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MONITORING MOLDOVA'S PUBLIC PROCUREMENT

Newsletter no. 5 (May 2022)

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EDITORIAL

BUILDING INTEGRITY IN PUBLIC PROCUREMENT REQUIRES ENGAGEMENT FROM ALL STAKEHOLDERS, INCLUDING CITIZENS'



Diana ENACHI

*Project coordinator
and public
procurement expert
at IDIS "Viitorul"*

Public procurement is an area vulnerable to fraud and corruption. Addressing these risks requires the improvement of systems: management systems, integrity systems and processes to strengthen the public system, motivate public officials, and create conditions, laws, processes, and regulations that are clear, easy to apply, and do not lead to misinterpretation.

I also call on all of us not to wait for the authorities to fight corruption. All things start with us, and as long as we are fair and not part of these

illegal acts or these acts of corruption, we will be able to create change. If we wait for the authorities to intervene, then things certainly will not change any time soon. That is why integrity must be built from all sides, including by the citizens.



IDIS "VIITORUL" PRESENTS THE UPDATED EDITION OF THE PUBLIC PROCUREMENT MONITORING GUIDE

» The Institute for Development and Social Initiatives (IDIS) "Viitorul," in partnership with the Partnership for Transparency Fund (PTF) presents the updated edition of the Public Procurement Monitoring Guide: a Tool for Civil Society (March 2022). The guide is signed by experts Diana Enachi and Viorel Pîrvan and aims to assist civil society organizations, civic monitors, and journalists in monitoring and investigating public procurement at any level and in any sector.

"Civil society has a key role to play in monitoring public procurement and ensuring transparency in the award and execution of procurement contracts. In cases where public authorities do not respect the principles of transparency, integrity, and efficiency in the procurement process, or are even part of corruption schemes, civil society organizations can use the findings and the identified risks of corruption to refer the matter to the control/law enforcement bodies and to mobilize citizens to demand more accountability from the government. It is, therefore, civil society which, by monitoring how public money is used, can make an important contribution to strengthening good governance and building bridges between society and government at all levels," the publication states.

The logical structure of the guide facilitates an understanding of the functioning mechanism of the procurement system (legal and institutional framework, stages of the procurement process, etc.) and then the criteria for selecting procurement for monitoring in parallel with the application of monitoring tools. The guide provides step-by-step instructions for the process of identifying risk indicators (red flags) at each stage of the procurement process. The authors also formulate post-monitoring recommendations, including advocacy actions, referrals to competent bodies, coalitions with other civil society actors, media, etc. These actions aim to contribute to increasing transparency, ensuring efficiency in the use of



The publication can be accessed [HERE](#):



public money, sanctioning those responsible for illegalities, and making contracting authorities accountable to citizens.

The guide is a product of the project "[Strengthening Integrity in Public Procurement](#)" implemented by the Institute for Development and Social Initiatives (IDIS) "Viitorul," in partnership with the Partnership for Transparency Fund (PTF). The project aims to support public procurement reforms in Moldova that will increase transparency and fairness in public procurement by empowering citizens to hold relevant institutions accountable.

Source: www.viitorul.org

VALUES OF PUBLIC WORKS CONTRACTS ADJUSTED BY NEW MECHANISMS

» The values of public works procurement contracts will be subject to adjustment through new mechanisms following price increases, particularly in the construction sector. On 27 April, the government approved the draft amendment to the regulation on the periodic adjustment of the value of public procurement contracts longer than one year ([GD No 1129/2018](#)).

This measure will ensure that public works contracts continue to be executed to avoid non-execution or stopping works.

According to the draft, the adjustment will be made based on updated cost prices, as well as taking into account inflation and deflation. To this end, new concepts will be introduced into the regulation and some concepts will be amended.

The draft also provides for the introduction of a new formula governing the possibility of adjust-

ing the price of public works contracts based on the prices of construction materials, taking into account any increase or decrease in these prices. Thus, the updating of the cost price components will be carried out by taking into account the increase in wages, the price of materials, and the price of fuel.

At the same time, the subjects participating in the procurement process will be able to select the formula based on which the contracts will be adjusted, a condition to be provided for in the tender documentation by the contracting authority.

The draft also completes the regulation with a new chapter setting out the procedure for examining the request for adjustment and how to update the prices of the cost price components.

Currently, the adjustment of the value of a public procurement contract concluded for more than one year is made by taking into account the inflation or deflation rate calculated for the year preceding the adjustment and published by the National Bureau of Statistics.

Source: www.mf.gov.md



VADIM ȚURCAN:

"TECHNICAL AND PROFESSIONAL CAPACITY ESSENTIAL FOR DETERMINING SIMILAR EXPERIENCE IN PUBLIC WORKS PROCUREMENT"

» In the process of public procurement of works, the tender documents specify in the qualification and selection criteria, for technical and/or professional capacity, the need to provide proof of similar experience. Demonstrating similar experience in works procurement is often a complex and thorough verification process.

Art. 22, para. (3), letter "a" of [Law 131/2015](#) provides that in the case of a procedure for the award of a public works contract, to verify the technical and/or professional capacity of the tenderers, the contracting authority has the right to request the following from them, depending on the specific nature, volume, and complexity of the works to be carried out and only insofar as this information is relevant to the performance of the contract:

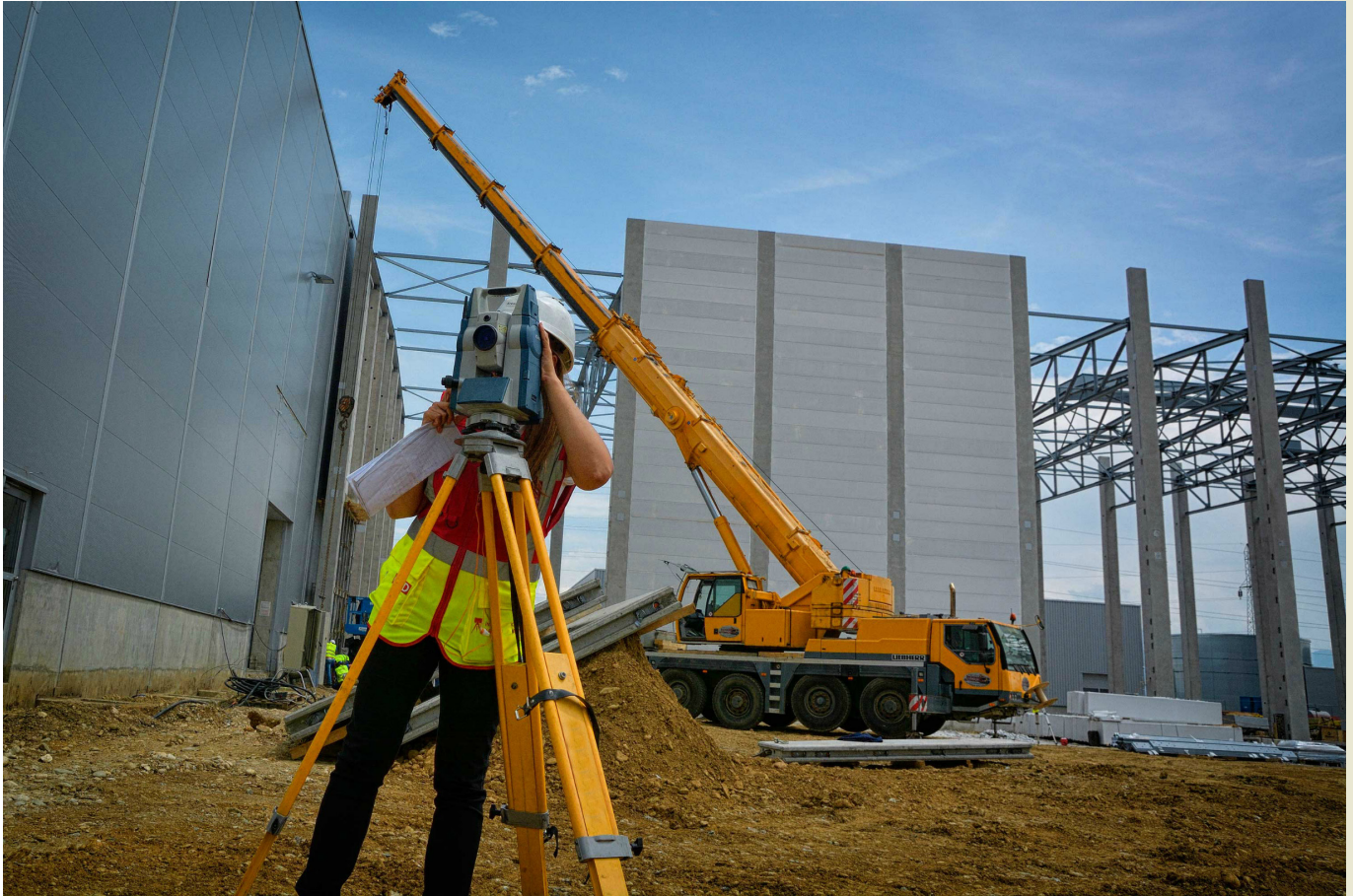
1. **LIST OF SIMILAR WORKS CARRIED OUT** in the last five years, accompanied by certificates of satisfactory execution for the most important works, including at least one contract for similar works whose value is not less than 75 percent of the value of the future contract, or
2. **THE CUMULATIVE VALUE OF ALL CONTRACTS** executed in the last year of activity must be equal to or greater than the value of the future contract.

Certificates of satisfactory execution indicate the beneficiaries, whether they are contracting authorities or private clients, the value, period, and place of execution of the works, whether they have been carried out under professional rules in the field, and if they have been completed.



Similar experience must be demonstrated by the presentation of the contract/contracts of the contractor or sub-contractor, confirmed by the acceptance report on completion of the works/final acceptance report on expiry of the guarantee period, and accompanied by certificates of satisfactory execution for the most important works.

The minutes of completion must be drawn up following the provisions [of Government Decision 285/1996](#) on the approval of the Regulation on the acceptance of constructions and related installations. Paragraph 8 of GD 285/1996 refers to the fact that the acceptance committees are appointed by the investor. The investor, represented by the acceptance committee, is responsible for the preparation and completion of the entire acceptance process upon



completion of the works. The acceptance committees for construction and related installations are made up of at least five people. They include the investor's representative, the representative of the local public administration, and construction specialists. The report on the completion of the works is then drawn up in accordance with the model in [Annex 1](#).

Although Annex No 1 to point 9 refers to the conclusion of the Technical Supervision Agency, it frequently happens that economic operators submit reports of completion of works without this conclusion.

However, Government Decision 285/1996 does not expressly indicate the obligation to include the conclusion of the Technical Supervision Agency in the report of completion of the works. This raises the question of whether the work carried out is deemed to have been accepted without the conclusion of the Technical Supervision Agency. In the author's opinion, the work is considered to be accepted for the following reasons:

- 1. THE WORK HAS BEEN CERTIFIED AS COMPLETED** by the appointed acceptance committee of at least five members, including construction specialists.
- 2. PRESENTATION BY THE DESIGNER**, as the author of the project, of their point of view on the completion of the works.
- 3. SUBMISSION BY THE INVESTOR** to the acceptance committee of the opinions of the Directorate of Fire and Rescue Service, the State Public Health Surveillance Service, and the State Environmental Inspectorate on the de facto execution of the construction.

In conclusion, judging in the light of the provisions of Art. 22 para. 3, the technical and/or professional capacity has been satisfied and the contracting authority is to consider it compliant if it is attached including the certification of good execution (letters of recommendation).

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BENEFITS AND RISKS

OF THE DRAFT AMENDMENT TO THE LAW ON PUBLIC PROCUREMENT REGISTERED IN PARLIAMENT

» On 12 May 2022, a new [draft amendment to the Law on Public Procurement No 131/2015](#) was registered in Parliament. The draft law aims at improving and adjusting the current regulatory framework that will increase the transparency of public procurement procedures, including the introduction of regulations related to the manner of concluding low-value public procurement contracts.

Overall, the Public Procurement Act needs to be completed and improved in several respects. The draft law addresses a number of the current legislative shortcomings and problems raised by civil society in recent years. However, in our view, the proposed draft law contains some shortcomings and risks, which will be detailed below.

One of the draft proposals aims to legally regulate low-value purchases (goods and services up to 200 000 lei and works - 250 000 lei). Currently, small-value purchases are regulated by a [separate regulation](#), not registered in the electronic system, and carried

out with minimal transparency. The regulation on low-value procurement has not been updated since 2016, when the Public Procurement Act was substantially amended by increasing the thresholds by almost 100 percent.

Similarly, with reference to low-value purchases, the draft law encourages the publication of contract notices in the electronic procurement system. However, if other methods of communication are chosen, the authority is obliged to obtain at least three tenders, which is not mandatory in the case of publication of the notice in the electronic system.

These additions to the Public Procurement Act will address the lack of transparency in low-value procurement and the minimal accountability for authorities in the execution of low-value contracts. Although they are considered low-value purchases, if analyzed in terms of total volume they amount to impressive sums of public money. According to the [Analytical Synthesis of the audit results related to public procurement from 2020-2021](#), the Court of Accounts estimates the value of low-value procurement at about 9 billion lei. According to official statistics, this represents the total public procurement budget of the Republic of Moldova minus the low-value procurement. Annually between 17 and 18 billion lei pass through the public procurement system (about 8-9 billion lei for large-value contracts and about 9 billion for low-value contracts), which represents about 20 percent of the national public budget expenditure. In the same summary, the Court of Auditors notes that the incomplete regulation of low-value public procurement, combined with the high discretion of the contracting authorities, facilitates the non-transparent and sometimes inefficient use of public money and, implicitly, conditions the risk of fraud.

The draft law also aims to clarify the role and powers of the Public Procurement Agency (PPA), ensuring the Agency's main role is to implement public procurement policies and monitor the

compliance of public procurement procedures. The law would also supplement the powers of the Agency to ascertain and examine cases of infringement of the rules for initiating and conducting public procurement procedures, issue prescriptions, and impose penalties in accordance with the law.



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At the same time, the Agency will be obliged to publish on its website all decisions adopted within three days from the date of issue. This new duty of the Agency follows the December 2021 adoption of the [draft law on the amendment of the Contravention Code of the Republic of Moldova No. 218/2008 \(art.402\)](#). This draft and the issue of the lack of enforcement of sanctions for illegalities in the procurement process in the last four years was emphasized in the [previous edition of the Newsletter "Procurement in Focus"](#) (page 5). Thus, the Public Procurement Agency will note violations in the procurement process and apply sanctions to those responsible for these violations.

The allocation of powers to detect infringements and apply sanctions has proven necessary, given the increasing number of abuses and illegalities. However, the lack of clear provisions governing this mechanism is dangerous. It is therefore unclear how the



This provision will restrict the right of economic operators to lodge objections to the tender documentation, in particular in the frequently encountered cases of "arranged" technical specifications.

mechanism for selecting the procedures to be monitored will be selected, and this detail must be clarified. There should be a system of risk indicators so that only procurements with a higher risk of fraud are examined by the PPA. Such monitoring can also be initiated as a result of complaints from state institutions, civil society organizations, or investigative journalists. Although the obligation to publish the decisions of the Public Procurement Agency is indicated, there is no mention of where they are to be published (PPA website, electronic procurement system, or other).

It is considered appropriate and necessary to clarify the powers of the National Agency for the Complaints Settlement (NACS), i.e. that the members of the panels will only be able to present the claims that have been invoked. However, further clarification should be made regarding NACS decisions, i.e. the inadmissibility of initiating a repeated procurement procedure while a procurement procedure with the same subject matter is being examined by NACS.

However, IDIS does not support the draft bill's proposal to exclude the right of economic operators to challenge a procurement until the opening of tenders if they have not made use of their right to request clarifications. Article 35 of the Law on Public Procurement provides for the right and the obligation of the economic operator to request clarifications of the tender documentation. This provision will restrict the right of economic operators to lodge objections to the tender documentation, in particular in the frequently encountered cases of "arranged" technical specifications. In addition, the authorities' replies to requests for clarification are often formal, which discourages economic operators from clarifying vague provisions in the documentation. In other words, this provision will only create additional obstacles for economic operators.

A final aspect that deserves the legislator's attention is the current possibility for economic agents included in the Interdiction List to still be awarded low-value public procurement contracts. In its current version, the Public Procurement Act requires the contracting authority to exclude economic operators listed on the Interdiction List from participation in high-value procurement procedures only. Therefore, it is necessary to introduce a rule clearly prohibiting the award of low-value procurement contracts to economic operators included in the Interdiction List.

Authors : Diana Enachi, project coordinator and procurement expert at IDIS "Viitorul" and Maria Covalciuc, President of AGER

PROCUREMENT OF MORE THAN 8 BILLION LED BY PUBLIC AUTHORITIES IN MOLDOVA IN 2021

» Public procurement is an important component of the public finance system. A significant amount of public budgetary resources flows through the public procurement system every year. Procurement can and should be a tool to stimulate economic growth as well as to achieve other macroeconomic policy objectives such as job creation, stimulating innovation, boosting competitiveness and market access for small and medium enterprises (SMEs), sustainable development, and others.



From an economic perspective, procurement is increasingly used as a lever to improve the efficiency of public spending. Public spending and investment through procurement procedures are two important levers of economic growth. Measuring the impact of public procurement on the economy and economic development requires policies with relevant key indicators, access to disaggregated and quality data, and regular analysis of performance against procurement targets.

Statistical information on public procurement contains only primary data and does not include

performance indicators measured regularly. This is also confirmed by the Organization for Economic Cooperation and Development (OECD) which stated that „although the Member States are increasingly collecting basic data on public procurement, only a small number of Member States carry out a systematic analysis of this information to assess the performance of the public procurement system.” For example, in Finland, following an analysis of savings in different types of procurement, it has been shown that savings of around 25 percent can be achieved through centralized procurement. In Romania,

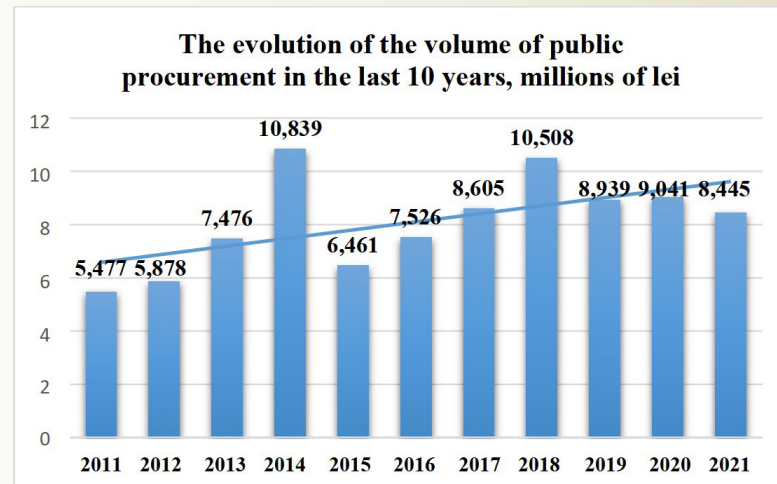
there is a mechanism for regular measurement of the performance of the public procurement system, which is structured around five classes of indicators: market size and characteristics, the intensity of competition, monitoring of economic activities, efficiency of public procurement, and misconduct/regulations.

PUBLIC AUTHORITIES IN MOLDOVA CONCLUDED 13,450 PROCUREMENT CONTRACTS IN 2021

One of the most important indicators when talking about public procurement is its share of gross domestic product (GDP). According to a [recent study](#), 12 percent of global GDP (around USD 10 trillion) is spent through public procurement. In the Republic of Moldova, the share of public procurement in GDP is at an all-time low of 3.5 percent. This is despite OECD data showing that the share of public procurement in GDP has increased slightly in OECD countries, from 11.8 percent in 2008 to 12.6 percent in 2019. In 2020, the COVID-19 pandemic led to an increase in public procurement relative to GDP. In the 22 European Union (EU) OECD member countries, public procurement as a share of GDP increased from 13.7 percent in 2019 to 14.9 percent in 2020. This increase occurred in the context of the greater need to procure goods and services for the prevention and control of COVID-19 infection, as well as the reduction in GDP due to the crisis. A similar trend was recorded in the Republic of Moldova in 2020 as compared to 2019. Public procurement in 2020 saw an increase, albeit a small one, both in nominal value and as a share of GDP, from 4.25 percent in 2019 to 4.38 percent in 2020.

In 2021, according to [data from the Public Procurement Agency](#), public authorities in Moldova purchased goods, works, and services worth about 8.4 billion lei.

In total, in 2021, public national authorities concluded 13,450 procurement contracts as a result of 3,485 public procurement procedures. In 2021, there was a slight decrease in the volume of public procurement compared to 2020, by about half a billion lei (6.58 percent).



Source: Based on Public Procurement Report 2021, www.tender.gov.md

LOW-VALUE PURCHASES MADE MORE TRANSPARENT BY THE ELECTRONIC SYSTEM

However, these data do not include low-value purchases (goods and services up to 200,000 lei, and works up to 250,000 lei), which means that the real value of all public procurement is much higher. The main problem is the lack of any official data on the volume of low-value purchases, which are not covered by Law 131/2015, are not carried out through the electronic system, and are not included in procurement statistics.

The solution to bring low-value purchases into the sphere of transparency is to regulate them through Law 131 and to make it compulsory to carry them out electronically. This would allow access to data on low-value contracts, their measurement, and the prevention of fraud and irregularities that are characteristic of non-transparent procurement. A [draft law](#) is registered in Parliament [to amend Law 131/2015](#) proposing, among other provisions, the regulation of low-value procurement through Law 131 and the electronic conduct of the procurement process.

IN THE CASE OF OPEN TENDERS, AN AVERAGE OF THREE TENDERS ARE SUBMITTED

Another important indicator characterizing public procurement in 2021 is the average number of

bids submitted for a procurement procedure. This is an indicator that shows the degree of competition in the procurement market, which is important for achieving efficiency by obtaining advantageous prices and conditions for public authorities in the procurement process. The average number of tenders submitted to a procurement procedure in 2021 is 3.32. There are insignificant differences between the competition in open tenders and requests for price quotations. Thus, the average number of bids was higher in open tenders (3.64) compared to the request for price quotations (3.10). There are also differences in the degree of competition in the procurement of goods, works, and services. Thus, in the case of procurement of goods through open tenders, the average number of bids is 4.86; it is 2.85 in



In 2021, the share of canceled procurements was 28.2 percent. However, in the vast majority of canceled procurements (95.3 percent), contracting authorities invoke "various reasons" for canceling the procurement which can only take place under the conditions expressly provided for by Law 131/2015.

the case of procurement of works, and in the procurement of services, this indicator is 1.62. By comparison, the analysis of public procurement market indicators in Romania shows, in general, a similar degree of competition in open tenders and higher competition in service procurement. In the case of open tenders, on average three bids are submitted, while in the case of requests for quotations, on average two bids were submitted for the procurement of goods and works, and four

bids for the procurement of services. With regard to simplified procedures (low-value purchases, according to the legislation of the Republic of Moldova), there is a very high degree of competition in Romania. On average, five tenders were submitted for the procurement of goods and three tenders for the procurement of services and works.

THE HIGH LEVEL OF CANCELED PROCUREMENT PROCEDURES SHOWS WEAKNESSES IN THE SYSTEM

When looking at the efficiency of public procurement, an important indicator is the share of canceled purchases. A high rate of canceled procurement procedures indicates weaknesses in the system, the quality of the tender documentation, and the violations that public authorities admit in the procurement process. In 2021, the share of canceled procurements was 28.2 percent. However, in the vast majority of canceled procurements (95.3 percent), contracting authorities invoke "various reasons" for canceling the procurement which can only take place under the conditions expressly provided for by Law 131/2015. Other reasons invoked by authorities for canceling procedures were: lack of offers (4.2 percent), lack of funding (0.2 percent), and lack of qualified offers (0.3 percent). For comparison, in Romania, the cancellation rate of procurement procedures is lower at 22 percent.

In conclusion, public procurement statistics in the Republic of Moldova contain mostly primary data and very few performance indicators that would allow for assessing the efficiency of the procurement process and identifying gaps and solutions respectively. Although data such as award criteria, award of contracts to SMEs, the share of batch procurement, rejection rates, the average duration of a contract award, etc. are included in the templates and in the electronic system, such indicators do not appear in the statistics.

Author: Diana Enachi, project coordinator and public procurement expert at IDIS "Viitorul"

DIANA ENACHI: "WHERE THERE IS A LACK OF TRANSPARENCY, SANCTIONS, AND CONTROL, PUBLIC PROCUREMENT RISKS FRAUD"

» Diana Enachi is a project coordinator at the Institute for Development and Social Initiatives (IDIS) "Viitorul," qualified in transparent budgeting and public procurement, anti-corruption, democracy, and good governance. Diana Enachi is recognized and known in the Republic of Moldova as a nexpert in public procurement and manifestations of corruption in public procurement. This article, based on the podcast "Anti-Corruption Conversations" signed by the Association for Human Rights Lex XXI, is focused on this topic.

Valeria Ciolac, Anti-Corruption Programme Coordinator: *Why exactly is public procurement exposed to corruption risks, and what are the main factors that stimulate and proliferate corruption in public procurement?*

Diana Enachi: Public procurement concerns all of us, because it is in fact all the procurement of any goods, services, or works that a public institution does, whether it is a local authority, a central authority, a state enterprise, an educational institution, a hospital, a medical institution and so on, i.e. everything that is financed by public money, by public budgets. So any good procured by an institution, any medicine procured, any public infrastructure work, road, anything, goes through a public procurement procedure. That is why every citizen should be interested in this process



and monitor it. When we are talking about vulnerability to corruption, I must mention that in general public procurement is an area vulnerable to fraud and corruption. Obviously, the level of corruption differs greatly from country to country, but this does not mean that public procurement is vulnerable to corruption only in the Republic of Moldova. Why does this vulnerability exist? Because it always exists for public money, because we are dealing with public budgets. Also, public procurement is nothing more than a process that is followed by a contract concluded between a public actor, i.e. a public institution, and a private actor, i.e. an economic agent. Obviously, each of them has different interests and this is where this interest comes into play.

There are several statistics internationally on the volume of corruption in procurement or roughly how much it „would cost” to get a procurement contract and that would be



In fact, corruption is an effect, a consequence, or a symptom. In this sense, there is a methodology that we apply in preventing corruption, not in fighting it, which is a different area.

between 15 percent and even sometimes 30 percent a for a company to get a procurement contract. This does not mean that every procurement process is rigged and corrupt. Let's move on to the factors that incentivize this. We talk about corruption as a problem. In fact, corruption is an effect, a consequence, or a symptom. In this sense, there is a methodology that we apply in preventing corruption, not in fighting it, which is a different area. The prevention part denotes that corruption is an effect, generated by different factors. Therefore, we have to minimise these factors or make sure that these factors do not exist. According to Robert Klitgaard, a noted economist, the formula for corruption is: corruption = discretion + monopoly - transparency or accountability. Corruption is where there is a high monopoly, and in the case of public procurement, there is a monopoly because public institutions make these purchases.

There is also high discretion caused by a discretion in decision-making of a procurement working group, specialist, authority, and the way in which the decision is being made. Where there is no transparency, where things are not seen to be happening, it is easier and more convenient to implement all sorts of schemes to defraud a process. When the lights are off, things happen differently. As a trainer said at one of our trainings that there are big crocodiles in muddled waters, and the same is true with transparency. The lack of transparency from the start is a risk factor, and where there is no transparency there is a higher likelihood of corruption.

Transparency is, in fact, also a principle regulated by procurement legislation, but it is not just a wish of ours, or of a company, or anyone else. These are the factors that generate these risks and in the presence of which fraud and corruption are highly likely to occur.

Valeria Ciolac: What should the authorities do to prevent and reduce corruption in public procurement?

Diana Enachi: We ask the authorities to respect the law. It is important that we eliminate that factor of discretion in the decision-making process, that there are no methods by which the specialist or the procurement working group, the decision-makers, decide in favor of their personal interest, but decide according to the law and according to the public interest, i.e. to get the best value for public money. Let us make sure that in the legal framework we have concrete and clear rules that cannot be interpreted and that any decision-maker or any procurement working group will apply them in the decision-making process.

In addition to this, it is important that we somehow ensure the control and sanction component, because it is very important in preventing corruption. If it is known that there is no risk, no sanction, no control, and if it is known that there will be no accountability for its illegal actions, most will be tempted to do it. It has been shown that about 80% of people will behave according to their entourage or according to the conditions that have been created. That is why it is important that we do not create conditions for the proliferation of corruption: where there are no conditions, where there is no transparency, where there is high discretion, where there are no sanctions or control, and where there is not a high risk that the person who commits these frauds will answer for his actions and for defrauding public money, there obviously the majority will commit these illegalities.

Valeria Ciolac: How does the Republic of Moldova rank in terms of preventing corruption in public procurement? I think that here we can agree that the professionalism and integrity of procurement officials plays an extremely important role in reducing corruption in public procurement. In your opinion, how is the Republic of Moldova doing in this respect?

Diana Enachi: The integrity of the procurement specialist, but also of the members of the working group, is extremely important because this is where the integrity of the procurement procedure and the procurement process as a whole starts.

It is not for nothing that we have legislation that lays down very clear rules and procedures, and I am referring to the legislation in the field of integrity, stipulating provisions related to institutional integrity and to professional integrity, but also to the integrity of each public official. Their fairness and integrity depend also on the fairness of the procurement process.

There is also a shortage of procurement specialists in many public authorities, especially local ones, meaning there is not even a procurement specialist, a dedicated person in charge, trained in the field of procurement, to deal with any procurement that the authority needs. And then we have a situation where the accountant, the mayor, the secretary of the local council, and so on are in charge of procurement, which is not their core competence and, not knowing certain aspects, they commit a series of mistakes which subsequently lead to violations and illegalities because there is no professional in the field. I come back to our big problem that we do not have a system of professionalization and certification in procurement, although some steps have been taken in the last two years. And yes, indeed, if we don't have a procurement group, a dedicated procurement specialist, and a person of integrity within the authority, then obviously there will be these risks of corruption and problematic procurement and the community will not benefit from those quality goods, works and services that were expected would be procured.

Valeria Ciolac: How do you think Moldova will become a somewhat more corruption-free state and how long will it take for the Republic of Moldova to limit the manifestations of corruption in its public and private life sectors?

Diana Enachi: It can always be done and what I want to say, and it may not sound optimistic at all, is that we will not succeed in eliminating corruption, entirely, any time soon. It is simply not possible. What we need to do is to improve the systems: the administration systems, the integrity systems, the processes, to strengthen the public system, to motivate public officials, to create conditions, to create laws, processes, and regulations that are clear, that are easy to apply and that do not lead to misinterpretation. In this way, we can reduce the risks of corruption as much as possible and thus contribute to reducing this scourge. Eliminating corruption for good is not possible, and I believe that there is no such system or country where corruption does not exist, but minimizing it as much as possible should be our goal.

And of course, we must not lose sight of the whole justice system, of the need to hold accountable those who deserve it, which must act as the anti-motivation for those who intend to defraud the public purse. I also appeal to all of us not to wait for the authorities to fight corruption. All things start from us and as long as we will be fair and not part of these illegal acts and these acts of corruption we will be able to change these things. As long as we just wait for the authorities to intervene then things will certainly not change very soon, so it is important that integrity is built from all sides, including by the citizens, who say they can do nothing, but in reality, we can do a lot. We must contribute, be fair, respect the law, and not prefer corruption.



Listen to the full podcast here:
**DIANA ENACHI ON CORRUPTION
IN PUBLIC PROCUREMENT**



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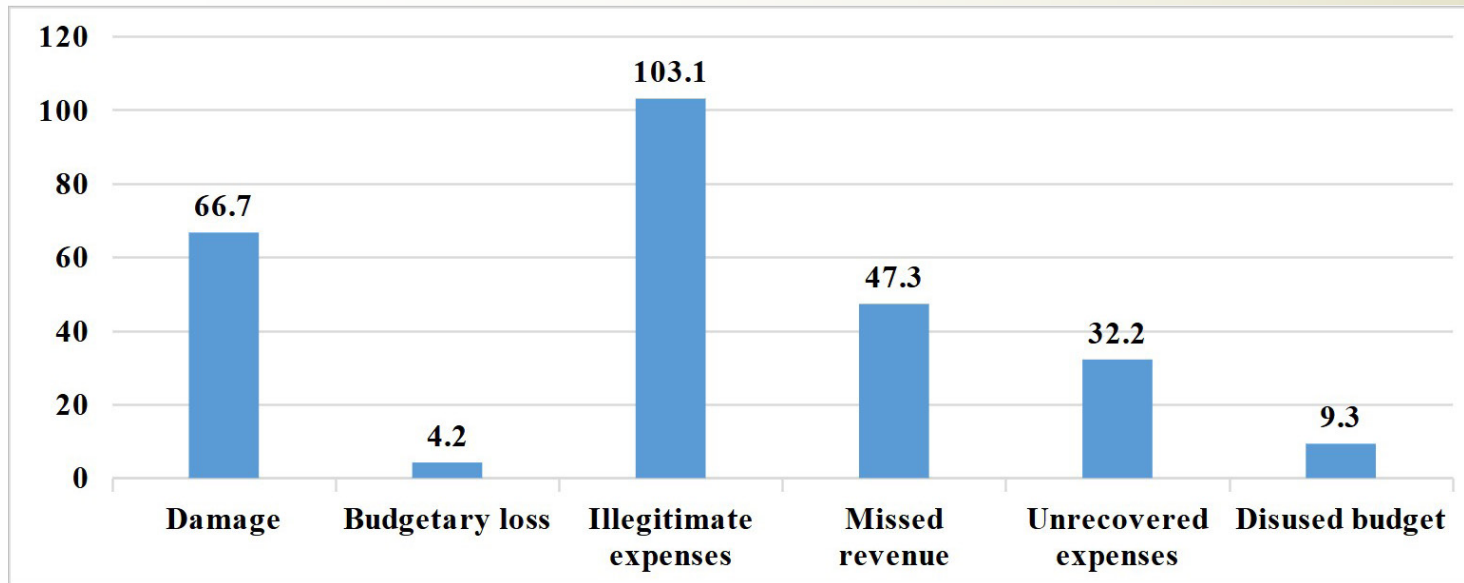
WHO CHECKS THE LEGALITY OF PUBLIC PROCUREMENT AND WHAT ARE THE MOST COMMON VIOLATIONS

» The public procurement procedures of central and local public authorities, as well as the institutions subordinated and/or founded by them, are subject to control by the [Financial Inspectorate](#), an institution subordinated to the Ministry of Finance whose mission is to protect the public financial interests of the State. One of the functions of the Financial Inspectorate is the exercise of centralized financial control over compliance with the law of operations and transactions related to the management of national public budget resources and public assets.

According to [the report on the results of the inspection activity carried out by the Financial Inspectorate in 2021](#), the financial inspections carried out in 2021 reveal non-compliance by the heads of public entities subject to inspection with the provisions of the normative acts, with the detection of damages, shortfalls,

illegitimate expenses, missed revenue, unrecovered expenses, and disused budgetary means in the amount of 262.8 million lei. Of the 1,038 inspections carried out last year, 787 financial inspections (75.8 percent) were carried out in public entities. Also, of the 262.8 million lei, only 15.6 percent of financial resources were

Infringements detected estimated in monetary amounts



Source: Prepared by the author on the basis of the report on the results of the inspection work carried out by the Financial Inspectorate during 2021, available at www.if.gov.md

recovered, equivalent to about 41.1 million lei, the report says.

As a result of the financial inspections carried out in 2021, the Financial Inspectorate drew up 687 reports, with fines amounting to about 10 million lei, of which about half were collected (4.9 million lei).

As far as public procurement is concerned, the results of the controls carried out show largely the same violations that are also detected by civil society in the monitoring process or by journalists in journalistic investigations. According to the report cited above, the most frequent violations detected by the Financial Inspectorate at different stages of the procurement process are:

PROCUREMENT PLANNING AND PREPARATION OF TENDER DOCUMENTATION:

- ☑ Superficial planning of the estimated value of goods, works, and services requirements.
- ☑ Splitting up public procurement by concluding separate contracts for the

purpose of applying a procurement procedure other than that legally required.

- ☑ Failure to plan public procurement contracts.
- ☑ Procurement plans are drawn up with significant deviations from the annual budget allocation limit, and the plans are not adjusted to the budget specifications.
- ☑ Lack of clear provisions on the division of tasks, duties, and responsibilities between members of the Procurement Working Group.

LAUNCH OF PROCUREMENT, SUBMISSION, AND OPENING OF TENDERS:

- ☑ Launching and carrying out unplanned procurement not included in the contracting authority's Annual Procurement Plan.
- ☑ Participation of a single economic operator in public procurement tenders.
- ☑ Admission of the participation of interdependent economic operators (founders and/or joint managers or affiliated persons).

AWARD OF THE PROCUREMENT CONTRACT:

- ☑ Illegal disqualification of economic operators, who submitted bids with the most advantageous conditions, primarily in terms of price.
- ☑ Procurement and execution of capital repair works in the absence of project documentation, resulting in an unjustified increase in the volume of works.
- ☑ Conclusion of contracts for the provision of various services with natural persons without documentary confirmation of professional capacity.
- ☑ Conclusion of procurement contracts with economic operators, the founders of which are persons affiliated with decision-makers within the contracting authority.
- ☑ Conclusion of procurement contracts for road repair works in circumvention of the procurement procedure required by law.

IMPLEMENTATION AND MONITORING OF PROCUREMENT CONTRACTS:

- ☑ Inadequate monitoring of the execution of procurement contracts and, as a consequence, failure to fully execute the terms of the contracts, as well as failure to apply the penalties provided in the contract to economic operators in breach of contract.
- ☑ Unilateral modification of contractual elements by contracting authorities.

It is not clear from the Financial Inspectorate reports which risk indicators are used to select transactions related to public finance management, including procurements to be audited. A number of the breaches found in relation to procurement are not in fact deviations from the legislation in force, which shows a lack of understanding of procurement processes and legislation. A prime

example is an infringement concerning the "participation of a single economic operator in the procurement," which, according to the legislation in force, is not an infringement. The current legislation does not provide for a minimum number of bidders in any type of public procurement procedure. If only one economic operator participates in a procurement procedure whose tender meets the requirements and criteria laid down in the documentation, the contracting authority has no legal basis for rejecting the tender.

Author: Diana Enachi, project coordinator and public procurement expert at IDIS „Viitorul”



DEDICATED PURCHASES. ONE-OFF BIDS BY CAR DEALERS FOR THE TAILOR-MADE REQUIREMENTS OF SOME MUNICIPALITIES



» During the COVID-19 pandemic, from March 2020 to February 2022, during the pandemic, several municipalities bought new cars, the cost of which varies between 150 and 374 thousand lei. Only one economic agent has participated in the 15 public procurement tenders organized by municipalities in the last two years.

Many municipalities, without taking into account the Public Procurement Law, copy the technical specifications of the cars to be purchased, so that only one model can meet the requirements of local public authorities.

"Unfortunately, many city halls advertise procurement with ,dedication,' favoring a certain economic operator. The mayor has set himself the goal of buying, for example, a Dacia Logan, goes to the manufacturer's website, and copies the technical specifications of the Dacia car. Moreover, it is done out of ignorance of the contracting author-

ities to draw up specifications that meet the requirements of the law," said Vadim Țurcan, associate expert in public procurement at IDIS "Viitorul."

TECHNICAL SPECIFICATIONS DO NOT HAVE TO INDICATE A SPECIFIC MODEL OF CAR

At the same time, the law does not prohibit a single economic operator from taking part in the tendering procedure, but this may indirectly favor a particular company.

"In the procurement of goods and services, it is permissible to choose the winner from a single

bidder if they meet the requirements. There is nothing illegal in this," said Țurcan.

According to the documents published by the municipalities on www.tender.gov.md, most of the money allocated for the purchase of company cars had only one beneficiary: the financial-industrial group "DAAC Hermes" S.A. The website also lists the prices and model of the cars purchased and the exact offers of the economic agents "DAAC AutoSport," "DAAC AutoTest," and "Integral Auto." Only the City Hall of Hânțești, one of the 15 municipalities mentioned in this article, bought the car from "Continent" SRL.

In 2018, www.anti-corruption.md wrote that for years most of the public money allocated for state cars has been going to the company "DAAC Hermes." In 2015, [Ziarul National](http://ZiarulNational.md) newspaper wrote that the daughter-firms of "DAAC Hermes" have had their eyes on public money since 2003, when they delivered 70 "Skoda Octavia" cars to the State Chancellery.

Civil servants and mayors have said that the cars were purchased strictly for the needs of the city hall. Most of the cars were purchased with money allocated from the local budget by the decision of the local council, and at council meetings it was decided what kind of car model to purchase.

With an annual budget of 6.5 million lei in 2021 the Vărătic Town Hall, Râșcani district, purchased

a Dacia Duster for 330,325 lei, equivalent to 16,500 euros. The car was a necessity, says the accountant, because the Lada model car is out of order. *"I had the old car appraised at the Chamber of Commerce and Industry. It cost 17 thousand lei. If we can sell it - fine, if not, we'll scrap it,"* said Diana Pleșca, chief accountant at Vărătic Town Hall.

Sireți Town Hall decided to buy a Renault Kadjar car worth 374,388 lei, or almost 19 thousand euros. It is the most expensive of the 15 cars purchased by the town halls reported on in this article. *"The town hall has no economic potential to buy the car. And still such a car. We won a cross-border project with Romania. We don't have money in the budget for basic expenses. If it wasn't for the project, we would have been driving around with the car we have had since 2010, which is dangerous for the town hall employees,"* said Leonid Boaghi, mayor of Sireți, Strășeni district.



In February 2022, the Cantemir City Hall also chose a Renault Megan, worth 350 thousand lei. The 15-year-old car is to be given to "Apă Canal Cantemir" or will be driven by the deputy mayor, said Roman Ciubaciuc, mayor of Cantemir.

CARS BOUGHT FROM SAVINGS

In April 2021, Covurlui City Hall got a Dacia Logan car worth 205 thousand lei. Mayor Ion Neghina claims that the car was purchased from savings made in the local budget. *"Being the*



mayor in my third term of office, all these years I have only used my car everywhere. The town hall is not small and the needs are great. We made a lot of savings in the budget and decided to buy a car for the town hall, with which to solve the problems of the institution," said Neghina.



A Dacia Logan worth 249,900 lei was also purchased by the Molovata Noua Town Hall in the Dubasari district. Mayor Oleg Gazea said that the local council decided to buy a car for the needs of the town hall. Also, the Vișneovca Town Hall, d. Cantemir bought a car costing 244 thousand lei in April 2020. Mayor Olga Pac claimed that the old car will become scrap metal.



In 2020, the City Hall of Sărata Galbenă, Hâncești, chose a Dacia Sandero Stepway for which it paid 260 thousand lei. "We wanted to repair the old car, but when we heard how much

it costs...we decided to buy a new one," said Mayor Mihail Lozovoi.

The Tabani Town Hall in Briceni district bought a Dacia Duster in December 2020 for 368,500 lei. "We sold land, this and that, saved the money and bought the car. We needed this car. The car is driven by the mayor. That's how it is by law, where a mayor is a man - he drives the car, and where the mayor is a woman - a driver is hired or the woman mayor drives it. Women employed in the town hall do not have a driving license," says the accountant of Tabani Town Hall.

The following municipalities also bought cars: Boldesti in Nisporeni (298,300 lei); Gotești in Cantemir (150,000 lei); Hincesti (304,150 lei); Sturzovca in Glodeni (321,222 lei); Taraclia (305,000 lei); Chioselia Mare in Cahul (213,000 lei) and Leova (258,000 lei). The cheapest car was chosen by Gotești Town Hall, which paid 150 thousand lei.

EFFICIENCY IN MANAGING PUBLIC MONEY

IDIS "Viitorul" procurement expert Diana Ranga-Enachi says that local public authorities must respect the principles of efficient management of public financial resources, according to the Law on Public Procurement and the Law on Public Finance and Budgetary-Fiscal Responsibility.

"If the public authority demonstrates that the purchase is a real need and a priority for the community (it has no service transport) to carry out its work properly and has planned for it (it is in the Annual Procurement Plan), the car purchase can be justified. Otherwise, it is a whim of the mayor, which has nothing to do with the priorities of the people, the needs of the community, and the principles of good governance," she explained.

On 17 March 2020, the Parliament adopted a resolution declaring a state of emergency in the Republic of Moldova due to the COVID-19 pandemic.

Source: www.gazetadechisinau.md