

Assessing Public Procurement Practice in Moldova - 2017

General Description of the Public Procurement System

X. Management of the Public Procurement System

Please provide a brief description of how the public procurement system is managed in your country by answering the following questions:

Is there a single state body responsible for managing the public procurement system, or is this function distributed among more than one state body? What is its/their authority and responsibilities and are legal requirements met in practice in this regard? What is the level of independence of this body/ies and are legal requirements met in practice? Is there duplication of authority?

Please provide the answer in a maximum of 5-10 sentences.

Comment: In the Republic of Moldova there is single body responsible for managing the public procurement system – Public Procurement Agency (PPA). The main responsibilities of the PPA are coordination, monitoring and ex-post evaluation of public procurement procedures. The PPA is not an independent body, since it is under the auspices of the Ministry of Finance (administrative subordination). There are no duplication of authority with other institutions working in the field.

X. Are tenders electronic or paper based? In cases when tenders are solely electronic, are there cases of paper-based tendering? Is there insufficient enforcement of PPL?

Please provide the answer in a maximum of 3-4 sentences.

Comment: The tenders are done both in electronic and in paper based versions, and most of the tenders are done in latter formats. Even in the electronic tenders all bids are supplied on paper, since existing procurement electronic system serves only as a register of tenders and not as a truly electronic platform covering all stages of procurement.

X. Is public procurement conducted through a centralized, single website or are there multiple websites for conducting public procurement? Is its/their use mandatory or voluntary?

Please provide the answer in a maximum of 3-4 sentences.

Comment: There is a centralized website for conducting public procurement. It is mandatory to all connected contracting authorities, but not all of them have up to date have been connected to the electronic system.

X. If there is a register of suppliers, what is the number of registered suppliers in it?

If possible, please provide a comparison with several (at least 5) previous years?

Comment: There is a register of suppliers, administered by the PPA. The annual data on number of registered suppliers are following: **2017** = 151; **2016** = 136; **2015** = 134; **2014** = 131; **2013** = 130.¹

X. What is the total number of competitive procedures?

If possible, please provide a comparison with several (at least 5) previous years.

Comment: Annual statistics on number of competitive procedures: **2017** = 10 323; **2016** = 8 476; **2015** = 10 712; **2014** = 15 763; **2013** = 12 560.²

X. What is share of public procurement in the country's GDP?

Comment: The share of public procurement in the country's GDP in 2017 was 5.72% according to the official information of PPA.³ The statistics presented by the PPA does not include numbers on procurements under the threshold (small value contracts).

X. What are the monetary thresholds for single source procurement (works, goods, services)? _____

Is the monetary threshold acceptable? Why or why not?

Comment: Monetary thresholds (small value contracts) for goods and services – 80 000 MDL (or 4 326.6 USD at average exchange rate in 2017). For works the threshold is 100 000 MDL (or 5 408.3 USD at average exchange rate in 2017).⁴

Public Procurement Scope and Spending Breakdown

X. What share (% in terms of procurement value) of government spending is conducted through competitive public procurement procedures? ____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There is no officially published statistic on total amount of public procurement (competitive and small value contracts). The PPA publishes data only on above the threshold procedures.

¹ <https://tender.gov.md/ro/operatorii-economici-calificati>

² <https://tender.gov.md/ro/documente/rapoarte-de-activitate>

³ https://tender.gov.md/sites/default/files/document/attachments/raport_anual_2017.pdf

⁴ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=365128>

X. What share (% in terms of procurement value) of total public procurement spending is conducted through single source procurement? _____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by the list of legal exemptions considered acceptable or unnecessary by the TPPR Methodology (Pre-tendering phase, Indicator 9).

Comment: There is no officially published statistic on total amount of public procurement (competitive and small value contracts). The PPA publishes data only on above the threshold procedures.

X. What is the share (% in terms of procurement value) of below threshold single source procurement in total public procurement spending? _____

Please provide an analysis of this data point in 2-3 sentences (if possible, provide data from previous 5 years).

Comment: There is no officially published statistics on total amount of public procurement (competitive and small value contracts). The PPA publishes data only on above the threshold procedures.

X. If your country has any unreasonable exemptions to the Public Procurement Legislation (e.g. contingency funds, utilities, certain procuring entities or sectors of the economy), provide your estimate of the volume spent in this way and the share (% in terms of value) these exemptions would constitute in total procurement spending? Volume : ____ share: ____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: Not all institutions and companies that are exempted from Public Procurement Law publish their statistic on their procurement.

X. What is the volume of secret government procurement? What is the share (value in %) of secret government procurement in total public procurement expenditures? Volume: _____ share: _____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There is no published statistics on secret government procurement.

Competitiveness

X. What is the average number of bidders? _____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by goods, works and services.

Comment: There is no official statistics on total and average number of bidders.

X. What is the share (% in terms of procurement value) of competitive procedures with single bidders in total competitive spending? _____

If possible, please provide information on the share (number) of competitive contracts won by single bidders in the total number of competitive procedures.

Comment: There is no official statistics on number of bidders participating in public procurement by each type of procedure.

X. What is the share (% in terms of procurement value) of competitive procedures with five or more bidders in total competitive spending? _____

If possible, please provide information on the share (number) of competitive contracts with three or more bidders in the total number of competitive procedures.

Comment: There is no official statistics on number of bidders participating in public procurement by each type of procedure.

X. What share (% in terms of procurement value) of public procurement contracts is won by commercial state-owned enterprises (above 50% ownership)? _____

Provide an analysis of this data point. If applicable, provide a comparison with several previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. Is there any reason to believe that state owned companies are getting preferential treatment?

Comment: There is no official statistics on type of bidders, including the state-owned enterprises.

X. What share (% in terms of procurement volume) of public procurement contracts is won by foreign enterprises? _____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There is no official statistics on type of bidders, including the foreign enterprises.

X. What is the share (%) of procuring entities which only used single source procurement in the total number of procuring entities? _____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There is no such statistics.

Efficiency

X. What is the share (%) of failed tenders in the total number of tenders? _____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by tenders with no bidders, cancelled tenders or unsuccessful tenders where no relevant competitor was found.

Comment: Statistics on failed procurement procedures:
2017 = 12,8%; **2016** = 15,2%; **2015** = 13,8%; **2014** = 15,7%; **2013** = 9,8%.

X. What share (%) of planned public procurement expenditure was saved as a result of competitive procedures? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There is no such statistics.

X. What is the share (% in terms of procurement value) of tenders where price is the only criterion compared to competitive procedures where other criteria are also used? ____

If possible, provide a comparison with several (at least 5) previous years, as well as a brief analysis of this data point.

Comment: There is no such statistics.

X. What is the share (%) of non-executed contracts in the total number of contracts? ____

If relevant, provide a comparison with several (at least 5) previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. If possible, indicate the share (%) of non-executed contracts awarded through competitive procedures, as well as single source procurement.

Comment: There is no such statistics.

Accountability

X. Describe the dispute settlement mechanism in public procurement, its composition, authority, level of independence, and decision-making procedures. What are the major strengths and problems in law and practice:

Comment: The authority responsible for dispute resolution in the public procurement is the National Complaint Settlement Agency (NCSA). The NCSA is fully independent and reports about its activity only to the Parliament. The staff of the Agency is composed of seven counselors, responsible for dispute settlement and supporting technical personnel. One of the major problems in this realm was establishment of the Agency with more than a one year delay in comparison with legal requirements. So, the NCSA became fully operational only in September 2017, while it should have been launched in the May of 2016. Another important problem in practice is that not all decision of the NCSA are taken into account and executed by contracting authorities.

X. What is the number of complaints submitted to the dispute resolution board (or equivalent body)? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: **2017** (only September – December) = 128; **2016** (only January – April) = 227; **2015** = 743; **2014** = 1096; **2013** = 1179.

X. What is the share (%) of disputed tenders in the total number of tenders? ____

If possible, please provide an analysis of this data point in 2-3 sentences.

Comment: 2015 = 8.42%; 2014 = 8.27%; 2013 = 11.7%.
For 2017 and 2016 it is not possible to calculate the share, because there are no aggregate statistics on submitted tenders monthly.

X. What share (%) of disputes was won by the initiator in the Dispute Resolution Board (or equivalent body)? ____

If possible, please provide an analysis of this data point in 2-3 sentences.

Comment: There is no such aggregate indicator published by the PPA. This share was calculate from statistics of PPA as the share of all accepted disputed and solved fully or partially:
2017 (only September – December) = 43%; **2016** ((only January – April) = 40.1%; **2015** = 38.1%; **2014** =

43%; **2013** = 38.5%.

X. What share of decisions of the Dispute Resolution Board have been taken to courts? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: 2017 = 3.9%; 2016 = 23.8%; 2015 = 7%; 2014 = 3%; 2013 = 3.1%.

X. What share (%) of the total competitive procurement spending was received by companies that have donated (including private donations by their owners) to the current government? ____

If possible, please provide an analysis of this data point in 2-3 sentences.

Comment: There is no such statistics.

X. What share (%) of the total single source procurement spending was received by companies that have donated (including private donations by their owners) to the current government? ____

If possible, please provide an analysis of this data point in 2-3 sentences. Have there been any high profile cases of politically affiliated companies receiving single source contracts?

Comment: There is no such statistics.

Transparency

X. Can public procurement related data be downloaded in bulk? If yes, can data be downloaded in any of the following formats - CSV, JSON, or XML?

Comment: The data from Public Procurement Electronic System can be downloaded in CSV format.

X. Are there any significant data quality issues? (Are any control mechanisms in place to ensure data quality is maintained?)

Comment: The names of the contracting authorities are not standardized (the same authority can be present under different name – full or abbreviation). There is no control mechanisms to ensure data quality.

X. Please fill the Data Transparency Table below by indicating either “Yes”, “No” or “N/A” in each empty slot:

Data Transparency Table - Access to Public Procurement Related Documents

| Type of document | Is this information required to be public by law? | Is this information publicly available? | Is the database complete? | Electronic | Machine-readable * | Free of charge | Exact format |
|------------------------------------|--|--|----------------------------------|-------------------|---------------------------|-----------------------|---------------------|
| PPL documents | Yes | Yes | Yes | Yes | Yes | Yes | XML and DOC |
| Annual public procurement plans | Yes | Yes | No | Yes | No | Yes | PDF and DOC |
| Notices of intended procurement | Yes | Yes | Yes | Yes | No | Yes | PDF |
| Amendments to tender documentation | No | No | No | No | No | Yes | - |
| Tender candidate applications | No | No | No | No | No | No | - |
| Bids | No | No | No | No | No | No | - |
| Tender commission decisions | Yes | Yes | No | Yes | No | Yes | PDF |
| Information on subcontractors | No | No | No | No | No | No | - |
| Procurement contracts | No | No | No | No | No | No | - |
| Contract amendments | No | No | No | No | No | No | - |
| Contract performance information | Yes | Yes | No | Yes | No | Yes | PDF and DOC |

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|--|-----|-----|-----|-----|----|-----|-------------|
| Payment receipts | No | No | No | No | No | No | - |
| Inspection and quality control reports | Yes | Yes | No | Yes | No | Yes | PDF and DOC |
| Complaints | No | No | No | No | No | No | - |
| Dispute resolutions | Yes | Yes | Yes | Yes | No | Yes | PDF |
| Internal and external audit reports | No | No | No | No | No | No | - |

* For the purposes of this questionnaire, machine-readable means: for quantitative data formats, such as: JSON, CSV, XML, and for text documents - document that are NOT uploaded in the form of a scanned photo or PDF file.

In the comment box below, please elaborate on any irregularities or important details related to the above table.

Comment: -

X. In addition to what is listed in the Data Transparency Table above, are there any gaps in the public procurement database/s? (e.g. gaps in the completeness of data from specific procurers or specific time periods?)

Comment: There is no possibility to identify any significant gaps in existing public procurement database. In order to identify any gap in data it should be checked the paper-based archives of the authorities that use the electronic system. Any such systemic investigation or audit has not been done yet.

Major Strengths and Weaknesses

X. What are the 3 major gaps between the country's public procurement legislation requirements and their implementation in practice? (e.g. ignored provisions, legal loophole, etc.) What are your recommendations for how to align the practice with the legislation? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Gap: There is a legal loophole that is used by contracting authorities to hinder access to procurement dossiers for civil society. The PPL does not oblige to open access to public procurement dossier, only

to publish the tender commission decision. Thus, the access to the dossier is at the discretion and benevolence of procuring authority.

Recommendation: In order to increase transparency and access to public procurement data it is recommendable to amend PPL by obliging contracting authorities to give access to dossiers, and specifying clearly in which conditions they can refuse.⁵

2.

Gap: In the PPL, the possibility to contest the public procurement procedure has only the participating companies. In such situations, when civil society organizations discover some major infringements in the procedure, they cannot lay the contestation to National Complaint Settlement Agency. Thus, in many cases it is impossible to stop operatively discovered procurements with problems.

Recommendation: To amend PPL in order to permit civil society organization to contest the procedures at National Complaint Settlement Agency.⁶

3.

Gap: In the PPL is not specified explicitly that session of opening the tender documentation is public, or which should be the procedure to register for any person to assist at these meetings. The Law permits only members of NGO to take part at the evaluation as members with consulting vote.

Recommendation: Amend the PPL to explicitly make public the opening session of tender documentation or establish some clear procedure to be abided by any citizen to assist at these meetings.

X. What are the 3 major weaknesses / challenges of the country's public procurement system as a whole? And what are your recommendations for overcoming them? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Challenge: The electronic system of public procurement is significantly underdeveloped. The existing system functions more like a register of public procurement procedures and does not cover all stages of the procurement. Also, not all contracting authorities are not connected to the electronic procurement system and perform their procurement only on paper-based formats.

Recommendation: Currently, the Republic of Moldova is testing a new electronic public procurement system, which covers all stages of the procurement and offers a full transparency. The main

⁵ <http://ager.md/sites/default/files/RAPORT%20monitorizare%20%28AGER%29%202.pdf>

⁶ Ibid.

recommendation is to speed up the implementation process and increase the assistance to contacting authorities in implementing it.

2.

Challenge: There are no legal provision that would cover the procurement of the state and municipal enterprises. Lack of such legal provisions distorts the completion environment and serves a propitious ground for corruption and lack of transparency in these enterprises.

Recommendation: Adoption of new legal framework that would regulate only the procurement of the state owned and municipal enterprises.

3.

Challenge: Lack of institutional capacity at the level of contracting authorities. The most personnel responsible for procurement are the accountants, which does not possess specific knowledge in the field of public procurement. The consequence is the poor drafting of the tender documentation, abundance of mistakes etc. Among the factors that contribute to this dire situation are the low remuneration in public institutions, underdevelopment of educational program in procurement and extremely decentralized institutional system in public procurement.

Recommendation: The main domain for required reform is centralization of procurement system. Currently, there are more than 3 thousand of contracting authorities nationwide, and the diminution of their number can give rise to employment of lower number of specialists with higher salaries.

X. What are the 3 major strengths / successes of the country's public procurement system as a whole?
Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Adjustment of PPL in the Republic of Moldova to EU public procurement directives as a result of Association Agreement with EU since 2016. Ratification by the Republic of Moldova of WTO GPA in 2016. This legal adjustment to best European and international practices will spur transparency, competition and efficiency of public procurement in the Republic of Moldova.

2.

Implementation of new electronic public procurement system with assistance of EBRD and EU, which started in 2017. The new electronic system, when fully implemented, will cover all stages of procurement, assure full transparency and connect all contracting authorities in the country.

3.

Creation of fully independent National Complaint Settlement Agency, reporting only to the Parliament. This agency should assure a fully transparent and impartial mechanism of dispute

settlement in public procurement. A year of activity of the Agency proves its success, despite some difficulties in coercing the contracting authorities to implement its decisions.