the municipal enterprise as a legal person that carries out entrepreneurial activity on the basis of state-owned assets transferred to it under administration and/or as a contribution to the share capital and on the basis of the property obtained by it as a result of economic and financial activity.

The law defines the municipal enterprise as the legal person that carries out entrepreneurial activity based on the assets owned by the administrative-territorial unit transferred to it in administration and/or as a contribution to the share capital and based on the property obtained by it as a result of economic activity. Defines the goods of a state and municipal enterprises, makes provisions for the administration of such enterprises, as for their reorganization and dissolution, for dealing with the conflicts of interest, and for transparency with regard to the information such enterprises are bound to make public.

5. **Law of integrity no. 82 of 25.05.2017**²⁹

The law regulates the field of public sector integrity at the political, institutional, and professional level, the responsibilities of public entities, anti-corruption authorities, and other competent authorities for cultivating, consolidating, and controlling public sector integrity, the essential areas for cultivating private sector integrity in the process of interaction with the public sector and for sanctioning the lack of integrity in the public and private sectors. This law aims at cultivating integrity in the public sector and the climate of zero tolerance towards corruption within public entities in the Republic of Moldova through: a) increasing the society's confidence in the fact that public entities and agents fulfill their mission in accordance with the public interest, including in the process of interaction with the private sector; b) the regulation of the obligatory measures for ensuring and consolidating the institutional and professional integrity; c) encouraging the denunciation of manifestations of corruption by public agents, as well as ensuring their protection against revenge; d) identification and elimination of corruption risks within public entities; e) sanctioning public agents for manifestations of corruption, and leaders of public entities for lack of institutional and professional integrity.

6. **Law no. 133 of 17.06.2016 on declaring wealth and personal interests**³⁰

The law regulates the obligation and the manner of declaring the property and personal interests by the subject of the declaration and the family members, his/her partner; the control mechanism of the property acquired by the subject of the declaration, and the family members, and/or by his/her partner during the exercise of mandates, or of public functions, or of public dignity, or of the control regarding the observance of the legal regime of conflicts of interests, incompatibilities, restrictions, and limitations. The stated purpose of this law is to establish measures to prevent and combat illegal enrichment, conflicts of interest, situations of incompatibility, as well as violations of the legal regime of restrictions and limitations.

7. **Law no. 132 of 17.06.2016 on the National Integrity Authority**³¹

The Regulation defines the mission, functions, attributions, as well as the organization and functioning of the National Integrity Authority, the procedure for controlling assets and personal interests, regarding the observance of the legal regime of conflicts of interest, incompatibilities, restrictions and limitations. The Regulation defines the National Integrity Authority as a public authority independent of other public organizations, or other legal persons governed by public or private law and of natural persons, operating at the national level as a single structure.

²⁸ https://www.legis.md/cautare/getResults?doc_id=115474&lang=ro

²⁹ https://www.legis.md/cautare/getResults?doc_id=120706&lang=ro

³⁰ https://www.legis.md/cautare/getResults?doc_id=105905&lang=ro

³¹ https://www.legis.md/cautare/getResults?doc_id=120704&lang=ro

8. Law no. 181 of 25.07.2014 on public finance and fiscal-budgetary responsibility³²

The law is adopted for the purpose of ensuring the sustainable development of public finances, strengthening budgetary and fiscal discipline, and ensuring the efficient and transparent management of public financial resources. It determines the general legal framework in the field of public finances, in particular: establishes the budgetary-fiscal principles and rules; determines the components of the national public budget and regulates the inter-budgetary relations; regulates the budgetary calendar and the general procedures regarding the budgetary process; delimits the competencies and responsibilities in the field of public finances. The provisions of this law apply to the elaboration, approval, execution, reporting, and control of budgets and funds as components of the national public budget, as well as towards ensuring financial monitoring of the activity of public authorities/institutions in self-management, state enterprises, municipal and commercial companies with full or majority public capital.

9. Competition Law no. 183 of 11.07.2012³³

The present law transposes the provisions of art. 101–106 of the Treaty on the Functioning of the European Union of 25 March 1957, the provisions of Regulation (EC) no. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, published in the Official Journal of the European Union no. L1 of 4 January 2003, and, in part, the provisions of Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, published in the Official Journal of the European Union no. L24 of January 29, 2004.

The law also establishes the legal framework for the protection of competition, including the prevention and counteracting of anti-competitive and unfair competition practices, counteracting the achievement of economic concentrations on the market, establishes the legal framework for the activity and competence of the Competition Council and the liability for infringements in the field of competition.

The purpose of this law is to regulate the relations related to the protection, maintenance, and stimulation of competition in order to promote the legitimate interests of consumers. The provisions of this law apply to acts or inactions that have as an object or have or may have the effect of restricting, impeding, or distorting competition, as well as to acts of unfair competition, which are committed by enterprises registered in the Republic of Moldova or in other states, as well as by natural persons; authorities of the central or local public administration, insofar as they, through the issued decisions or by the adopted acts, intervene on the market, directly or indirectly influencing the competition, except for the situations when such measures are taken in application of other laws or to defend a major public interest.

10. Law no. 133 of 08.07.2011 regarding the protection of personal data³⁴

The law creates the legal framework necessary for the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The purpose of this law is to ensure the protection of the fundamental rights and freedoms of the individual with regard to the processing of personal data, in particular the right to the inviolability of the family, and private life.

The law also regulates the legal relations that appear in the process of processing personal data that are part of a record system or that are intended to be included in such a system, performed in whole or in part by automated means, and by means other than automated. The scope of action of this law extends to the processing of personal data carried out within the activities implemented by operators located on the territory of the Republic of Moldova; the processing of personal data carried out within the diplomatic missions and consular offices of the Republic of Moldova, as well as by other operators located outside the country, but on territories where the domestic law of the Republic of Moldova applies, under public international law; the processing of personal data carried out by operators located outside the territory of the Republic of Moldova, using the means located on the territory of the Republic of Moldova, unless these

³² https://www.legis.md/cautare/getResults?doc_id=106188&lang=ro

³³ https://www.legis.md/cautare/getResults?doc_id=121240&lang=ro

³⁴ https://www.legis.md/cautare/getResults?doc_id=10607&lang=ro

means are used only for the purpose of transit on the territory of the Republic of Moldova of data that are subject to that processing; the processing of personal data within the actions of prevention and investigation of crimes, the execution of convictions, and other actions within the criminal or contravention procedure under the law.

11. Law no. 229 of 23.09.2010 regarding the internal public financial control³⁵

The law establishes general rules and principles for the organization of public internal financial control. The purpose of the law is to strengthen the managerial responsibility for the optimal management of resources according to the objectives of the public entity, based on the principles of good governance, by implementing the internal managerial control system and the internal audit activity in the public sector. The provisions of the law are applicable to the central and local public administration authorities, public institutions, as well as to the autonomous authorities/institutions that manage means of the national public budget.

12. Law no. 179 of 10.07.2008 regarding the public-private partnership³⁶

The law was adopted in order to contribute to attracting private investments for the realization of public interest projects, to increase the efficiency and quality of services, public works and other activities of public interest and to the efficient use of public patrimony and public money. This law establishes the basic principles of the public-private partnership, the forms and modalities of realization, the procedure of initiation and its realization, the rights and obligations of the public partner and of the private partner. The law also regulated the competency of the public authorities in the public-private partnership sphere, the object of the partnership and the forms of the contract and of its implementation, the control on the implementation of the partnership, the procedure for the selection of the private partner, as well as the guarantees, the risks and the way of solving disputes.

13. Contravention Code of the Republic of Moldova no. 218 of 24.10.2008³⁷

The code is a law of the Republic of Moldova which contains legal norms that establish the general and special principles and provisions in the matter of contravention, determine the facts that constitute contraventions, and make provisions for the contravention process and contravention sanctions. The purpose of the contravention law consists in defending the legitimate rights and freedoms of the person, defending property, public order, other values protected by law, in solving the contravention cases, as well as in preventing the commission of new contraventions.

14. Law no. 158 of 4.07.2008 on the civil service and the status of the civil servant³⁸

This law transposes art. 3 para. (1) lit. (a), (b) and (d) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the Official Journal of the European Union European Communities L 180 of 19 July 2000. This law regulates the general regime of the civil service, the status of the civil servants, the legal relations between civil servants and public authorities, as well as other relations arising therefrom. The purpose of this law is to ensure the achievement of a stable, professional, impartial, transparent, and efficient public service in the interest of society and of the state.

15. Law no. 25 of 22.02.2008 on the Code of Conduct of the civil servant³⁹

The code of conduct of the civil servant regulates the conduct of the civil servant in the exercise of public office. The purpose of the Code is to establish norms of conduct in the public service and to inform the citizens about the conduct that the civil servant must adopt in order to provide quality public services; ensuring a better administration in order to achieve the public interest; contributing to the prevention and elimination of corruption in public administration and creating a climate of trust between citizens and public authorities. The norms of conduct provided by the Code are mandatory for all civil servants.

³⁵ https://www.legis.md/cautare/getResults?doc_id=110521&lang=ro

³⁶ https://www.legis.md/cautare/getResults?doc_id=110569&lang=ro

³⁷ https://www.legis.md/cautare/getResults?doc_id=121245&lang=ro

³⁸ https://www.legis.md/cautare/getResults?doc_id=120077&lang=ro

³⁹ https://www.legis.md/cautare/getResults?doc_id=107130&lang=ro

16. Law no. 239 of 13.11.2008 on transparency in the decision-making process⁴⁰

The law establishes the applicable norms for ensuring transparency in the decision-making process within the central and local public administration authorities or other public authorities and regulates their relations with citizens, with associations established in accordance with the law, and with other stakeholders, in order to involve them in the participation in the decision-making process. The scope of this law concerns the totality of legal relations, established in the decision-making process, between citizens, associations established in accordance with the law, other stakeholders, on the one hand, and public authorities, on the other hand. Under the incidence of the present law fall the following public authorities that elaborate draft decisions: the Parliament; the President of the Republic of Moldova; the Government; autonomous public authorities; the specialized central public administration authorities; the authorities of the autonomous territorial units with special legal status; local public administration authorities.

17. Law no. 397 of 16.10.2003 on local public finances⁴¹

The law has provisions for the structure of the local budgets, their elaboration, approval, and implementation, for the competencies and responsibilities in the sphere of the public local finances, as well as for the control of the process of execution of the local budgets.

18. Law no. 721 of 02.02.1996 regarding the quality in constructions⁴²

The law establishes the legal, technical-economic, and organizational basis of the activity of natural and legal persons in the field of construction, their obligations, and responsibility regarding the quality in construction. The provisions of this law apply to constructions of any category and their related installations, regardless of the type of property or destination, as well as to their modernization, modification, transformation, consolidation, and repair works. The residential buildings with one level, for one or two families, and their household annexes located in the rural localities, as well as the temporary constructions with surfaces smaller than 150 sq m, are exempted from the provisions of the present law. The quality control of the constructions shall be the function of the local public administration bodies. Makes provisions governing the system of the quality in constructions, the obligations of the investors, the obligations of the project designers, of the project implementers, of individuals ensuring quality control, as well as of the owners of the constructions.

19. Road fund Law no. 720 of 02.02.1996⁴³

The law establishes the legal, organizational, and financial bases for the creation and operation of the road fund. The fund has a special purpose, being used to finance: maintenance, repair, and reconstruction of national and local public roads; road design; the development of the production base of the units that carry out road maintenance works, the procurement of the equipment, and of the afferent hardware; production of road construction materials; scientific research, design, and construction work in the field; road household administration; the expenses for servicing and repaying the special purpose loans approved by law. The funds of the national and local public roads are envisaged to be distributed according to the number of equivalent kilometers administered.

20. Road Law no. 509 of 22.06.1995⁴⁴

The law establishes the economic, legal, and organizational principles of road administration, maintenance, extension, and use. The law aims at establishing the basic normative framework regarding the operation of roads and their use, regarding the acquisition and use of land areas related to roads, regarding the management, coordination, and control of activities in the field of roads, as well as regarding the interests of road users, road owners and the state; streamlining the state administration of activities in the field of roads; improving the investment climate in the field of roads and related activities.

⁴⁰ https://www.legis.md/cautare/getResults?doc_id=106638&lang=ro

⁴¹ https://www.legis.md/cautare/getResults?doc_id=120082&lang=ro

⁴² https://www.legis.md/cautare/getResults?doc_id=120454&lang=ro

⁴³ https://www.legis.md/cautare/getResults?doc_id=118925&lang=ro

⁴⁴ https://www.legis.md/cautare/getResults?doc_id=115472&lang=ro#

III. Secondary legislation

Government decrees in the public procurement sphere:

1. Government Decree no. 122 of 26.02.2019 regarding the modification of some Government decrees **(modification of the Public Procurement Agency limit-staff and the Ministry of Finance)**⁴⁵

Reduces the number of the Public Procurement Agency's personnel from 43 to 25 employees.

2. Government Decree no. 544 of 12.11.2019 on some **measures to organize the procurement process in the field of information and communication technology**⁴⁶

Approves Procurement coordination methodology in the field of information and communication technology; lays out the common actions that the E-Government Agency, Public Procurement Agency and the Ministry of Finances need to take in order to implement the methodology, while outlining the task each institution has in this regard.

3. Government Decree no. 1129 of 21.11.2018 on the approval of the **Regulation regarding the periodic adjustment of the value of the public procurement contracts with continuous execution, concluded for a term of more than one year**,⁴⁷

Lays out the general provision of the adopted regulation, the procedure and terms for the examination of the adjustment application submitted either by the economic operator or the contracting authority, as well as the algorithm of the adjustment for both inflation and deviation, as well as the right of the economic operators to challenge the actions of the contracting authority in court.

4. Government Decree no. 986 of 10.10.2018 on approval of the **Regulation for keeping the State register of public procurement formed by "State register of public procurement" (MTender)**⁴⁸;

Lays out the general provisions of the regulation, its general notions, the subjects of the legal relations in the work related to the establishment and functioning of the register, the rights and the obligations of such actors, the way of managing and ensuring the functionality of the register; the users of the register through the SIA RSAP (MTender); the user registration; the authentication and authorization of users within the system; the interaction of the register with other information system; the requirements regarding the information entered in the register; the minimum security and operation requirements, as well as the control and accountability provisions.

5. Government Decree no. 987 of 10.10.2018 for approval of **Regulation on procurement of goods and services using request for price quotation**⁴⁹;

Stipulates the general provisions, and defines the notions employed by the Regulation, lays of the criteria for the organization of procurement procedures through requests for price quotations, including the maximum threshold; the procedure for creating and submitting the invitation or the notice for participation; the procedure for submitting and evaluating the bids; the contract signing procedure.

6. Government Decree no. 705 of 11.08.2018 on approval of **Technical concept of "State register of public procurement" (MTender)**⁵⁰;

Tasks the MoF, as the owner of the central data unit of the Automated Information System "State Register of Public Procurement" (MTender), with the implementation, operation, and development of the System in accordance with the legislation and international agreements to which the Republic of Moldova is a party. Tasks the Ministry of Finance and Ministry of Economy and Infrastructure, jointly with the Public Property Agency, with ensuring that the state-owned

⁴⁵ https://www.legis.md/cautare/getResults?doc_id=120537&lang=ro

⁴⁶ https://www.legis.md/cautare/getResults?doc_id=118946&lang=ro

⁴⁷ https://www.legis.md/cautare/getResults?doc_id=109334&lang=ro

⁴⁸ <http://www.legis.md/cautare/rezultate/109175>

⁴⁹ <http://www.legis.md/cautare/rezultate/109176>

⁵⁰ <http://www.legis.md/cautare/rezultate/113731>

enterprises and joint-stock companies publish on MTender notices regarding the purchase of goods and services with a value greater than or equal to 9500.0 lei and for works with a value greater than or equal to 120000.0 lei.

7. Government Decree no. 985 of 10.10.2018 on the approval of **Regulation on accreditation of electronic platforms on procurement within "State register of public procurement" (MTender)**⁵¹;

Lays out: the general provisions and terms as well as the notions and abbreviations; the composition and tasks of the accreditation committee; the requirements for the accreditation of the Electronic Procurement Platforms; possible sanctions against Electronic Procurement Platforms;

8. Government Decree no. 134 of 09.03.2017 on the approval of the **Regulation on the organization and functioning of the Public Procurement Agency and its staff**⁵²;

Stipulates the general provisions governing the activity of the Agency, including the fact that PP is an autonomous institution; lays out the basic functions, main attributes, general rights and mission of the agency which is to ensure the coherent implementation of the state policy in the field of public procurement and the process of gradual harmonization of the national legislation with the EU legislation; lays out the principles for the organisation of PPA's activity, and the ex-post control organization procedure.

9. Government Decree no. 339 of 26.05.2017 on the approval of the **Regulation on the Common Vocabulary of Public Procurement (CPV)**⁵³

Lists the general provisions, including notions, abbreviations and definitions employed in the Common vocabulary in Public Procurement; lays out the structure of the vocabulary; stipulates the application and usage of the common vocabulary.

10. Government Decree no. 1128 of 10.10.2016 on the **Center for centralized public procurement in health (CAPCS)**

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Lays out the general provisions of the Regulation, including the definition of the Center which is stated to be a non-profit public institution with financial autonomy, which operates based on the principles of self-management central contracting authority that plans and conducts public procurement procedures for medicines, other medical products, medical devices, specialized medical transport, maintenance services for medical devices and information systems included in the Medical Register, waste treatment and disposal services, awards public procurement contracts, as well as evaluates and supervises the execution of public procurement contracts; stipulates the mission, the basic functions, the rights and the obligations of the Center; the organization of the Center's activity; the decree also enshrines the Regulation on the purchase of medicines, other medical products, medical devices, specialized medical transport, maintenance services of medical devices and information systems included in Medical register, medical waste treatment and disposal services; lays out the procedure for the planification of procurement by the Center, for running procurement procedures; stipulates the duties and responsibilities of the working group in the procedures acquisition; the way for elaborating and presenting the offer; the procedures for Completion, execution, supervision and monitoring of execution public procurement contracts;

Orders of the MoF in the public procurement sphere:

1. Order no. 23 of 6.02.2019 on the approval of the **Standard Documentation for the public procurement of social food services in educational institutions**⁵⁵

Decree adopted in order to ensure the application of a unique methodology regarding the public procurement procedures of social food services in educational institutions according to the provisions of art.50 of Law no.131 / 2015

⁵¹ <http://www.legis.md/cautare/rezultate/109174>

⁵² https://www.legis.md/cautare/getResults?doc_id=120579&lang=ro#

⁵³ https://www.legis.md/cautare/getResults?doc_id=99562&lang=ro

⁵⁴ https://www.legis.md/cautare/getResults?doc_id=111606&lang=ro

⁵⁵ https://www.legis.md/cautare/getResults?doc_id=112513&lang=ro

on public procurement and point 4 of Government Decision no.1260 / 2018 on upon approval of the pilot project for the organization of food deliveries for children and students in general education institutions.

2. Order no. 193 of 27.11.2018 on **registering public procurement contracts by the territorial treasuries**⁵⁶

Was adopted with the goal of ensuring the registration of the Public Procurement Contracts during 27 November - 27 December 2018; stipulates the correct procedure that needs to be followed by the contracting authorities, the Public procurement agencies, and the treasuries themselves, before the contracts are registered.

3. Order no. 157 of 14.09.2018 on **Program for experimental use of SIA State Register of public procurement** and order no.178 of 16.10.2018 on modification of the order no. 157/2018⁵⁷.

Adopts the program, stipulating the actors responsible for its implementation, their duties, and the deadlines; Indicates the list of public authorities participating in the Program for experimental use of the System Automated Information System "State Register of Public Procurement" (MTender).

4. Order no. 176 of 05.10.2018 on approval of the **Standard documentation for public procurement of works**⁵⁸;

The decree is adopted in order to ensure the application of a unique methodology regarding the public works procurement procedures according to the provisions of Law no. 131 of 03.07.2015 on public procurement, indicating that contracting authorities shall initiate and carry out public works procurement procedures in accordance with the approved standard documentation.

5. Order no. 175 of 05.10.2018 on approval of **Standard documentation for public procurement of goods and services using request for price quotation**⁵⁹;

Adopted in order to ensure the application of a unique methodology regarding public procurement of goods and services by requesting price offers according to the provisions of Law no. 131 of 03.07.2015 on public procurement; stipulates that contracting authorities shall initiate and carry out public procurement procedures for goods and services by requesting price quotations in accordance with the approved standard documentation.

6. Order no. 174 of 05.10.2018 on approval of **Standard documentation for public procurement of services**⁶⁰;

Adopted in order to ensure the application of a unique methodology regarding the public procurement procedures for services according to the provisions of Law no. 131 of 03.07.2015 on public procurement; Indicates the obligation of contracting authorities to initiate and conduct public procurement procedures for services in accordance with the approved standard documentation.

7. Order no. 173 of 05.10.2018 on approval of **Standard documentation for public procurement of goods**⁶¹;

Adopted in order to ensure the application of a unique methodology regarding the public procurement procedures for services according to the provisions of Law no. 131 of 03.07.2015 on public procurement; Indicates the obligation of contracting authorities to initiate and conduct public procurement procedures for services in accordance with the approved standard documentation.

8. Order no. 14 of 26.01.2017 on the approval of the **standard report form on the public procurement procedure**⁶²

Adopted in order to standardize the reports on public procurement procedures, based on the provisions of art.73 of Law no.131 of July 3, 2015 on public procurement. Stipulates that, for the reporting of results on public procurement procedures, contracting authorities shall draw up the Report in accordance with the standard form.

⁵⁶ https://tender.gov.md/sites/default/files/ordin_mf_193.pdf

⁵⁷ https://www.legis.md/cautare/getResults?doc_id=111806&lang=ro

⁵⁸ https://www.legis.md/cautare/getResults?doc_id=111821&lang=ro

⁵⁹ https://www.legis.md/cautare/getResults?doc_id=111820&lang=ro

⁶⁰ https://www.legis.md/cautare/getResults?doc_id=111816&lang=ro

⁶¹ https://www.legis.md/cautare/getResults?doc_id=111813&lang=ro

⁶² https://www.legis.md/cautare/getResults?doc_id=97696&lang=ro

9. Order no. 18 of 20.06.2016 on the approval of the **Regulation on the use of the Automated Information System "State Register of Public Procurement"** (SIA RSAP)⁶³ (the old e-procurement system, currently still used by the CAPCS – centralized procurement)

Adopted for the purpose of executing the provisions of point 2 of the Decision of the Court of Accounts of the Republic of Moldova no. 56 of 08. 12.2014 on the Information Technology Audit Report "Which is the result of the implementation of the Automated Information System" State Register of Public Procurement?"; stipulates that the Regulation will be brought to the attention of SIA RSAP users, including the employees of the Public Procurement Agency, by posting it on the official website of the Agency by the Directorate of Statistics and Electronic Procurement.

IV. Recent normative acts in public procurement (approved during 2020 - 2021):

1. Government Decree no. 599 of 12.08.2020 on the approval of the **Regulation on public procurement using negotiation procedure**⁶⁴

The regulation sets out the process of awarding the contract for public procurement of goods, works, and services through the negotiation procedure, together with the general notions and terminology employed for that purpose; defines the general rules governing the negotiation procedure; The terms for the application and initiation of the negotiation procedure with the prior publication of a contract notice; describes the stage of submitting applications and selecting candidates, the stage of submitting the initial offers by the candidates and conducting the negotiations, the negotiations conducted in order to improve initial offers, as well as the stage of submitting the final offers by the bidders and the evaluation thereof. The Regulation also lays out the rules and procedures for the negotiations without prior publication of a notice for participation, including the conditions for the application of a negotiated procedure without prior publication of a notice of participation, the initiation and conduct of the negotiated procedure without publication of a notice of participation, the award and the conclusion of the public procurement contract, and the aspects related to the reporting of the results of the negotiation procedure without prior publication of a contract notice.

2. Government Decree no. 638 of 26.08.2020 on the approval of the **Regulation on procurement of works**⁶⁵

The regulation lays out the general dispositions and definitions with which it operates, as well as the general rules for initiating and implementing public procurement procedures for works, including rules with regard to publicity and transparency, communication the way of drafting and the content of the awarding documentation, the rules for defining the criteria for qualification and selection, etc. Next, the regulation defines the way of conducting the actual procedure, including the bidding terms, the open tender procedure, the restricted tender procedure, the requests for price quotations, the competitive dialogue procedure, etc. With regard to the awarding of the public procurement of works contract, the Regulation defines the rules for participation in such awarding procedures, the way of drafting and submitting the offer, the bid guarantee, the procedure of examination, evaluation and comparison of the received offers, the circumstances for the rejection of a bid due to possible acts of corruption, the circumstances for the annulment of procedure for public procurement of works, the information concerning the results of the procurement procedure, the guarantee of good execution of the contract, the signing of the contract, etc.

3. Government Decree no. 694 of 23.09.2020 on the approval of the **Regulation on the framework agreement as a special modality of awarding the procurement contract**⁶⁶

The regulation lays out the general provisions and definitions with which it operates, as well as the general rules. It explains the terms and procedures for the employment of the framework agreements, including the concept and the area of applicability, the limits of a potential framework agreement, the progress of the public procurement procedure for the signing of a framework agreement, the awarding of the subsequent contracts, and makes provisions regarding the reporting of the results of the procedure for awarding the framework agreement / subsequent contracts.

⁶³ https://tender.gov.md/sites/default/files/regulamentul_cu_privire_la_utilizarea_sia_rsap_1.pdf

⁶⁴ https://www.legis.md/cautare/getResults?doc_id=122853&lang=ro

⁶⁵ https://www.legis.md/cautare/getResults?doc_id=123036&lang=ro

⁶⁶ https://www.legis.md/cautare/getResults?doc_id=123353&lang=ro

4. Government Decree no. 778 of 28.10.2020 on the approval of the **Regulation on the preparation and keeping of the public procurement dossier**⁶⁷

The regulation lays out the general provisions, defining the public procurement dossier as representing the totality of both the documents used by the contracting authority in the process of awarding a public procurement contract and the related documents used after the completion of the award procedure. Next, the regulation lays out the way of compiling, keeping and presenting the information in the public procurement dossier, and the procedure of access to the information contained therein.

5. Government Decree no. 494 of 08.07.2020 on the approval of the **Regulation on the public procurement necessary for preventing and control of COVID-19 infection**⁶⁸

The decree applies to public procurement procedures initiated during the state of emergency in public health, declared by the Decision of the Extraordinary National Commission for Public Health no. 10 of May 15, 2020, necessary for the prevention and control of COVID-19 infection, in case the emergency situation does not allow compliance with the general terms, established by Law no. 131/2015 on public procurement. It applies to public procurement contracts necessary for the prevention and control of COVID-19 infection, whose estimated value, excluding value-added tax, is equal to or greater than 800,000 lei for goods and services and 2,000,000 lei for works, without value-added tax. For public procurement contracts necessary for the prevention and control of COVID-19 infection, the estimated value of which, without value-added tax, is lower than the threshold provided for above, the Regulation indicates that provisions of the Regulation on low-value public procurement shall apply, approved by Government Decision no. 665/2016.

6. Government Decree no. 493 of 08.07.2020 on the approval of **additional transparency measures regarding public procurement to prevent, reduce and eliminate COVID-19 consequences** (for the year 2020)⁶⁹

The regulation lays out the general provisions, and proceeds with regulating the modalities, procurement procedures for the needs of the state enterprise and ensures transparency in the procurement of goods, works, and services, with the stated goal of minimizing costs, saving money, ensuring the principle of speed/efficiency in procurement, but also increasing the degree efficiency of the enterprise's activity. The Regulation lays out the grounds for procurement through the negotiation procedure conducted by state enterprises, and through framework agreements. It makes provisions governing the activity of the public procurement working group, the way of drafting and compiling the awarding documentation, the terms governing the preparation, publication and/or the issue of the notice for participation, the terms for submitting, opening, examining and evaluating the offers. It stipulates the special requirements for participating in procedures and the modalities for conducting the procurement, dealing with the procurement of goods, works, services, as well as with procurement of materials with the goal of production. Finally, the Regulation lays out the provisions for the awarding and signing of the public procurement contract, as well as the appeals procedure.

7. Government Decree no. 351 of 10.06.2020 on the approval of the **Regulation on procurement of goods, services and works within state-own enterprise** (recommended for the procurement within municipal enterprises in case the local authority decides to)⁷⁰

The decree is adopted with the stated goal of ensuring good governance, transparency, and optimal management of public money in the process of preventing, mitigating, and eliminating the consequences of the Coronavirus pandemic. Stipulates the reporting, transparency and audit measures regarding public procurement carried out in accordance with Law no. 69/2020 concerning the establishment of measures during the state of emergency in public health and the amendment of normative acts in order to prevent, reduce and eliminate the consequences of the coronavirus pandemic for 2020. Established the forms of reporting on public procurement carried out in order to prevent, reduce, and eliminate the consequences of the coronavirus pandemic.

⁶⁷ https://www.legis.md/cautare/getResults?doc_id=123807&lang=ro

⁶⁸ https://www.legis.md/cautare/getResults?doc_id=122150&lang=ro

⁶⁹ https://www.legis.md/cautare/getResults?doc_id=122147&lang=ro

⁷⁰ https://www.legis.md/cautare/getResults?doc_id=122110&lang=ro

The Regulation stipulates that the reports according to the adopted forms shall be submitted to the Public Procurement Agency by the contracting authorities, which have carried out public procurement in order to prevent, reduce and eliminate the consequences of the coronavirus pandemic. The reports will include information on all public procurement carried out during 2020, including low-value procurement. Establishes that, at the request of the Public Procurement Agency, the Public Services Agency will, within up to 3 working days, present information on the actual owners of economic operators contracted for public procurement conducted in order to prevent, reduce, and eliminate the consequences of the coronavirus pandemic.

8. Order of the MoF no. 72 of 11.06.2020 on the approval of the **standard form of the European Single Procurement Document (ESPD)**⁷¹

Adopts the form of the European Single Procurement Document (ESPD) is an affidavit, by which the economic operator confirms the fulfillment of the qualification and selection criteria necessary within the public procurement procedures in the Republic of Moldova. The form provides for the submission of: information concerning the contracting authority and the procedure for public procurement; information regarding the economic operator; information regarding the motives for exclusion from public procurement procedures; information regarding criteria for the qualification and selection of economic operators; general indications for the qualification and selection criteria; the preselection of the candidates for the public procurement contract awarding.

9. Order of the MoF no. 105 of 12.08.2020 on the approval of the **Instruction on the manner, conditions and procedure for organizing and conducting the market consultation in preparation for the public procurement procedure**⁷² (*new Instruction, we did not have such Instruction until now*)

Instruction on the manner, conditions, and procedure for organizing and conducting the market consultation to prepare for public procurement. Lays out the general provisions of the Instruction; defines the process of market consultation, as well as the drafting of the report on the market consultation.

10. Order of the MoF no. 82 of 06.07.2020 on modification the MoF Order no 193/2018 on the **registration of public procurement contracts by the territorial treasuries**⁷³

Tasks the Public Procurement Agency with monitoring of the conformity of the public procurement procedures. Stipulates that in case of finding the deviations from the provisions of Law no. 131/2015 on public procurement, the Public Procurement Agency draws up the Monitoring Report, which is submitted to the contracting authority. After the presentation by the contracting authority of the information regarding the remediation of the detected deviations or, of the justified explanations on the refusal to remedy the findings from the Monitoring Report, the Public Procurement Agency processes the data regarding the public procurement contracts. In case of refusal to remedy the severe deviations from the legal provisions, which affect the result of the award procedure, limitation of competition, and in the cases provided by art. 71 of Law no. 131/2015 on public procurement, the Public Procurement Agency notifies the competent state agencies.

11. Government Decree no. 667 of 27.05.2016 on the approval of **Regulation on activity of working group on public procurement**⁷⁴ (**the Government has approved on January 20, 2021 the new Regulation on the activity of the working group, which is not yet published in the Official Gazette**)⁷⁵

The new Regulation aims at correlating the normative secondary framework to the new provisions, establishing the attributions, obligations, and rights of the procurement working group, which is defined as a group of specialists within the contracting authority, responsible for any decision and action taken with regard to the procurement of goods, services and works. The main proposals of the draft regulation concern the drafting of awarding documentation, including the Single European Procurement Document and other documents applicable in public procurement procedures; the

⁷¹ https://tender.gov.md/sites/default/files/ordin_72_duae.pdf

⁷² https://www.legis.md/cautare/getResults?doc_id=122888&lang=ro

⁷³ https://tender.gov.md/sites/default/files/82_06.07.2020_1_0.pdf

⁷⁴ <http://www.legis.md/cautare/rezultate/92988>

⁷⁵ https://gov.md/sites/default/files/document/attachments/subiect-10_5.pdf

preparation of the necessary documents for sanctioning the economic operator in case of improper fulfillment of the contractual clauses; the publication of the award documentation and receipt of tenders within the SIA "RSAP". The Regulation also provides the standard blanks that need to be filled by the procurement working group.

12. Order of the MoF no. 145 of 24.11.2020 on the approval of the **Declaration on the confirmation of the beneficial owners' identity and their non-inclusion in the situation of conviction for participation in activities of a criminal organization or group, for corruption, fraud and / or money laundering.**

13. Order no 46 of 31.12.2020 of the PPA Director on the approval of the **Regulation on certification in public procurement.**

The Regulation establishes the secondary regulatory framework regarding the certification process of specialists in public procurement as well as their post-certification situation. The Regulation also establishes subjects and the competencies of the subjects involved in the process of certification, the requirements for admission to the training process and the certification examination, the conduct of the certification examination of public procurement specialists, the method of assessment of results and decision-making, issuing, maintaining and withdrawing the certificate of professional qualification in public procurement, the way to keep the Register of certificates of professional qualification in public procurement.

The objective of certification in public procurement is to acquire the knowledge, skills and professional competences of the persons within the contracting authorities responsible for organizing, conducting public procurement procedures and awarding public procurement contracts.

V. Government Decrees (to be adjusted/renewed according to the 2018' amendments to the public procurement Law 131/2015):

14. Government Decree no. 370 of 21.04.2018 on the approval of the **Sectorial Plan of anti-corruption actions in the public procurement sector for the years 2018-2020**⁷⁶

The plan is adopted with the stated goal of ensuring the transparency of the entire public procurement process, increase the level of participation of the business environment in public procurement procedures, reduce the risks and costs of corruption, as well as optimize transaction costs by aligning the legal framework with European Union directives and best practices, implementation of electronic means at all stages of the public procurement process and capacity building of all actors involved in this process.. The plan outlines its priorities, expected results, responsible actors, activities, deadlines, indicator, and the monitoring and evaluation tools. The plan focuses on the following priorities: the review of the legal and regulatory framework on public procurement, bringing it into line with EU directives and good practices; optimizing the procurement process, developing the capacities of contracting authorities in conducting public procurement and preventing corruption in the field, strengthening internal control procedures in public procurement processes; ensuring the transparency of public procurement processes; strengthening the role of business and civil society in preventing corruption in public procurement, removing bureaucratic barriers, preventing faked procurements; reviewing the functions and strengthening the capacities of the supervisory, control and appeals bodies; implementing the efficient and effective public procurement information system, with the integration of tools and good practices for identifying and preventing fraud and corruption,

15. Government Decree no. 1332 of 14.12.2016 on the approval of the **Strategy for development of the public procurement system for the years 2016 – 2020 and the Action Plan for its implementation**⁷⁷ (the MoF states that the draft of the new Strategy will be published in yearly January 2021 for public consultation);

The Strategy outlines the present day situation in the sphere of public procurement, as well as the Government's vision on the future of this sector, which is stated to be a "functional, competitive, accountable and transparent procurement system that generates and ensures the trust of Moldovan citizens and of the international community in the procurement

⁷⁶ https://www.legis.md/cautare/getResults?doc_id=103018&lang=ro

⁷⁷ https://www.legis.md/cautare/getResults?doc_id=96808&lang=ro

function", in accordance with the principles of good governance: transparency, accountability, participation, equity and inclusiveness, and efficacy and efficiency. The Strategy has the following objectives: ensuring an open, transparent, and compliant procurement process; achieving continuous improvements in all categories of expenditures through transparent and fair procurement processes; promoting equal opportunities for all enterprises; working in partnership with the private sector and other organizations to ensure the value for money, providing quality and efficient services. In order to achieve these objectives, the Strategy envisages the following categories priority measures: measures to improve the legal framework; measures to improve the central institutional capacity and the coordination mechanism; measures to strengthen implementation capacity at the level of contracting authorities; measures to strengthen integrity and fight corruption in the public procurement system. The following specific areas of action are targeted in the Strategy: reform from the perspective of the Association Agreement, the legal harmonization, institutional development, development of the e-Procurement system, capacity building for contracting authorities and officials involved in public procurement. These reforms are defined as a priority of the government.

16. Government Decree no. 1419 of 28.12.2016 on the approval of **Regulation on the planning of public procurement contracts**⁷⁸

The Regulation stipulates that In order to meet the needs of goods, works, and services, the contracting authority is obliged to plan public procurement contracts, to be concluded as a result of public procurement procedures, respecting the principles of ensuring competition, efficiency, transparency, equal treatment, non-discrimination, and their non-division into smaller batches. The planning of public procurement contracts is defined as the identification of public procurement contracts intended to meet the needs of goods, works, or services for the entire budget year, finding which is reflected in the procurement plan of the contracting authority.

17. Government Decree no. 1418 of 28.12.2016 on the approval of **Regulation on the compilation of the interdiction list of the economic operators**⁷⁹

Stipulates that the List shall include for a period of three years, only those economic operators who have participated in public procurement procedures, but have not properly fulfilled their obligations under these procedures or whose conduct is contrary to the provisions of the legislation. States that the exclusion from the list ahead of schedule shall take place only after the revocation of the decision of the Public Procurement Agency, or the annulment of the registration decision by a final decision of the court.

18. Government Decree no. 665 of 27.05.2016 on the approval of **Regulation on small value public procurement**⁸⁰;

The regulation defines the low-value public procurement as the public procurement contracts planned and concluded by the contracting authorities, whose estimated value, without value-added tax, does not exceed 80,000 lei for goods and services and 100,000 lei for works. Stipulates that low-value public procurement is carried out by the contracting authority on the basis of annual plans for public procurement or for reasons of urgency, as a result of unplanned needs or unforeseen events. Reasons for urgency shall be established by the working group in minutes. The Regulation defines the conditions for the awarding of the small value procurement contract; makes provisions for the e execution of the small value procurement contract, adding that The small value public procurement contract must be registered in the State Treasury or in one of the territorial treasuries of the Ministry of Finance, if its value exceeds 10,000 lei without value-added tax and the management of financial sources is carried out through the treasury system, within 15 days from the closing date. Low-value public procurement contracts that have not been registered in the established manner have no legal force.

19. Government Decree no. 804 of 10.10.2013 on the approval of the **Regulation on public procurement through competitive dialogue**⁸¹

⁷⁸ https://www.legis.md/cautare/getResults?doc_id=96902&lang=ro

⁷⁹ https://www.legis.md/cautare/getResults?doc_id=96901&lang=ro

⁸⁰ <http://www.legis.md/cautare/rezultate/92984>

⁸¹ https://www.legis.md/cautare/getResults?doc_id=19456&lang=ro

The Regulation defines the competitive dialogue as an open tender procedure, carried out in two stages, applicable in the case of particularly complex procurement contracts, in which any economic operator may request to participate and in which the contracting authority maintains a dialogue with the tenderers admitted to this tender, for developing one or more alternative solutions to meet the requirements under which the selected tenderers are to be invited to submit their tenders; Makes provisions for carrying out the public procurement procedure through competitive dialogue, including the Contract Award Criterion, which is defined as "only the most economically advantageous tender." Stipulates the terms and conditions for launching the competitive dialogue procedure, the access to the pre-selection procedure, explanations to the pre-selection documentation and submission of applications, the opening of applications, evaluation of applications, establishment of the shortlist of economic operators with which the competitive dialogue will take place, preparation of the award documentation - the final form based on the identified solution/solutions, submission of final bids, offer guarantees for the good execution of the contract. Outlines the way of carrying out stage II of the dialogue procedure, including the opening of the final bids, evaluation of the final bids, cancellation of the award procedure, completion of the award procedure through the designation of the winner, and communication of the final result and the conclusion of the contract.

VI. Other legal and normative acts relevant to the public procurement:

Legal acts of the Parliament:

1. Parliament Decision no. 56 of 30.03.2017 on the approval of the **National Integrity and Anti-Corruption Strategy for the years 2017–2020**⁸²

Besides the Strategy itself, the law also adopts the action plans for the pillars of the Strategy, as well as the impact assessment grid of the Strategy. The Strategy describes the current situation in terms of promoting integrity and fighting corruption, and formulates its objectives which are to discourage involvement in acts of corruption, recover the goods of corruption crimes, ensure ethics and integrity in public, private, and non-governmental sectors, protect integrity whistleblowers and the victims of corruption, ensure transparency of the public institutions, party and mass-media financing, and educating society and public officials. The integrity pillars defined by the strategy are The Parliament, The Government, public sector and local public administration, Justice and anti-corruption authorities, Central Electoral Commission and political parties, Court of Accounts, People's Advocate, The private sector, Civil society and the media. The Strategy's action plan stipulates the specific roles and actions for each of these pillars, the deadlines, indicators, and the responsible actors.

Government decrees:

1. Government Decree no. 164 of 11.03.2020 for the approval of the **Program on the distribution of road fund funds for national public roads for 2020**⁸³

Outlines the categories for spending. Sets the spending limit for the Program at 1 718 789,6 lei. States that the financing of the works foreseen in the Program will be carried out from the account of the means of the road fund, as they accumulate, according to the provisions of art. 2 para. (4) of the Law on the road fund no. 720/1996.

2. Government Decree no. 484 of 18.10.2019 for the approval of **some normative acts regarding the implementation of Law no. 246/2017 on the state enterprise and the municipal enterprise** (Model statute of the state enterprise, Model statute of the municipal enterprise, etc.)⁸⁴

Adopts the model statute of the state enterprise, the model statute of the municipal enterprise, the model regulation regarding the organization and development of the competition for filling the vacant position of administrator of the state enterprise, the model of the individual labor contract of the administrator of the state / municipal enterprise, the

⁸² https://www.legis.md/cautare/getResults?doc_id=99502&lang=ro

⁸³ https://www.legis.md/cautare/getResults?doc_id=120749&lang=ro

⁸⁴ https://www.legis.md/cautare/getResults?doc_id=118535&lang=ro

model regulation of the board of directors of the state enterprise, the model regulation of the audit committee of the state enterprise. Tasks the central and local public administration with enforcing the usage of these model statutes.

3. Government Decree no. 160 of 21.02.2018 on the approval of the **Program for the promotion of the “green” economy in the Republic of Moldova for the years 2018-2020 and of the Action Plan for its implementation**⁸⁵

The stated purpose of the Program is to promote the implementation of the principles of the “green” economy in the Republic of Moldova in harmony with economic development and social welfare. By 2020, efforts will be made to implement the Program, which will ensure the development of the necessary capacities of all those involved in the planned activities, by implementing the following specific objectives: 1) ensuring, by 2020, the conditions of good governance and consolidating the institutional and management potential in the field of promoting the “green” economy by 30% at a national level; 2) ensuring, by 2020, the promotion of measures to implement the principles of the “green” economy, so that 17% of gross final energy consumption comes from renewable sources and energy efficiency is improved by 8.2%; 3) ensuring, by 2020, the greening of about 30% of small and medium enterprises through adequate support in implementing the principles of the “green” economy; 4) ensuring, by 2020, the promotion of organic farming by implementing the principles of the “green” economy and expanding the area of agricultural land used for organic farming by about 20%; 5) reducing, by 2020, air pollution by 30% by developing sustainable transport; 6) ensuring, by 2020, the promotion of measures to implement the principles of the “green” economy in the field of construction by 15%; 7) ensuring, by 2020, the implementation of the principles of resource efficiency and purer production in about 30% of enterprises and organizations; 8) ensuring, by 2020, that at least 15% of all public procurement meets the criteria for sustainable procurement; 9) increasing, by 2020, the level of knowledge on the “green” economy and sustainable development among pupils and students by at least 30%; 10) increasing, by 2020, the level of public awareness of the “green” economy and sustainable development by at least 30%; 11) creation, by 2020, of the “green” growth indicators monitoring system.

4. Government Decree no. 967 of 09.08.2016 on **the mechanism of public consultation with civil society in the decision-making process**⁸⁶

The Regulation lays out the general provision and notions with which it operates, makes provisions for ensuring the transparency of decision-making process, including for the information concerning the decision-making process, for public consultation, for the transparency of the decision-making, and for drafting the reports on such transparency.

5. Government Decision no. 936 from 16.08.2006 for the approval of the **Regulation on technical expertise in constructions**⁸⁷

The Regulation on technical expertise in constructions establishes the manner, forms, objects, content, and subjects involved in performing technical expertise of constructions, in order to ensure and maintain the technical condition of constructions in accordance with the essential requirements of Law no.721 -XIII of February 2, 1996, on quality in constructions. The provisions of this Regulation extend to constructions of any category (civil, industrial, agro-zootechnical, roads, bridges, railways, hydrotechnical, communal constructions, etc.) and their related installations, regardless of the affiliation, the form of property, and their destination, as well as on the intervention works in time (consolidations, modernizations, capital repairs, rehabilitations, transformations, extensions). It lays out provisions for the organisation and carrying out of the technical expertise in constructions, for the results of such investigations, for roles and responsibilities within the process, for the appeals procedure against the results of the technical expertise, for the functioning of the Counsel of experts, etc.

6. Government Decree no. 361 of 06.25.1996 on **ensuring the quality in constructions**⁸⁸

States that the provisions of this decision apply to constructions with any category, type of property, or destination and are mandatory for public administration bodies, investors, owners, researchers, designers, executors, manufacturers,

⁸⁵ https://www.legis.md/cautare/getResults?doc_id=102127&lang=ro

⁸⁶ https://www.legis.md/cautare/getResults?doc_id=119856&lang=ro

⁸⁷ https://www.legis.md/cautare/getResults?doc_id=103648&lang=ro

⁸⁸ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=296196>

and suppliers of construction products, as well as for project verifiers, managers technicians, site managers and technical experts, who carry out their activity in constructions on the territory of the Republic of Moldova. The following are exempted from the provisions of this decision: temporary demountable constructions, executed for the purpose of site organization; technological installations and equipment for procedure or research; one-level residential buildings, for one or two families, their household annexes, located in rural localities, as well as temporary constructions with areas smaller than 150 m.p.

The decree approves the regulation regarding the verification of projects and execution constructions and technical expertise of projects and construction, in which provisions are made for the verification of projects by certified project verifiers, for the technical expertise of projects and constructions by certified technical experts, for the verification of the execution of works by certified technical managers and site managers.

7. Government Decree no. 285 of 23.05.1996 on the approval of the **Regulation for the reception of the afferent constructions and installations**⁸⁹

The regulation applies to specific constructions and installations financed from the state budget or local budgets, with some exceptions. The reception is defined as a component of the quality system in constructions and is the act by which the reception commission declares that it accepts and takes over the finalized construction work and its related installations, with or without reservations, and that it can be put into use. The act of acceptance certifies that the executor has fulfilled his obligations in accordance with the provisions of the contract and of the execution documentation, assuming, at the same time, the responsibility provided by law for the executed works. The Regulation makes provisions for the reception upon the full execution of the works, as well as for the final reception, and additionally for the procedure of reception of constructions and additional installments financed through private financial means

VII. Guidance and other policy document in public procurement

1. **Guide on Sustainable Public Procurement** for contracting authorities (English and Romanian versions)⁹⁰
2. **Standard Documentation on public procurement of doors and windows that meet sustainable criteria**⁹¹

The regulation makes provision for the principles underlying the award of the procurement contract; Source of funding; Applicable law; Expenditure on participation in the auction; Language of communication in the auction; Visiting the site; Sections of tender documents; Clarification and amendment of tender documents; Corruption practices and other prohibited practices; Purpose of the auction; Principles underlying the award of the procurement contract; Source of funding; Applicable law; Expenditure on participation in the auction; Language of communication in the auction; Visiting the site; Sections of tender documents; Clarification and amendment of tender documents; Corruption practices and other prohibited practices; Personal situation of the tenderer and eligibility; Ability to pursue a professional activity; Economic and financial capacity; Technical and/or professional capacity and experience criteria; Quality assurance and environmental protection standards.; Qualification of candidates in case of association; Documents constituting the offer; Alternative offers; Period of validity of the offer; Execution periods; Warranty period; Technical offer; Financial offer; Offer guarantee; Currency of the offer; Format and signing of the offer; Deadline and procedures for submitting the tender; Submission, sealing and marking of tenders; Modification and withdrawal of the offer; Delayed tenders; Joint offer; Prohibition to submit several tenders; Opening of tenders; Confidentiality; Examination of the documents accompanying the tender; Examination of tenders; Correction of errors; Evaluation of tenders; The criterion applied for the award of the works contract; Communication on the outcome of the application; Annulment of the application of the procedure for the award of the public contract; Conclusion of the public works contract; Right of appeal.

⁸⁹ https://www.legis.md/cautare/getResults?doc_id=109762&lang=ro

⁹⁰ <https://tender.gov.md/ro/content/ghid-privind-achizi%C8%9Biile-publice-durabile>

⁹¹ <https://tender.gov.md/ro/content/documenta%C8%9Bie-standard>

3. **Ban List in public procurement** (the list containing the information of the banned economic agents can be accessed through the link in the footnote)⁹²
4. **Training Curriculum of the Public Procurement Agency**⁹³

The goals that the curriculum sets forward to be achieved are the following: Advanced training of theoretical knowledge of specialists, necessary for the correct interpretation and application of both legal provisions and principles underlying the award of public procurement contracts; Knowledge and understanding of the obligations and responsibilities of both public institutions and other participants involved in public procurement procedures; Increasing the theoretical and practical skills of officials, necessary for the efficient and compliant use of public financial means; Development of theoretical competencies and practical skills of officials, necessary for identifying and implementing the correct procedure for awarding public procurement contracts; Increasing the theoretical and practical skills of officials, necessary for the efficient and compliant use of public financial means; Increasing the theoretical and practical knowledge of civil servants, necessary for carrying out public procurement procedures in accordance with legal provisions and obtaining the price-quality ratio; Updating the theoretical knowledge of specialists, necessary for the execution of the procurement contract in accordance with the legal and financial commitments assumed; Familiarizing specialists with the knowledge necessary to understand the concept of "sustainable public procurement", and the correct conduct of procedures for the procurement of goods, services and / or works that meet sustainable public criteria; Increasing the theoretical and practical knowledge of specialists, necessary for resolving conflicts in compliance with the principle of legality; Developing the skills needed to ensure risk control in the field of public procurement; Advanced training of the theoretical knowledge of specialists, necessary for the correct interpretation and application of both legal provisions and principles underlying the award of public procurement contracts in the energy, water, transport and postal services sectors

5. **Annual Training Plans of the Public Procurement Agency**⁹⁴

The 2021 Training Plan contains a list of 44 topics to be addressed during the same number of envisaged training sessions expected to take place before the end of 2021. Planning and initiating public procurement procedures; Carrying out public procurement procedures; Low value purchases; Participation of economic operators in public procurement procedures; Sustainable public procurement; Types of specific award procedures, techniques and tools; Contract management and monitoring, etc.

⁹² <https://tender.gov.md/ro/lista-de-interdictie>

⁹³ <https://tender.gov.md/ro/tip-de-pagin%C4%83-avansat%C4%83/curricula-de-instruire>

⁹⁴ <https://tender.gov.md/ro/tip-de-pagin%C4%83-avansat%C4%83/plan-de-instruire>