



THE COURT OF ACCOUNTS OF THE REPUBLIC OF MOLDOVA

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Analytical synthesis of the audit results related to the field of public procurement in the period 2019-2020

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PREFACE

The scope of an efficient public procurement system is declared as one of the fundamental elements of the development process of the Republic of Moldova¹. At the same time, the field of public procurement is often subject to major risks.

The audit experience of previous years has elucidated the maintenance of multiple deficiencies and irregularities rooted over the years in this area, as well as problems in the development of e-procurement. For these reasons, the **Court of Accounts** planned and carried out, **for the first time, frontal audits** on the compliance of public procurement within the **9 ministries with subordinate institutions**. Such an approach has proven to be appropriate and effective in several respects, as well as **highlighted** the seriousness of the issue of low value procurement, which, at the institutional level, does not seem essential.

The Court of Accounts stated that, in addition to the official figure of public procurement of **9.04 billion lei** (4.4% of GDP) made in 2020, the contracting authorities of the Republic of Moldova also purchased goods, works and services, the estimated value of which amounts to **9.01 billion lei** and these purchases are, in fact, **low value public procurement**.

Although low value public procurement has almost equaled the value of competitive public procurement procedures, most authorities **do not ensure the conduct** of low value public procurement procedures **through AIS "PPSR" MTender** and **do not report them** to the Public Procurement Agency, for which reason, there **are no official statistics** in the Republic of Moldova on the total real amount of public procurement.

The flawed regulation of low-value public procurement, combined with the possibility of discretionary action by contracting authorities in making such procurement, facilitates the non-transparent and sometimes inefficient use of public money and, implicitly, conditions the risk of fraud.

LIST OF ACRONYMS

PPA	Public Procurement Agency
NASC	National Agency for Solving Complaints
TSA	Technical Surveillance Agency
NPB	National Public Budget
SEPD	Single European Procurement Document
G'sD	Government's Decision
M Tender	Automated Information System "Public Procurement State Register"
GDP	Gross Domestic Product
VAT	Value added tax
MEI	Ministry of Economy and Infrastructure
MoF	Ministry of Finance

¹ G'sD no. 1332 from 14.12.2016 "On the approval of the Strategy for the development of the public procurement system for 2016-2020 and of the Action Plan regarding its implementation".

MoD	Ministry of Defense
MIA	Ministry of Internal Affairs
MARDE	Ministry of Agriculture, Regional Development and Environment
MECR	Ministry of Education, Culture and Research
MoJ	Ministry of Justice
MHLSP	Ministry of Health, Labor and Social Protection
MFAEI	Ministry of Foreign Affairs and European Integration

I. INTRODUCTION

Public procurement represents the procurement, by means of a public procurement contract, of goods, works or services by one or more contracting authorities from economic operators selected by them, whether or not the goods, works or services are intended for a public purpose². As a process, "public procurement is a succession of stages and operations through which a product, service or work is acquired definitively or temporarily following the award of a public procurement contract, in order to fulfill a public interest"³.

The participants/subjects of the public procurement procedure are the *contracting authorities* (who procure goods/works/services) and the *economic operators* (who deliver goods, execute works and provide services). The contracting authorities are directly responsible for the regular and efficient performance of public procurement. According to the legal framework⁴, contracting authorities shall exercise their powers in the field of public procurement through working groups set up for this purpose.

Supervision, monitoring and interbranch coordination in the field of public procurement is provided by the Public Procurement Agency, and the resolution of appeals formulated in public procurement procedures, according to the Law no. 131/2015, is provided by the National Agency for Solving Complaints.

In order to ensure the transparency and digitization of public procurement, at the end of 2018 was established the automated information system "Public Procurement State Register" (hereinafter - AIS "PPSR"/MTender)⁵, which was to ensure the completion by electronic means of the entire cycle of public procurement procedures, from the planning stage to the last payment made upon completion of the execution of public procurement contracts.

Procurement procedures by call for tenders and by open tender organized by the contracting authorities are carried out through one of the 3 e-procurement platforms.: [e-](#)

² Art.1 of the Law on public procurement no.131 from 03.07.2015 (*hereinafter - Law no.131 / 2015*).

³ Public procurement guide for contracting authorities. Publication made within the Project "Innovative improvements in the public procurement system of the Republic of Moldova through inclusion, creativity and compliance practices".

⁴ Art.14 paragraph (1) of Law no.131/2015.

⁵ G'sD no. 986 from 10.10.2018 "On the approval of the Regulation on the manner of maintaining the Public Procurement State Register formed by the Automated Information System "Public Procurement State Register"(MTender)". G'sD no. 705 from 11.07.2018 "On the approval of the Technical Concept of the Automated Information System "Public Procurement State Register "(MTender)".

licitatie.md; tender.md and yptender.md. The Ministry of Finance, as the owner of the central data unit of the AIS "PPSR"/M Tender ⁶, ensures its implementation, operation and development.

The field of public procurement in the Republic of Moldova is a key area in the management of public finances, therefore the irregularity of public procurement procedures involves major costs for the national public budget.

Table no.1

<i>Information on the volume of public procurement reported to the Gross Domestic Product (million lei)</i>			
Year	GDP calculated at current prices	Volume of public procurement	Share of public procurement in Gross Domestic Product (%)
2010	71.885	5.64	7,85
2011	82.349	5.47	6,65
2012	87.847	5.87	6,69
2013	99.879	7.47	7,49
2014	112.050	10.83	9,67
2015	121.851	6.46	5,30
2016	134.476	7.52	5,60
2017	150.369	8.60	5,72
2018	190.016	10.50	5,53
2019	210.099	8.93	4,25
2020	206.352	9.04	4,38

Source: PPA report for 2020.

The data from Table no. 1 reveals that the value of public procurement in 2020 amounted to **9.04 billion lei**, registering a share in GDP of 4.4%. However, during the last 11 years, the best indicator was registered in 2014, i.e. before the approval of the new Law on public procurement no. 131/2015, when the maximum share in GDP of public procurement was 9.67%. From 2015 until now, is attested the presence of the negative trend of the share of public procurement in GDP.

In 2019, the respective indices registered a comparative decrease compared to 2014 by 5.42 p.p. and by 1.3 p.p., compared to 2018. One of the explanations for this dynamic is the increase of 2.5 times, starting with the end of 2018 (from 14.12.2018)⁷, of the value thresholds of public procurement, which fall under the incidence of Law no.131/2015. Thus, after the operation of the respective modifications, the value thresholds related to public procurements were

⁶ The technical concept of the Automated Information System "Public Procurement State Register" (MTender), approved throughout the G'sD no. 705 from 11.07.2018.

⁷ Law no. 319 from 30.11.2018 for the amendment of Law no. 131/2015 on public procurement.

increased for goods and services from 80.0 thousand lei to 200.0 thousand lei, without VAT, and for works from 100.0 thousand lei up to 250 .0 thousand lei, without VAT.

Table no.2

<i>Indicators related to public procurement compared to the indicators of the National Public Budget</i>											
	Years	2020			2019			2018			
		Public procurement procedure	No. of contracts	Amount of contracts/allowances (million lei)		No. of contracts	Amount of contracts/allowances (million lei)		No. of contracts	Amount of contracts/allowances (million lei)	
				Initial/specified	Adjusted/executed		Initial/specified	Adjusted/executed		Initial/specified	Adjusted/executed
1	Framework agreement	2	3,96	1,95	20	3,90	3,90	481	21,20	21,26	
2	Open auctions, conducted throughout the AIS PPSR MTender and AIS PPSR	4.663	7.778,21	7.569,40	5.186	7.463,88	7.418,22	7.694	8.250,29	7.992,26	
3	Request for price offers, carried out through AIS PPSR MTender and AIS PPSR	4.263	1.105,51	1.070,65	5.456	1.225,06	1.215,87	9.444	1.395,08	1.371,22	
4	Negotiation without publication	476	407,76	398,57	416	317,81	301,57	3.748	1.155,47	1.136,57	
5	Direct allocations for educational services	28	404,08	403,71	33	1.160,53	1.160,27	43	865,14	865,14	
6	Total	9.432	9.699,53	9.444,28	11.111	10.171,19	10.099,83	21.410	11.687,18	11.386,45	
7	Total expenditures and non-financial assets of the National Public Budget		78.750,1	73.269,80		70.631,30	65.975,60		64.580,30	59.608,90	
8	Expenditure on goods and services and non-financial assets, of which:		23.490,4	20.457,50		21.755,80	19.010,10		21.055,10	17.797,90	
9	- from external sources			2.010,50			1.430,50			920,50	
10	- from local sources			18.447,00			17.579,60			16.877,40	
11= 10-6	The value of purchases made in the absence of procurement procedures			9.002,72			7.479,77			5.490,95	
12= 6/10	Share of purchases in total procurement of NPB, %			51,20			57,45			67,47	

Source: PPA's and MoF's reports for the years 2018-2020.

The information presented in Table no. 2 shows a decrease in the number of public procurement contracts declared and registered by the PPA in the last 3 years, from 21.4 thousand in 2018 to 9.4 thousand in 2020, or 2.3 times fewer contracts. The share of public procurement in the total procurements made from the National Public Budget decreased from 67% in 2018 to 51% in 2020. Thus, the value of purchases made, which are not regulated by the Law no. 131/2015, increased from **5.9 billion lei in 2018** to **9.0 billion lei in 2020**, or **1.7 times more**. The vast majority of these purchases are in fact **low value public procurement**. We mention that in this amount are also found some of the acquisitions of communal services, as well as the legally supported derogation from the general rules for some procurements during the pandemic period.

The Court of Accounts intends to focus its efforts on auditing this area. Thus, in the Audit Programs of the Court of Accounts for 2020 and 2021 were included and performed 9 audits aimed at assessing the compliance of public procurement in ministries. Based on the audit findings and

conclusions, the Court of Accounts made 224 recommendations aimed at improving the regulatory framework for public procurement, maximizing the expected impact of using the "MTender" automated system, and avoiding future non-compliances identified in the audits in order to make more efficient use of the public finances allocated for this purpose.

II. SYSTEMIC DEFICIENCY

2.1 Imperfection of the regulatory framework

2.1.1. The regulatory framework for low value procurement is ambiguous and incomplete, facilitates the non-transparent and inefficient use of public money and does not allow monitoring of public procurement as a whole.

According to Article 2 paragraph (4) of Law no. 131/2015, public procurement contracts whose estimated value, excluding VAT, does not exceed the thresholds mentioned in paragraph (1) of Article 2 of the mentioned, Law (200.0 thousand lei for goods, without VAT, and 250.0 thousand lei, without VAT for works), are regulated by the Regulation of low value public procurement, approved by the Government⁸. Thus, low value public procurement represents the public procurement contracts, planned and concluded by the contracting authorities, whose estimated value, excluding VAT, according to the mentioned regulation, does not exceed 80.0 thousand lei for goods and services and 100.0 thousand lei for works. As a result, there is a discrepancy between the provisions of the law and the regulation on acquisition thresholds.

Although that Regulation lays down general requirements for the procurement of low value public procurement⁹, these cannot be used as strong compliance criteria in order to establish the correctness of making low value purchases. Although the total value of low value public procurement is about 9.0 billion lei, this is almost equal to the value of competitive public procurement procedures performed by contracting authorities, it is an estimated value and, so far, there is no official statistics on their actual total amount.

If for the **planning of low value public procurement**, the specified regulations contain the general rules for calculating the estimated value of public procurement contracts, provided by law, then **for the award of contracts**, those rules are evasive and do not contain clear qualification criteria, tender selection requirements and the signing of the contract.

Minor acquisitions made under some ministry systems are non-transparent, most of which are not reported to the PPA. Although the Ministry of Finance, by addressing (on 02.05.2017) to the contracting authorities, urged them, when making low value public procurement, to ensure transparency in the process, by using the electronic public procurement system, the contracting authorities do not ensure the conduct of low value public procurement procedures through AIS "PPSR" M Tender, which limits the transparency and, implicitly, the occurrence of the risk of fraud.

⁸ G'sD no. 665 from 27.05.2016 on the approval of the Regulation on low value public procurement (hereinafter the Regulation).

⁹ Point 4 of the G'D no. 665 from 27.05.2016 "Efficient use of financial resources, transparency, objectivity and impartiality of the procurement process".

At the same time, only within a ministry¹⁰ 149 institutions did not regularly submit to the PPA reports on low value purchases.

The activity of the working group and its attributions in the exercise of low value public procurement is not provided by the Regulation in question, and the provisions in this respect of the normative framework related to the development of competitive public procurement procedures are not applicable to this type of public procurement. Consequently, low-value public procurement falls within the remit of the Public Procurement Working Group, being assigned exclusively to the head of the entity.

In the context of what is reported, it is noted that, although the cumulative value of low value public procurement is significant, they are not regulated by the Law, but only by the Regulation approved throughout the G'sD no. 665 from 27.05.2016, which needs to be updated, completed and consolidated. Therefore, the flawed regulation of low-value public procurement, combined with the possibility of discretionary action by contracting authorities in making such procurement, facilitates the non-transparent and sometimes inefficient use of public money and, implicitly, conditions the risk of fraud.

2.1.2. The non-harmonization of some provisions of the Government's Decisions with the provisions of the Public Procurement Law leads to the different treatment, by the contracting authorities, of the same situation.

The Regulation on the work of the Procurement Working Group¹¹ provided for the preparation of the minutes regarding the results of the evaluation of the bids submitted within the procurement procedure, but this procedure is not found in Law no. 131/2015.

However, the audit shows that this document is useful in the procurement dossier because it contributes to the transparency of the bid evaluation process in terms of analyzing each bid, especially when applying the criterion "bid with the best value for money".

We also draw attention to the fact that, although the regulatory framework regulates the need to report the execution stage of the contract, the lack of a formalized Execution Report does not allow the use of data from it easily to identify cases of improper execution by the economic operator of the contract in the past.

Contracting authorities, when drawing up the specifications and establishing the appropriate evaluation criteria, very rarely use the value for money criterion, or the quality-cost ratio, often choosing the lowest price evaluation criterion. This is due to the lack or inadequacy of the knowledge and skills required for the correct application of these criteria, especially in the case of an electronic auction, these criteria cannot be applied, even if the law on some public procurement procedures provides for these criteria. In this regard, training is needed to develop knowledge and understand the benefits of applying these criteria.

¹⁰ MECR.

¹¹ Point 14 of the Regulation on the activity of the procurement working group, approved throughout the G'sD no. 667 from 27.05.2016.

Among the main causes that determined the conclusions presented can be listed: the insufficiency of the internal managerial control procedures of the decision-makers within the ministerial system, the non-exhaustive execution of the delegated attributions to the members of the Working Group for public procurement, the lack of clear and distinct regulations, non- non-harmonization/non-adjustment of the secondary regulatory framework to the provisions of the Public Procurement Law, limited capacities of the electronic procurement system, etc.. The accumulation of what was found affected the entire public procurement process, deficiencies and irregularities being present in all stages related to a public procurement process.

2.1.3. The application mechanism of the Law no. 131/2015 on public procurement, in particular the value of procurement thresholds, has not been modified according to the legal provisions in force.

Although Law no. 131/2015 on public procurement was amended at the end of 2018 and linked to the Community legal framework, so far the law enforcement mechanism established throughout Government Decisions, in particular the value of low value procurement thresholds, procurement by the demand for tenders and procurement of works has not been modified according to the provisions of the nominated law, which influences the compliant organization by the contracting authorities of public procurement procedures. Other gaps and shortcomings of the regulatory framework are:

- the inconsistency of the normative acts in the aspect of the definition of public capital investments and current and capital repairs leads to the clear non-delimitation of recurrent expenditures from capital investment expenditures and to their erroneous classification;
- the quotas used in the elaboration of the estimate of expenses for the acquisition of works established by the Ministry of Economy and Infrastructure differ significantly from the quotas applied by the bidders in the elaboration of the offer, a situation that leads to the exaggerated planning of budgetary resources and minimizing the risks of the contracting authority.

2.1.4. The shortcomings of the regulatory framework regarding the format of the model framework contract for the public procurement of works do not ensure the link between the procedure for designating the winner and the concluded contract.

According to the provisions of Law no. 131/2015, was elaborated and approved the standard documentation for public procurement, which contains the model contract with the obligatory contractual clauses.

When examining the models of the approved framework contracts, discrepancies were found in the chapter "Contracting Parties", namely in the works procurement contracts the reference to the decision of the working group awarding the contract is missing, while in the contracts for the procurement of goods and services this reference is contained. Thus, in order to ensure their uniformity and perception, the contractual provisions must be similar for all public procurement contracts regardless of the object of the procurement.

The lack of correlation between the contract and the award decision jeopardizes the possibility of pursuing the correctness of the public procurement and does not ensure the transparency of the award process and the signing of the contract. Moreover, it does not allow the follow-up of the NASC decisions in terms of the annulment of the contract award decisions.

Note: Throughout the MoF's Order no. 69 from 07.05.2021, changes were made in the standard documentation for the public procurement of works, however, these changes do not ensure the correlation mentioned above and, respectively, do not remedy the deficiency found.

2.1.5. In the context of multiple and serious cases of non-compliance with the legality of the public procurement process, there is a lack of effective and accountable sanctions for breaches of public procurement law.

Preventing and/or enforcing coercion in the form of misdemeanor liability in the event of admissions of errors and fraud in public procurement is not functional. Attention is drawn to the fact that, throughout the Law no. 295 from 21.12.2017¹² amendments were made to the art.402 of the Contravention Code, as a result of which the finding and application of the contravention facts provided by art.3271 of the Contravention Code starting with 12.01.2018, was excluded from the competence of the administrative authorities subordinated to the Ministry of Finance¹³.

Also, there are no legal norms that would make it possible to ascertain and apply civil and/or criminal liability concerning the cases of violation of the regulatory framework on public procurement, committed by individuals, legal entities, with special status, etc.

Although frequent violations are found in the contracting authorities, the lack of appropriate measures to enforce legal liability for breaches of the established regulations, the actions taken by the competent authorities, in the circumstances created, do not have an impact and are not effective.

Illegal direct award of contracts may be considered as one of the most serious public procurement infringements by a contracting authority, the fight against which should provide for effective, proportionate and dissuasive sanctions. One sanction, considered the most effective, is that the contract that is the result of an illegal direct award to be considered ineffective.

In this context, the shortcomings of the current regulatory framework, on the one hand, minimize the expected effects and added value of the controls performed by the PPA in order to comply with the rigors of public procurement, and on the other hand, constitute an impediment to ensuring discipline and increasing accountability. involved in the public procurement process.

2.2 Weaknesses identified by the PPA in monitoring the public procurement process

According to the legislative amendments (since 2017), the PPA does not exercise ex-ante and ex-post control attributions of the public procurement procedures. Therefore, it no longer verifies the procurement documentation (*from the initial stage to the award of the contract*),

¹² Legea pentru modificarea și completarea unor acte legislative nr.295 din 21.12.2017 (MO nr.7-17/58 din 12.01.2018).

¹³ Agenția Achiziții Publice, Inspekția Financiară.

drawn up by the contracting authorities, and the results of the public procurement procedure, ensuring only the recording of the reports related to the procedures and the responsibility for their correctness shall be vested exclusively in the contracting authorities.

The monitoring of public procurement procedures is carried out selectively by the PPA. Thus, the aspects of planning public procurement procedures, selecting the type of procedure and initiating them are not subject to the control performed by the PPA.

According to its competencies, the PPA only monitors compliance with the conduct of public procurement procedures (*except for low value public procurement*). In case of identification of deviations from the legislation, individual Monitoring Reports are drawn up as a recommendation, informing the contracting authorities.

Table no. 3

Result of actions taken by contracting authorities following the monitoring reports during 2019-2020						
Actions taken	Assignment documentation		Results of the contract award/modification procedure		Total	
	number	%	number	%	number	%
YEAR 2020						
Repaired	186	45	42	26	228	39
Unrepaired	160	39	103	62	263	46
Partially repaired	67	16	20	12	87	15
Total	413	100	165	100	578	100
YEAR 2019						
Repaired	515	39	60	19	575	35
Unrepaired	634	48	235	73	869	53
Partially repaired	164	13	26	8	190	12
Total	1.313	100	321	100	1.634	100

Source: PPA report for 2020

The data in Table 3 indicate the fact that the contracting authorities ignore the requests of the PPA to remedy the deficiencies found in the monitoring of public procurement. Thus, only 35% and 39% of the deficiencies were remedied in 2019-2020, respectively.

The current legal framework limits the right of the PPA to intervene in these situations, in order to remove non-compliances, respectively, it cannot be ordered to re-examine the results of the procurement procedure or cancel it, because monitoring reports are not mandatory, established by Order of the Minister of Finance, respectively the non-execution of the monitoring report does not prevent the recording of the report.

2.3. Problems of the automated information system "Public Procurement State Register"

The automated information system "Public Procurement State Register"/MTender is fragmented, does not regularly support and document all public procurement procedures provided by the legal framework, and limits the right of non-resident economic operators to participate in the public procurement procedure. Thus, the System does not cover 6 procurement procedures out of 8 provided by the legal framework, as well as limits the right of non-resident economic operators to participate in the public procurement procedure, because it does not

recognize electronic signatures of non-residents, given that there are currently no agreements in this regard between the Republic of Moldova and other states, which favors the participation of intermediaries in public procurement procedures and in the procurement of goods by contracting authorities at exaggerated prices.

Other imperfections of the information system are:

- lack of correlation of information recorded on 3 public information platforms e-licitatie.md; tender.md and yptender.md., all managed by entities subordinate to the Ministry of Finance that are not subject to system controls;
- the lack of interconnection between AIS „PPSR”/MTender and bap@tender.gov.md does not ensure the publication in legal terms on the information platform of the reports regarding the public procurement procedure carried out by the contracting authorities.
- the current version of M-Tender does not allow the generation of adequate data on public procurement monitoring. Some documents are formalized, and others are uploaded in PDF or other format, which makes it difficult to systematize and generalize them as well as use in various systemic or specific analyzes of key information.
- there is no single interconnection, no single place to store information about the procurement process and procedures. Various information is posted either on the Public Procurement Agency's website (eg Prohibition List, Notice of Intent, etc.), or on the Contracting Authority's website (Procurement Plan), or in the M-Tender, or IS used by the National Agency for Solving Complaints.

In conclusion, it is attested that the e-procurement system is not fully functional according to the approved concept, and in some cases is not connected as the provisions of the Public Procurement Law, being limited only to some of the public procurement procedures and a single qualification criterion of the offers (the lowest price), being necessary measures of modification/adjustment of the IS operation at all stages of the procurement process.

Although some of the data is easily accessible and placed either on the Public Procurement Agency's website or in M-Tender, data on small contracts are largely missing in both electronic sources and most of the documents cannot be read or automated processing.

III. DEFICIENCIES IDENTIFIED WITHIN THE AUDITED MINISTRIES

3.1. Tasks of the working group and the functions of the members

The managers of the contracting authorities within the system of ministries, through their decisions, did not properly establish the attributions of the working group and the functions of each member, necessary for the exercise of the public procurement procedures.

According to the provisions of art.14 par. (1) of Law no. 131/2015, the contracting authority exercises its duties through a working group, created for this purpose by officials and specialists with professional experience in the field of public procurement, within the contracting

authority, within the limits of the staff. At the same time, according to the Regulation¹⁴, the contracting authority, in the special decision (order) or in the order setting up the working group, expressly establishes the tasks of each working group (if two or more are created) and the functions of each member of the group within public procurement procedures. The working group carries out its activity ensuring according to the legal provisions¹⁵ transparency, publicity, objectivity, impartiality and efficiency of public procurement.

As a result of the external public audit activities carried out, it was found that the internal regulatory framework related to the functioning of the working groups for public procurement within contracting authorities within the system of **4 ministries**¹⁶ has not been modified and strengthened with the clear establishment and division of tasks, attributions and responsibilities between the members of the working group, and other contracting authorities did not regularly describe the operational processes regarding public procurement, as the risk registers were not updated and/or elaborated. In some public entities, the internal normative acts are not related to the provisions of the legal framework and to the structural changes that have occurred over time.

3.2. Failure to comply with the basic conditions and principles applied to public procurement planning

According to the legal framework¹⁷, the contracting authority's procurement plan represents the set of needs for goods, works and services for the whole budget year, which are to be met by concluding one or more public procurement contracts, depending on how they are planned. The procurement plan must comply with the principles of annuality; based on real needs; financial coverage; accessibility and transparency. At the same time, when planning public procurement, the working group is obliged to respect the principles of ensuring competition, efficiency, transparency, equal treatment, non-discrimination and non-division¹⁸.

In this context, the audit reveals that within the contracting authorities of the system of **6 ministries**¹⁹, the level of quality of public procurement planning was reduced, and the manner of elaboration/publication of the respective public procurement plans was non-compliant. Thus, these entities did not ensure the realization of public procurement according to the principles set out above and admitted deficiencies and irregularities that totaled 1244.7 million lei. These include:

- non-regular publication of notices of intent regarding public procurement expected in ministries in the amount of 258.8 million lei;

¹⁴ Point 18 of the Regulation on the activity of the working group for procurement, approved throughout the G'sD no. 667 from 27.05. 2016 (hereinafter - the Regulation approved throughout the G'sD no. 667 from 27.05.2016).

¹⁵ Point 17 of the Regulation approved throughout the G'sD no. 667 from 27.05.2016.

¹⁶ MoD, MIA, MARDE, MEI.

¹⁷ Point 2, point 5, point 7, point 8, point 13 and point 18 of the Regulation on the planning of public procurement contracts, approved throughout the G'sD no. 1419 from 28.12.2016 (hereinafter - Regulation approved throughout the G'sD no. 1419 from 28.12.2016).

¹⁸ Article 4 paragraph (1) and paragraph (2), art.39 para. (1); art. 61 paragraph (1) of Law no. 131/2015 on public procurement; point 1, points 5-8 of the Regulation approved throughout the G'sD no. 1419 from 28.12.2016; point 17 of the Regulation approved throughout the G'sD no. 667 from 27.05.2016.

¹⁹ Deficiencies and irregularities established regarding public procurement planning: MEI in the amount of 43.3 million lei; MoF - of 140.8 million lei; MoJ - 405.8 million lei; MIA - 170 million lei, MECR - 121.3 million lei, and MHLSP - 10.0 million lei.

- lack of updating and lack of publication of the annual procurement plans on the website of the contracting authorities in the amount of 296.5 million lei, as well as the development of some public procurement procedures with the total value of 198.8 million lei not included in the annual procurement plans;
- the lack of comprehensive data on low-value procurement (those reported to the PPA amounted to 121.3 million lei), as well as the lack of a system for monitoring and informational interaction of these public procurements at all stages of planning, implementation, award and reporting of contracts;
- lack of valorization by some contracting authorities within the system of **3 ministries**²⁰ of financial means for public procurement in the amount of 369.3 million lei, some of the causes being the allocation at the end of the budget year of financial means mainly for works, as well as reduced absorption capacities of funds, including from external sources;
- improper planning by a contracting authority²¹ of the need for financial means for reimbursed medicines (596.0 million lei), does not provide data on facilitating the coverage of several groups of citizens who need reimbursement of medicines.

Thus, the way in which public procurement plans are developed and published at the level of ministries does not ensure a clear, complete and transparent view of how public money is used.

3.3. Non-compliance with the preparation of the award documentation and the established qualification and selection criteria

The award documentation published by the contracting authorities within the system of 6 ministries²² does not comply with the legal framework, and in some cases restrictive and discriminatory qualification and selection criteria are established for some economic operators participating in the public procurement procedure.

According to the legal framework²³, when contracting authorities describe the characteristics of the goods, works or services requested, they shall use general descriptions of parameters and functions, international, European or national standards. The description of the required characteristics of a work, a good or a service does not refer to a specific manufacturer or to a specific source, process or trademark, patent, type or specific origin or manufacture. In this regard,

- the compliance of the awarding documentation to the organization of the procurement procedures of the goods and works within the MIA was not ensured, being restricted technical specifications that limited the competition between the economic operators, the purchases of cars worth 50.0 million lei and the terminals radio with a value of 14.8 million lei were performed unevenly per system;
- for the purchase of 106 cars worth 38.6 million lei, was established a commercial surcharge in the amount of 8.4 million lei, which varied from 12% to 144% at the purchase price, the

²⁰ MIA did not capitalize allocations in the amount of 221 million lei, the MoF - of 135.5 million lei, and MARDE - of 12.9 million lei.

²¹ National Medical Insurance House

²² MEI, MIA, MARDE, MHLSP, MoJ și MECR.

²³ Art.37 paragraph (5), paragraph (6) and paragraph (9) of Law no.131 / 2015 on public procurement; Chapter 8 "Public procurement"; pt.6 and pt.7 Award of contracts from the National Action Plan for the implementation of the Association Agreement Republic of Moldova - European Union in the period 2014-2016, approved throughout the G'sD no.808 from 07.10.2014.

cause being the increased announcement the estimated value of public procurement, the lack of tendering and the procurement of cars through intermediaries;

- without evaluating the average prices on the market, it was announced the purchase of the same model of radio terminal and from the same manufacturer with different prices, these being purchased per system with prices ranging for the portable terminal from 12.1 thousand lei to 17.9 thousand lei per unit, and for the mobile terminal - from 18.0 thousand lei to 30.0 thousand lei per unit, thus not ensuring the economy of public funds;
- the award documentation and the contracts for the procurement of works worth 276.7 million lei were drawn up by the contracting authorities within 3 ministries²⁴ in the absence of projects and general estimates of expenditures, expertized in a regular manner;
- due to the lack of execution projects and general estimates of works expenses, as well as the irregular planning of procurement contracts in 3 ministries²⁵, was allowed to increase by 28.4 million lei the volumes of works compared to those initially contracted at tenders, and by the conclusion of the additional agreements allowed the extension of the deadlines for the execution of the works;
- by the contracting authorities within the system of 3 ministries²⁶ was not regularly requested from the economic operators designated winners at the conclusion of the procurement contracts the guarantee of good execution of the contracts, or from 5% to 15% of the value of the public procurement contract in the amount of 34.9 million lei;
- concluding a contract for the acquisition of works for the restoration of outdoor electric lighting in the amount of 1.0 million lei with a bidder who at the stage of evaluating the bid presented erroneous supporting documents;
- lack of regular informing of some economic operators on the results of the public procurement procedure, as well as the establishment in the documentation of the award of restricted terms regarding the execution of contracts;
- non-preparation of declarations of impartiality and confidentiality by members of the procurement working group of a contracting authority²⁷;
- due to the lack of qualified bids participating in the auction for 4.5 years, the construction works of the Chisinau Penitentiary with a value of 1123.6 million lei were not initiated, although the works were to be completed on December 31, 2017, and the operation was planned for July 2018²⁸.

3.4. Non-compliance of the contractual clauses with the technical specifications proposed by the winners

The clauses of the contracts concluded with the economic operators do not correspond to the technical specifications of the winning bids, and the contracting authorities within the system of 7 ministries²⁹ did not receive the goods, works and services according to the conditions of the

²⁴ MIA drew up works procurement contracts in the absence of projects and general estimates of expenses amounting to 271.4 million lei, MARDE - of 3.4 million lei, MHLSP - of 1.9 million lei.

²⁵ MECR increased the volumes of works in the amount of 19.5 million lei, MIA - of 7.3 million lei, and MARDE - of 1.6 million lei.

²⁶ MIA - the guarantee of good execution in the amount of 21.2 million lei, MEI - of 11.5 million lei, MARDE - of 2.2 million lei.

²⁷ STS.

²⁸ MoJ.

²⁹ MARDE, MoJ, MECR, MEI, MIA, MoF, MFAEI.

concluded contracts, being admitted deficiencies and irregularities in total amounting to 403.2 million lei.

Public procurement management within the system of some ministries³⁰ is affected by irregularities, which have a negative impact on the performance of procurement in economic conditions, not being regularly ensured the initiation and conduct of public procurement procedures. In this context,

- application of the procedure for the procurement and award of the contract for the purchase of equipment for the construction of the TETRA standard radio communication network with a value of 163.5 million lei through the negotiation method without prior publication of a contract notice referring to the "technical reason for creation" contravenes Law no. 131/201³¹, non-compliance with the principles of legality, transparency, competition, efficiency and economy;
- Excessive final costs of the radio communication network have been admitted due to the application of illegitimate commercial additions to the customs territory, which at some equipment positions reached a maximum share of 229% at the initial purchase price, being spent from the state budget by 24, 4 million lei more, as well as being caused budget losses in the amount of 14.5 million lei;
- Were made payments for the works in the absence of the minutes of receipt of the construction works of the radio communication network, of the documents justifying the quantitative and value standard regarding the execution of the construction works of the network (30.6 million lei);
- the construction of the radio communication network for the operational purposes within the Police was not completed, as well as the procurement budget approved according to the Financing Agreement was exceeded by 27.9 million lei.

The working groups do not fully monitor the execution of the awarded contracts. When organizing the public procurement procedures for the equipment within the MIA, with the elaboration of 89 public procurement contracts in the amount of 76.7 million lei, the following were found:

- the legal framework that regulates the purchase of equipment for employees and which was the basis for the preparation of the award documentation for the organization of tenders is uneven and imperfect, does not establish by system the name of the fabric and the fibrous composition in %;
- were purchased 20 positions of equipment in the amount of 11.5 million lei without label regarding the fibrous composition in% of the fabric or the fibrous composition of the fabric on the label does not correspond to the technical specification proposed in the winning bid, being purchased equipment with a content high in synthetic fibers to the detriment of natural fibers;

³⁰ MIA, MARDE, MoJ, MECR.

³¹ Art.54 paragraph (1) letter (c) of Law no.131/2015 on public procurement.

- the stocks of equipment from the warehouses belonging to 4 contracting authorities amount to 49.4 million lei, being increased compared to the previous year by 13.1 million lei, thus the budgetary means for an indefinite period being decommissioned in the formation of unused stocks;
- the contracts for the purchase of services for the storage of cereals stored in the state reserve in the amount of 27.3 million lei were not concluded by the contracting authority within the MIA in conditions of transparency, competition and efficiency of the use of public money, the negotiation procedures being formal and undocumented;
- was allowed the illegal payment of advance payments for the execution of works to an international organization for a term of more than four years, without the transmission of works in the amount of 28.7 million lei³²;
- contracting authorities within the system of two ministries³³ did not capitalize the works executed for some objectives in a total amount of 46.3 million lei, as well as did not regularly carry out the reception at the end of the reconstruction works in the amount of 38.3 million lei;
- some contracting authorities within a ministry³⁴ accepted the purchase of medicines in the amount of 10.0 million lei with a shorter validity period than the one established in the offer and in the concluded public procurement contract;
- acquisition of standard forms of primary documents with special regime, with deviations from the normative provisions³⁵;
- at the conclusion of contracts and the purchase of goods worth 2.0 million lei, intended to fight the Covid-19 infection, nine contracting authorities within a ministry³⁶ illegally applied in contracts the VAT rate increased by 20%, compared to the VAT rate of 8% for such goods, in 61 cases being paid from the budget by 0.3 million lei more;
- Procurement Working Groups did not draw up and did not regularly publish Reports on Monitoring the Execution of Government Procurement Contracts, including concerning the Fight with Covid-19 Infection³⁷.

3.5. PUBLIC PROCUREMENT DIVISION.

When organizing procedures for the procurement of goods, works and services, the contracting authorities within the system of 6 ministries³⁸ admitted the irregular division of procurement with a total value of 40.7 million lei.

According to the legal framework³⁹, the public procurement contract is concluded according to the public procurement procedures provided by law, for the entire amount allocated to one

³² MIA

³³ MoJ did not capitalize works in the amount of 31.0 million lei and MARDE - of 15.3 million lei.

³⁴ MHLSP.

³⁵ MoF.

³⁶ MIA.

³⁷ MFAEI.

³⁸ MARDE- in the amount of 11.2 million lei, MECR - of 13.3 million lei, MEI - of 1.9 million lei, MIA - of 10.1 million lei, MHLSP - of 2.3 million lei, MFAEI - of 1.9 million lei.

³⁹ Art.74 para. (1) of Law no. 131/22015 on public procurement.

procurement per year, based on the procurement plan and within the approved allocations, with mandatory registration with the treasury. The contracting authority has no right to divide the procurement by concluding separate public procurement contracts for the purpose of applying a public procurement procedure other than the procedure that would have been used in accordance with this law, if the procurement had not been divided.⁴⁰.

The external public audit shows that the division of procurement procedures is found in multiple cases, this irregularity not being taken into account or reported as a major and frequent problem, including by the profile authorities with ex-post control responsibilities within the Ministry of Finance. As a result of the dysfunctionality of the procurement planning process, within 6 ministries it was admitted to divide public procurement into 193 low value contracts, amounting to 40.7 million lei. At the same time, 4 contracting authorities within a ministry⁴¹ avoid making purchases through the MTender Electronic Procurement System, public procurements being made on paper.

IV. OVERALL CONCLUSION

The way in which contracting authorities carry out public procurement largely determines the efficiency of the management of public money used to achieve institutional objectives. The Court of Auditors has repeatedly warned of the many shortcomings that have accumulated in recent years in this area. Thus, the audits carried out by the Court of Accounts on the compliance of public procurement executed in the period 2019-2020 revealed that the contracting authorities with attributions and responsibilities in the field of public finance management did not comply with the regulatory provisions in public procurement procedures. and services being reduced the transparency of the procurement process, the degree of efficiency in the use of public money, which was expressed by:

- Lack of modification and lack of consolidation of the internal regulatory framework related to the functioning of working groups for public procurement with clear establishment and division of tasks, responsibilities;
- poor planning of procurement of goods and services or delay of public procurement procedures, resulting in non-use of allowances, as well as non-modification of annual procurement plans on web pages held taking into account the specified allocations;
- restrictive development of award documentation, including technical specifications, which has led to limited competition and inefficient use of public funds;
- drawing up the award documentation and the works procurement contracts in the absence of projects and general estimates of expenses, expertly regulated;
- failure to monitor and execute public procurement contracts under the conditions of the winning bid;

⁴⁰ Art.76 para. (1) of Law no. 131/22015 on public procurement.

⁴¹ MARDE.

- concluding additional agreements, which increased the volume of procurement of works set out in the winning bid and the concluded contract, due to the lack of execution projects, non-compliant planning of procurement contracts, and not ensuring their transparency;
- irregular payment of advance payments for works for an indefinite period;
- the non-regulatory request, from the winning economic operators, of the performance guarantee at the conclusion of the procurement contracts;
- the purchase by the contracting authorities of goods of public money at prices exaggerated from the initial purchase price;
- admitting the division of contracts through public procurement, especially of low value;
- low absorption capacity of funds, including from external sources;
- the allocation of procurement funds at the end of the budget year has created obstacles to the transparent and efficient conduct of procurement procedures, resulting in non-performance of contracts, extension of deadlines and non-utilization of allocations;
- the gaps and inconsistencies of the regulatory framework related to the field of public procurement cause ambiguities in the application of certain procedures;
- The MTender e-procurement system does not incorporate all the procurement procedures provided within the Law no. 131/2015 on public procurement, being limited only to open tenders and the request for price offers, as well as limiting the right of non-resident economic operators to participate in the public procurement procedure, because it does not recognize the electronic signatures of non-residents;
- incomplete monitoring by the Public Procurement Agency, as the body responsible for the administration of public procurement, of the legality of the actions taken by the contracting authorities or of the omissions admitted by them, a situation caused by the reduced institutional capacities of this body. Non-development by the Public Procurement Agency, according to the law⁴², of the certification mechanisms of the persons within the contracting authorities and of the procurement service providers, responsible for the organization, development of the public procurement procedures and award of public procurement contracts.

To address the shortcomings and irregularities, the Court of Accounts made **223 audit recommendations** aimed at addressing the shortcomings of the regulatory framework, improving the AIS PPSR/MTender, and strengthening the institutional capacity to plan, implement and monitor the procurement process within the audited entities. Broadly speaking, the recommendations are aimed at:

adjusting/improving the legal framework and developing the AIS (*to the Ministry of Finance and Ministry of Health*):

- amending the mechanism for applying Law no. 131/2015 on public procurement, taking into account the provisions of the legal framework in force, establishing the value of procurement thresholds designed to ensure compliance of public procurement

⁴² Art.10 letter (e) of Law no.131/2015 on public procurement.

procedures, including ensuring the transparency of low value procurement through the procurement system electronic;

- developing the functional capabilities of the AIS PPSR/MTender, including all stages of a procurement procedure, ensuring maximum transparency and effective mechanisms for monitoring the entire public procurement process and enabling the efficient and transparent conduct of all types of public procurement, in compliance with existing legislation, as well as the development of a mechanism for recognizing the signatures of non-resident economic operators, potential participants in public procurement procedures;
- ensuring the correlation of AIS PPSR/MTender with the platform www.tender.md (BAP) and with other relevant platforms;
- elaboration of the AIS PPSR/MTender user guide;
- ensuring the correlation of the notions from the Order of the Minister of Finance no. 216 from 28.12.2015, on the aspect of investments/capital repairs, with the provisions of the normative acts in the field of constructions;
- non-admission of the financing of repairs and capital investments through projects and general estimates of unsubstantiated and non-expert expenses in the established manner, as well as in the absence of planning and regular allocation of financial means for capital investments through annual budget laws;
- to the Ministry of Health, Labor and Social Protection to adjust the regulations governing the drug offsetting process, in order to avoid the ambiguity of the regulations and to exclude the risk of incorrect interpretation of the powers of the Council and the Secretariat at the stages of inclusion and exclusion of reimbursed drugs.

strengthening of CIM/control actions by contracting authorities:

- to the Ministry of Economy and Infrastructure, for the evaluation through the prism of the applicable Internal Control Standards in the public sector, of the public procurement process, in order to identify and subsequently manage the identified gaps, deficiencies and risks related to it;
- to the Ministry of Internal Affairs, for the full description of the operational processes regarding public procurement, as well as the updating of the risk registers related to the implementation of the internal managerial control system, which should guarantee the compliance of the entire public procurement process;

other:

- To the Government of the Republic of Moldova, for the examination in terms of the competencies regarding the ordering of the capping of commercial additions to the goods, works and services purchased by the contracting authorities with payment from the national public budget;
- To the Ministry of Economy, for ensuring the elaboration of the normative framework of standardization and technical regulation for the light industry sector on the territory

of the Republic of Moldova, as well as for updating the quotas used to determine the value of construction objectives;

- To the Technical Surveillance Agency, for the control of the volumes and the cost of the works executed on the objects of constructions and capital repairs in the absence of some projects and general estimates of expenses, regularly expertized and financed from the state budget;
- to the National Agency for Solving Complaints, for the identification of a mechanism of liability of economic operators who abuse the right to challenge the public procurement procedure countless times, which, consequently, leads to delays and/or non-conclusion of procurement contracts and non-capitalization of budget allocations, with an impact on the execution of institutional objectives.

Anexă

Lista misiunilor de audit realizate de CCRM în anii 2020-2021 asupra conformității procesului de achiziții publice în cadrul ministerelor

Nr. d/o	Raportul de audit	Hotărârea Curții de Conturi	Numărul de recomandări înaintate
1	Raportul auditului conformității achizițiilor publice în cadrul sistemului Ministerului Sănătății, Muncii și Protecției Sociale și la unele entități din subordine, precum și la alte părți implicate	Hotărârea Curții de Conturi nr.57 din 30 noiembrie 2020	44
2	Raportul auditului conformității achizițiilor publice în cadrul Ministerului Educației, Culturii și Cercetării și la unele entități din subordine	Hotărârea Curții de Conturi nr.73 din 22 decembrie 2020	19
3	Raportul auditului conformității asupra achizițiilor publice în cadrul Ministerului Economiei și Infrastructurii în anii 2019-2020	Hotărârea Curții de Conturi nr.17 din 29 aprilie 2021	38
4	Raportul auditului conformității achizițiilor publice în cadrul sistemului Ministerului Apărării în anii 2019-2020	Hotărârea Curții de Conturi nr.34 din 05 iulie 2021	13
5	Raportul auditului conformității asupra achizițiilor publice în cadrul sistemului Ministerului Afacerilor Externe și Integrării Europene în perioada 2019-2020	Hotărârea Curții de Conturi nr. 38 din 19 iulie 2021	12
6	Raportul auditului conformității asupra achizițiilor publice în cadrul sistemului Ministerului Justiției în anii 2019-2020	Hotărârea Curții de Conturi nr. 40 din 23 iulie 2021	14

7	Raportul auditul conformității asupra achizițiilor publice în cadrul sistemului Ministerului Agriculturii, Dezvoltării Regionale și Mediului în anii 2019-2020	Hotărârea Curții de Conturi nr.46 din 29.07.2021	19
8	Raportul auditul conformității asupra achizițiilor publice în cadrul sistemului Ministerului Finanțelor în anii 2019-2020	Hotărârea Curții de Conturi nr.48 din 30.07.2021	43
9	Raportul auditul conformității asupra achizițiilor publice în cadrul sistemului Ministerului Afacerilor Interne în anii 2019-2020	Hotărârea Curții de Conturi nr.50 din 10.09.2021	21
	Total		223