

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY MOLDOVA**

ARTICLE 9, PARAGRAPH 1 UNCAC

PUBLIC PROCUREMENT

MOLDOVA (THIRTEENTH MEETING)

➤ **State Register of Public Procurement MTender (SIA RSAP MTender)**

The IT tool used in the public procurement process in the Republic of Moldova is the **State Register of Public Procurement MTender (SIA RSAP MTender)**.

✓ *The publicity of data*

The system data is publicly available (except the personal data) and can be accessed at the following link: <https://mtender.gov.md/public/open-data>

✓ *Description of the main characteristics and functions of this ICT*

The MTender is a multi-platform networking digital procurement service that comprises a government-operated web portal and the Open Data central database unit and is networking with several commercial electronic platforms certified to support electronic tendering procedures for public sector and commercial clients.

The MTender networking electronic procurement platform is a commercial electronic platform, authorized and certified for networking with the MTender and providing digital electronic tendering services to public sector clients as well as commercial buyers. Each MTender networking platform is providing a help desk service to buyers and economic operators registered on this platform to access digital services of the MTender.

SIA RSAP Mtender offers functionalities for announcing public procurement procedures such as low value contracts, open tender, call for bidding, electronic bidding, from announcing procurement procedures to awarding public procurement contracts.

In 2021, the Digital Business Intelligence (BI) analysis tool was launched based on the open data available in the MTender electronic public procurement system, being an innovation for the Republic of Moldova. The new module offers the opportunity to study the behavior of participants in public procurement procedures, to identify problems and assess trends. Such analyzes significantly increase the transparency of public procurement procedures and allow for increased control and reduction of corruption in this area.

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ARTICLE 9, PARAGRAPH 1 UNCAC

PUBLIC PROCUREMENT

MOLDOVA (SIXTH MEETING)

1. Integrity in public procurement processes

a) measures ensuring that the national procurement system is based on principles of transparency, competition and objective criteria in decision-making; establishing in advance the conditions for participation, including selection and award criteria and tendering rules

The national public procurement system is regulated by the Law no. 96-XVI of 13 April 2007 on Public Procurement, which stipulates in art. 6 the basic principles for public procurement, as follows:

- a) efficient use of public financial means and minimization of risks for the contracting authorities;
- b) transparency of public procurement;
- c) providing competition and countering unfair competition in the domain of public procurement;
- d) protecting the environment and promoting sustainable development by means of public procurement;
- e) maintaining public order, morality and public safety, protecting health, human lives, flora and fauna;
- f) liberalization and extension of international trade;
- g) free movement of goods, freedom to establish and supply services;
- h) equal treatment, impartiality, non-discrimination towards all tenderers and economic operators;
- i) favoring economic operators that are resident in the Republic of Moldova, to the extent that it is not contrary to international law, to which the Republic of Moldova is a party;
- j) accountability within the framework of public procurement procedures.

The public procurement system of the Republic of Moldova is based on the best EU and international practices and is constantly adjusted by the Public Procurement Agency in order to meet the commercial realities of the state.

In light of the fact that Moldova has assumed certain important commitments by signing the Association Agreement between the European Union and the European Atomic Energy Community and its Member States, on the one hand, and the Republic of Moldova, on the other hand, the Public Procurement Agency has undertaken the task of harmonizing the national legislation on public procurement with the *acquis communautaire*, and in this sense was developed a new draft of the Law on public procurement, harmonized to the provisions of the

Directives no. 18/2004 /EC and no. 89/665 /EEC, which was approved by the Government through the Decision no. 217 of 25 March 2014 and adopted by the Parliament at first reading.

b. measures that provide for sufficient time to potential tenders to prepare and submit their tenders and using by default an open tender procedure

Art. 26 of the Law no. 96-XVI of 13 April 2007 on Public Procurement, provides for the following:

Article 26. Deadlines for the submission and receipt of calls for participation and tenders

(1) The deadline for the submission and receipt of calls for participation and tenders will be sufficient to enable economic operators, both in the country and from abroad, to prepare and submit tenders before the end of tender procedures.

(2) In setting the deadline, contracting authorities shall take into account the complexity of the envisaged procurement, the anticipated area of subcontracting and the usual time for the submission of tenders by post in the country and abroad.

(3) The contracting authority is responsible for setting the deadline for the submission and receipt of the calls for participation and tenders.

(4) In the case of open and restricted tenders, the deadline for the submission and receipt of calls for participation and tenders will be minimum 15 calendar days from the date of publication of the invitation to tender. In the case of the public procurement referred to art. 2 (3) the period will consist of at least 40 calendar days. In the case of repeated contracts and emergencies, justified by the contracting authority, the deadline for submission of tenders may be reduced to a minimum of 10 calendar days.

(5) In the case of procedures requesting price offers, the deadline for the submission and receipt of tenders will be minimum 3 calendar days for goods and 10 calendar days for works and services from the date of the invitation to tender. In the case of secondary purchases, repeated contracts and emergency cases, justified by the contracting authority, the period for submission of bids may be reduced to minimum 2 calendar days for goods and minimum 5 calendar days for works and services.

(6) The date and time for the opening of the tender will coincide with the deadline for the submission of calls for participation and receipt of tenders.

Although the above mentioned Law provides for the possibility of setting a deadline exceeding 15 days for the submission of tenders, contracting authorities are not entitled to the respective right and are limited to the minimum period of 15 days which is not always sufficient in order to prepare tenders.

Therefore, with the adoption of the new law on public procurement, the minimum deadline for the submission of tenders will be extended with view to provide for sufficient time for the development and submission of potential tenders. Concurrently, art. 33 par. (2) of the Law no. 96-XVI of 13 April 2007 on Public Procurement provides for the following:

(2) The basic procedure for the award of public procurement contracts is the open tender. Other procurement procedures can be used only if expressly provided for in this law.

c. measures that provide for transparent publishing of all procurement decisions including publishing the invitations to tender

Public procurement decisions are not published in any media source, but they are transparent to the extent that tenderers are informed about their content at each stage of the procedure; tenderers have the right to participate in meetings for opening tenders and to sign the minutes of the opening session.

Invitations to tender are published in the Public Procurement Bulletin, which is also the primary source of information in the domain of public procurement and can be accessed by any economic operator.

d. measures establishing procedures, rules and regulations for review of the procurement process, including a system of appeal

Article 71 par. (1) of the Law no. 96-XVI of 13 April 2007 on Public Procurement
(1) Any economic operator who believes that, within the framework of procurement procedures, the contracting authority, by a decision issued or applied with the violation of procurement procedures, has violated its rights that are recognized by law, as result of which the economic operator has suffered or can suffer damages, has the right to appeal the decision or procedure applied by the contracting authority in the manner established by law.

e. measures providing for a thorough selection of personnel responsible for procurement, including screening procedures; as well as establishing a conflict of interest management system with declarations of interest and methods to resolve conflicts in particular cases

The legislation of the Republic of Moldovan does not regulate a mechanism of selecting the staff responsible for carrying out procurement procedures, but expressly provides that the accountable body is the working group for procurement, which is created from the staff of the contracting authority, and according to art. 14 par. (3) the members of the working group are required to sign, on their own responsibility, a statement of confidentiality and impartiality, by which they unconditionally undertake the responsibility to respect the provisions of this law and, at the same time, acknowledging the following:

- a) they are not the spouse, relative or affine up to the third degree, included, with one of the tenderers;
- b) in the last three years, as provided by the work book, they have not activated based on an individual labor contract or contract of collaboration, with one of the tenderers or have not held membership in the council of administration or any other administrative body of the tenderer;
- c) they do not hold quotas or shares in the share capital of the tenderer.

f. measures that put in place other administrative practices promoting integrity in procurement (such as the rotation of personnel, debarment procedures, etc.)

The integrity of the members of the working group that initiates and manages public procurement procedures is ensured by the Law no. 16-XVI of 15.02.2008 regarding the conflict of interests

2. In order to improve and strengthen the public procurement system of the Republic of Moldova, it is necessary to adopt a new law on public procurement and, respectively, to adjust/develop the secondary legislation which will derive from this law.

3. With regard to technical assistance, the public procurement system in the Republic of Moldova is in necessity of reform, which will require the development of a strategy for the development of the public procurement system in conformity with the international best practices. In this regard, highly beneficial would be the assistance in the development of the respective reform strategy.