

**CHECKLIST OF ISSUES FOR PROVISION OF INFORMATION RELATING TO
ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT OF THE
REPUBLIC OF MOLDOVA**

Second Revised Replies by the Republic of Moldova*

The following communication, dated 29 August 2012, is being circulated at the request of the Delegation of the Republic of Moldova.

I. INTRODUCTION

Public procurement in the Republic of Moldova (RM) continued to grow over the last years, both in terms of amount of funds allocated for procurement and their share in the National Public Budget (NPB) and the Gross Domestic Product (GDP). Thus, the volume of public procurement has grown from US\$30.3 million in 2000 to about US\$600 million in 2007 (the highest value ever), and in 2011 it registered around US\$480 million, which represents almost 27 per cent of the total public expenditures and over eight per cent of the total GDP.

The Government of the Republic of Moldova considers the accession to the WTO Agreement on Government Procurement (GPA) as an important step in the establishment and maintenance of an efficient system of government procurement, which could lead, according to forecasts, to saving significant amounts from the total expenditures incurred in this field (20-25 per cent).

This document is mainly intended to present the new public procurement regulatory framework established by the new Law of the Republic of Moldova on Public Procurement No. 96-XVI of 13 April 2007 (please see the Annex to this document (at page 19) for the full text of the new Law No. 96-XVI). N.B.: For convenience, the relevant Articles of the revised text of the Agreement (GPA/113, dated 2 April 2012) have been shown in parentheses following each reference to corresponding Articles of the unamended 1994 GPA.

II. LEGAL FRAMEWORK

- 1. Is there a single central law on procurement? If so, please specify?**
- 2. What are the other laws, regulations, decrees, administrative rulings, decisions, policy guidelines and other instruments governing government procurement? Please provide a**

* Original replies to the Checklist (GPA/35 of 21 June 2000) were provided by Moldova in document GPA/W/177, dated 9 January 2002 and revised replies in document GPA/ACC/MDA/1, dated 11 November 2008.

summary of the subject areas dealt with by each of these instruments. Please also explain the main differences (if any) that exist between their application at the central and sub-central levels of government and at other types of entities.

3. To what extent will the provisions of the Agreement be applied directly or need to be transposed into the relevant law? In the event of direct application of the Agreement over conflicting provisions of domestic law, please indicate the relevant legal basis.

Before the entry in force of the new Law on Public Procurement No. 96-XVI of 13 April 2007¹, the relations in this field continued to be regulated by the Law on procurement of goods, works and services for the state needs No. 1166-XIII of 30 April 1997, and by a number of governmental regulations, of which, the most important are the following:

- (a) Government Decision on the approval of the Regulations regarding the organizing and functioning and the staff of the Public Procurement Agency No. 747 of 24 November 2009 (Official Monitor (OM) No. 171-172/826 of 27 November 2009);
- (b) Government Decision on the approval of the Regulations for procurement of services for the execution of design works for public investments No. 44 of 13 January 2006 (OM No. 25-27/142 of 10 February 2006);
- (c) Government Decision for the approval of the Regulations on the procedure of preparation and review of the List of vendors (contractors) who are banned to participate in public procurement procedures No. 105 of 30 January 2006 (OM No. 21-24/138 of 3 February 2006);
- (d) Government Decision on special public procurement resources of the Public Procurement Agency No. 278 of 16 March 2006 (OM No. 47-50/314 of 24 March 2006);
- (e) Government Decision on procurement of goods, works and services for the state needs for 1999 No. 50 of 27 January 1999 (OM No.10-11/91 of 4 February 1999);
- (f) Government Decision on the management and supervision of public procurement procedures No. 595 of 25 June 1999 (OM No. 67-69/626 of 1 July 1999);
- (g) Government Decision on the approval of the Regulations on public procurement of works No. 1123 of 15 September 2003 (OM No. 204-207/1181 of 26 September 2003);
- (h) Government Decision for the approval of the Regulations on procurement of goods and services through invitation to bid No. 832 of 13 August 2001 (OM No. 104-105 of 24 August 2001);
- (i) Government Decision on the main measures for more efficient public procurement No. 782 of 30 June 2003 (OM No. 135-137/819 of 4 July 2003);
- (j) Government Decision for the approval of the Regulations on single source public procurement No. 951 of 4 August 2003 (OM No. 182-185 of 19 August 2003);

¹ See Annex to this document. The Law entered into force three months after its publication (Article 76), *i.e.* on 27 October 2007.

- (k) Government Decision for the approval of the Regulations on generation and use of special resources of the public institutions from the provision of tender documents No. 98 of 31 January 2005 (OM No. 20-23/150 of 4 February 2005);
- (l) Government Decision on valuation, homologation and procurement of literary, dramatical, and musical works and works of fine arts for the completion of state collections No. 1312 of 28 December 2000 (OM No. 1-4/11 of 11 January 2001);
- (m) Regulations of the working group for the procurement of goods, works and services, approved by the National Agency for Public Procurement on 5 March 2003 (OM No. 62-66 of 4 April 2003);
- (n) Regulations on the contract for the procurement of goods and services for governmental beneficiaries (public procurement contract), approved by the National Agency for Public Procurement on 17 November 1999 (OM No.1-4 of 6 January 2000), etc.

Given the adoption of a new Law on Public Procurement No. 96-XVI of 13 April 2007, the governmental regulations mentioned above were required to be harmonized, within six months from the publication of the Law, with its provisions (Article 76). In addition, the Law envisages the development and approval of several governmental regulations to ensure further development of the legal base in this field. These particularly relate to the following issues:

- (a) low value procurement procedures (Article 2);
- (b) list of qualified economic operators (Article 17);
- (c) list of banned economic operators (Article 18);
- (d) procurement procedures based on a framework agreement (Article 50);
- (e) single source procurement procedures (Article 53);
- (f) procurement procedures based on invitations to bid (Article 54);
- (g) procurement procedures based on dynamic system (Article 55);
- (h) procurement procedures based on electronic tender (Article 56);
- (i) structure and content of applications for offers of consultancy services (Article 61);
- (j) etc.

Similarly to the previous Law on Public Procurement, the new Law provides for the supremacy of international treaties over the domestic legislation. Thus, if the international treaty to which the Republic of Moldova is a party, in particular the GPA, contains other provisions than those stipulated in the national legislation on public procurement, the international provisions shall apply (Article 7 of the Law).

III. SCOPE AND COVERAGE

4. Please summarize the organization of the government in your country at each level.
5. Please list all central government entities (ministries, departments, agencies, etc.) procuring goods, services and construction services.
6. What entities at the sub-central level of government (states, provinces, municipalities, etc.) procure goods and services?
7. Which are the enterprises owned or controlled by the government that are subject to the rules on government procurement? Which are the other entities or categories of entities (Annex 3-type entities) owned and controlled by the government that engage in procurement? Specify.
8. Do entities listed in response to questions 5, 6 and 7 apply in their procurement the main law (if one exists), other legislation provided by the federal or central level of government or are they autonomous from federal or central government in their procurement rules and practices? Where any of these entities are not subject to the main procurement law, please list the entities concerned and indicate which laws, regulations, etc., they are subject to. How will your government ensure the implementation of the Agreement by such entities below the central/federal government level?
9. Are there any general exceptions from the scope of application of the national procurement rules, for instance for essential national defence or security reasons? Please provide details.
10. Please provide available statistics on the procurement by government entities in your country in the last two years, including, to the extent available, a breakdown by entity and by categories of products and services.

The administrative organization of the territory of the Republic of Moldova consists of two levels: villages, communes, towns and municipalities - the first level and rayons - the second level (Law on Local Public Administration No. 123-XV of 18 March 2003). The public administration of the Municipality of Chisinau and of the Autonomous Territorial Operator of Gagauzia is regulated by special laws. The legal status of the region of Transnistria, where the Moldovan authorities currently are not exercising their power, shall be defined in the framework of negotiations taking place between the Republic of Moldova and Transnistria under the auspices of the OSCE, mediated by Ukraine and the Russian Federation and with the participation of the United States and the European Union (the so called 5+2 format), in accordance with the provisions of the Law of the Republic of Moldova on the Basic Provisions of the Special Legal Status of the Settlements on the Left Bank of Nistru River (Transnistria) No. 173-XVI of 22 July 2005.

The central public authority that supervises and coordinates generally the field of public procurement is the Public Procurement Agency (PPA). The Agency has functional autonomy, but is subordinated to the Ministry of Finance of Republic of Moldova. The Agency carries out its activities and is managed based on the Regulations approved by the Government Decision No. Nr. 747 of 24 November 2009. Pursuant to the provisions of the new Law on Public Procurement, the Agency exercises its powers through its local subdivisions (Articles 8 and 9 of the Law No. 96-XVI of 13 April 2007), subject to adequate financing.

All procurement contracts entered into by a "contracting authority" shall fall under the scope of the Law on Public Procurement. For the purposes of Article 12 of the Law No. 96-XVI, the capacity of "contracting authority" is granted to "public authorities", as defined by the legislation of

the Republic of Moldova, "*persons of public interest*", as well as "*associations of such authorities or persons*". Pursuant to Article 12(2) of the Law, "*legal person of public interest*" is any entity which enjoys legal personality and has been created with a view of satisfying a public interest, and not for profit. In the meanwhile, the activity of the entity should be mainly financed from public funds or its performance should be supervised by public authorities, or its administration, executive or supervisory board should consist of more than 50 per cent of state representatives.

It should be mentioned that the Government could decide to apply the Law on Public Procurement to legal persons acting on markets on which, based on a regulatory or administrative act, or the existence of a monopoly, competition is excluded (Article 12 (4), Law No. 96-XVI). Here we could first include a number of state enterprises or enterprises in which the State is the main shareholder. It has not been provided by the Law on Procurement of Goods, Works and Services for State Needs No. 1166-XIII of 30 April 1997. The list of such enterprises shall be approved by the Government.

In respect of the central and second-level local public administration, the duties of a "*contracting authority*" in the procurement of goods, works and services are exercised by the following main state authorities:

A. *Central public authorities:*

1. Office of the President of RM and institutions subordinated to it and under its supervision;
2. Office of the Parliament of RM and institutions subordinated to it and under its supervision;
3. Office of the Government of RM and institutions subordinated to it and under its supervision;
4. Ministry of Foreign Affairs and European Integration of RM and institutions subordinated to it and under its supervision;
5. Ministry of Internal Affairs of RM and institutions subordinated to it and under its supervision;
6. Ministry of Agriculture and Food Industry of RM and institutions subordinated to it and under its supervision;
7. Ministry of Defence of RM and institutions subordinated to it and under its supervision;
8. Ministry of Culture of RM and institutions subordinated to it and under its supervision;
9. Ministry of Environment of RM and institutions subordinated to it and under its supervision;
10. Ministry of Finance of RM and institutions subordinated to it and under its supervision;
11. Ministry of Education of RM and institutions subordinated to it and under its supervision;
12. Ministry of Justice of RM and institutions subordinated to it and under its supervision;
13. Ministry of Labour, Social Protection and Family of RM and institutions subordinated to it and under its supervision;
14. Ministry of Health of RM and institutions subordinated to it and under its supervision;
15. Ministry of Economy of RM and institutions subordinated to it and under its supervision;
16. Ministry of Information Technologies and Communications of RM and institutions subordinated to it and under its supervision;

17. Ministry of Regional Development and Constructions of RM and institutions subordinated to it and under its supervision;
18. Ministry of Transport and Road Infrastructure of RM and institutions subordinated to it and under its supervision;
19. Ministry of Youth and Sports of RM and institutions subordinated to it and under its supervision;
20. National Bank of Moldova;
21. Court of Accounts;
22. The Supreme Court of Justice;
23. Constitutional Court;
24. Office of the General Prosecutor;
25. National Commission of Financial Market;
26. National Agency for the Protection of Competition;
27. Public Property Agency;
28. Consumer Protection Agency;
29. Energy Efficiency Agency;
30. Public Procurement Agency;
31. State Tax Service;
32. Customs Service;
33. The National Regulatory Agency for Telecommunications and Informatics;
34. National Agency for Regulation in Energetics;
35. State Agency on Intellectual Property (AGEPI);
36. State Construction Inspectorate;
37. Agency for Intervention and Payments for Agriculture;
38. Sanitary-Veterinary and Animal Products Safety Agency;
39. State Ecological Inspectorate;
40. State Hydrometeorological Service;
41. Geology and Mineral Resources Agency;
42. National Agency for Regulation of Nuclear and Radiological Activity;
43. Agency "Apele Moldovei";
44. Fisheries Service;
45. National Employment Agency;
46. Labor Inspection;
47. Interethnic Relations Bureau;
48. National Statistics Bureau;
49. Border Service;
50. Agency "Moldsilva";
51. Agri-industrial Agency "Moldova-Vin";
52. Material Reserves Agency;
53. Cadastre and Land Relations Agency;
54. Centre for Combating Economic Crime and Corruption;
55. Information and Security Service;
56. Licensing Chamber;
57. Tourism Agency;

B. Local public authorities:

1. Council of Chisinau municipality and institutions subordinated to it and under its supervision;
2. Council of Balti municipality and institutions subordinated to it and under its supervision;
3. Council of Gagauzia TAU and institutions subordinated to it and under its supervision;

4. 32 rayon councils and institutions subordinated to it and under its supervision.

TABLE 1: PUBLIC PROCUREMENTS REGISTERED BY PPA IN 2011

Procurement Procedure	No. of Contracts	in %	Amount in MDL	in %
Tender	16537	38.9	3,659,074,792.34	66.8
Invitation to bid	23190	54.8	1,513,165,462.05	27.60
Single source	2734	6.3	305,236,962.73	5.6
Total:	42461	100	5,477,477,217.12	100

Source: PPA

The *ratione materiae* of the Law on Public Procurement No. 96-XVI of 13 April 2007 is defined based on two key criteria:

- (a) a minimum threshold of the estimated value of MDL 20,000 (US\$1,600) for contracts of public procurement of goods and MDL 25,000 (US\$2,000) for contracts of public procurement of works and services; the estimated value of the procurement contract shall be computed without VAT;
- (b) the fact that the procurement contract is not excluded from the scope of the Law on Public Procurement.

Public procurement contracts whose estimated value, without VAT, does not exceed the aforementioned threshold shall be entered into pursuant to the procedure provided by the Regulations on Low Value Public Procurement. A special status is reserved for public procurement contracts exceeding MDL 2.5 million (US\$200,000) in case of contracts for goods and services and MDL 99 million (US\$8.25 million) in case of works.

Currently 16 types of contracts are excluded from the scope of the Law, some of which are contracts for the concession of public works and services and public procurement contracts whose objective is procurement of goods for re-sale (Article 4 (g) and (i), Law No. 96-XVI).

The following are also excluded from its scope: contracts classified for security reasons if their performance must be accompanied by special safety measures as established by legislative acts, and contracts for procurement of goods, works and services related to the production and trade with guns, ammunitions and arming systems (Article 4 (j) and (k), Law No. 96-XVI). In the other cases, the contracting authorities from the area of national security, public order, safety and national security have the duty to apply the provisions of Law No. 96-XVI of 13 April 2007.

TABLE 2: PUBLIC PROCUREMENTS BY LOCAL PUBLIC AUTHORITIES IN 2011

The territorial administrative unit, District (rayon)	Goods		Works		Services		Total	
	Amount in MDL	Nr. of contracts						
Anenii Noi	13,520,863.00	340	5,347,179.00	69	1,230,928.00	18	20,098,970.00	427
Basarabeasca	6,584,454.25	96	1,374,681.71	18	0.00	0	7,959,135.96	114
Briceni	11,059,675.65	232	2,233,465.30	30	2,066,472.00	41	15,359,612.95	303
Cahul	16,115,568.43	536	6,429,427.68	84	1,292,703.45	32	23,837,699.56	652

Cantemir	6,456,092.00	122	2,641,254.00	38	917,559.00	12	10,014,905.00	172
Călărași	12,697,213.06	253	4,038,618.41	50	1,513,153.27	29	18,248,984.74	332
Căușeni	15,440,904.00	368	5,291,609.00	72	521,510.00	15	21,254,023.00	455
Cimișlia	9,879,701.12	166	2,897,924.09	39	1,813,531.32	29	14,591,156.53	234
Criuleni	14,315,553.00	303	15,719,532.00	97	1,809,678.00	36	31,844,763.00	436
Dondușeni	7,138,608.84	215	1,437,323.23	20	634,274.66	13	9,210,206.73	248
Drochia	13,224,813.71	520	3,739,577.44	57	671,219.53	28	17,635,610.68	605
Dubăsari	7,561,337.42	152	2,563,416.69	40	769,146.00	13	10,893,900.11	205
Edineț	12,754,769.00	275	2,463,129.00	38	1,562,581.00	33	16,780,479.00	346
Fălești	8,749,082.11	139	2,636,921.78	36	794,755.09	11	12,180,758.98	186
Florești	16,421,242.32	507	7,654,587.27	93	871,085.54	17	24,946,915.13	617
Glodeni	7,553,892.00	117	1,726,422.00	26	664,970.00	10	9,945,284.00	153
Hîncești	29,469,645.00	637	9,027,232.00	125	3,455,859.00	82	41,952,736.00	844
Ialoveni	12,027,472.66	204	11,882,454.51	102	2,878,877.40	42	26,788,804.57	348
Leova	18,436,243.00	1171	3,666,766.00	93	3,847,229.00	272	25,950,238.00	1536
Nisporeni	15,587,648.00	247	5,532,037.00	68	1,258,381.00	19	22,378,066.00	334
Ocnîța	8,895,969.00	178	3,541,824.00	48	1,144,596.00	20	13,582,389.00	246
Orhei	4,425,837.00	189	2,046,013.00	38	234,686.00	10	6,706,536.00	237
Rezina	10,643,345.00	282	2,292,240.00	31	494,331.00	9	13,429,916.00	322
Rîșcani	13,581,327.00	384	3,262,281.00	44	1,914,936.00	50	18,758,544.00	478
Sîngerei	13,845,958.00	237	9,524,024.00	86	1,172,631.00	22	24,542,613.00	345
Soroca	13,884,902.00	315	3,511,043.00	46	3,927,462.00	54	21,323,407.00	415
Strășeni	13,494,430.41	234	2,205,764.53	29	1,080,151.66	17	16,780,346.60	280
Șoldănești	10,169,773.85	326	449,902.00	9	1,884,510.28	31	12,504,186.13	366
Ștefan Vodă	18,589,166.00	739	4,490,255.00	71	1,385,071.00	36	24,464,492.00	846
Taraclia	5,132,384.98	131	1,849,779.95	24	575,251.97	10	7,557,416.90	165
Telenești	9,866,549.47	239	5,382,284.60	64	896,542.00	13	16,145,376.07	316
Ungheni	16,108,529.63	257	4,936,167.92	70	1,907,951.86	23	22,952,649.41	350
Municipiul Chișinău	55,163,418.24	751	16,821,920.94	209	13,896,496.96	210	85,881,836.14	1170
Municipiul Bălți	2,271,123.00	46	777,227.00	10	1,141,052.00	20	4,189,402.00	76
UTA Gagauzia	26,887,868.00	808	4,843,045.00	63	3,362,585.00	76	35,093,498.00	947
TOTAL:	477,955,360.15	11716	164,237,330.05	2037	63,592,167.9	1353	705,784,858.2	15106

Source: PPA

IV. NATIONAL TREATMENT AND NON-DISCRIMINATION

11. Identify the specific provisions in the legislation which reflect the national treatment and non-discrimination commitments of Article III of the Agreement (Article IV:1, 2 and 7 of the revised text).

12. Please provide details of any provisions in national legislation according domestic supplies and suppliers treatment more favourable than that accorded to foreign supplies or suppliers or according supplies or suppliers of any country more favourable treatment than those of any other country.

13. Please provide details of any provisions in national legislation allowing a locally established supplier to be treated less favourably than another locally established supplier on the basis of its degree of foreign affiliation or ownership or discriminating against locally established suppliers on the basis of the country of production of the good or service being supplied.

14. Please specify to what extent, if at all, more favourable treatment is granted to any sectors of the economy, regions or specific categories of suppliers or supplies.

15. Please specify any provisions requiring or allowing the use of offsets or measures with similar effect, such as domestic content, licensing of technology, investment, counter-trade or similar requirements in the qualification or selection of suppliers, products or services or in the evaluation of tenders and award of contracts.

Any economic operator having the status of an enterprise either Moldovan resident or not (natural or legal person) is entitled to participate in the procedure of being awarded a public procurement contract. Notwithstanding, the contracting authority may decide, in conformity with the legislation, to restrict the circle of participants to national entities only.

It is mandatory to grant non-Moldovan resident economic operator national treatment in case of public procurement exceeding, in case of contracts for goods and services MDL 2.5 million, and contracts for works – MDL 99 million (Article 2(3) Law No. 96-XVI of 13 April 2007), provided however that they are entitled to do so under the laws of their jurisdiction. Further, the Law guarantees that the terms for financial guarantees, technical qualifications and information necessary to establish the financial good-standing shall not be less favourable to non-Moldovan residents as opposed to Moldovan residents and that they shall not otherwise discriminate any non-Moldovan resident (Article 15(5) Law No. 96 of 13 April 2007).

Pursuant to the provisions of Law No. 96-XVI of 13 April 2007, all goods and services shall be treated equally regardless of the region. Further, the right to participate in the procedure of being awarded public procurement contract may be reserved, by the Government, to a rate that shall not exceed 20 per cent of the amount of procurements, to the Society of the Blind and Disabled, the Production Workshop of the Republic Psychiatric Hospital, penitentiaries and to other disadvantaged persons or the Government may establish the terms of participation in these procedures within employment programmes in the manner provided for by the legislation (Article 5(2), Law No. 96-XVI of 13 April 2007).

The legislation of the Republic of Moldova in the field of public procurement does not specify the criteria related to environmental and workers safety, but these largely fall under the scope of environmental and labour legislation. Thus, in the procurement process the parties involved are bound to observe these provisions deriving from the national regulatory regime.

V. ELEMENTS SPECIFIC TO PROCUREMENT PROCEDURES

16. Please provide a general description of your existing procurement methods and procedures, including the main procurement methods used and a brief description of each method, and the extent to which qualification of suppliers and open, selective and limited tendering for each level of government is used.

17. Identify the provision in your country's legislation requiring non-discrimination as regards the qualification of suppliers in terms of Article VIII (Article IX of the revised text) and selection of suppliers in terms of Article X (Article IX of the revised text). Indicate any exception to this requirement. What are the provisions ensuring non-discriminatory access of new suppliers to existing qualification lists?

18. In situations where qualification procedures and selective tendering may be used, to what extent do entities allow suppliers to become qualified during the procurement process? To what extent do entities maintain permanent lists of suppliers?

19. What are the conditions and circumstances foreseen in your legislation allowing the use of the limited tendering method under Article XV of the Agreement (Article XIII of the revised text)? What measures exist in order to ensure that this method is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discriminating among foreign supplies/suppliers or in favour of domestic supplies/suppliers?

20. Article XIV of the Agreement (Article XII of the revised text) allows for negotiation under certain conditions. Are entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?

21. Article XI (Article XI of the revised text) sets out the minimum time-periods for tendering and delivery. What are the rules and practices regarding time-periods in your legislation? Does the legislation reflect the various minimum time-periods as set out in the Agreement? If not, give information on any different time-periods which have been established in your national legislation.

22. Briefly describe the procedures for the submission, receipt and opening of tenders and awarding of contracts, in particular the procedures and conditions guaranteeing regularity of the openings and consistency with the non-discrimination provisions of the Agreement. How is the information on the proceedings related to the receipt, opening and evaluation of tenders maintained by entities?

23. Please identify the provisions in your legislation setting the parameters for the prescription of technical specifications by entities as part of the evaluation criteria.

24. Identify the measures in national legislation ensuring that awards are made in accordance with the evaluation criteria and essential requirements specified in the tender documentation.

The basic procedure of awarding a public procurement contract is by way of open tender. Additionally public procurement contracts may be awarded using the following procedures:

- (a) restricted tender;
- (b) framework agreement;
- (c) competitive dialogue;
- (d) negotiated procedures;

- (e) procurement from a single source;
- (f) invitation to bid;
- (g) dynamic procurement systems;
- (h) electronic tender;
- (i) procurement in case of social housing plans;

The manner of carrying out the specific types of procurement shall be regulated by means of special Regulations enacted by the Government.

"*Open Tender*" means a procedure which includes offers by all economic operators willing to participate at the tender. The contracting authority shall beforehand publish, subject to the requirements set out in the Law, an adequate participation invitation and shall make available the tender documents to economic operators (Article 35, Law No. 96-XVI of 13 April 2007). The structure and contents of the tender documents is provided by in the standard documentation approved by the Government. The fee that the contracting authority may collect for tender documents includes only expenditures related to their printing and delivery to the economic operator (Article 36-37, Law No. 96-XVI of 13 April 2007). Currently, the price of a package of tender documentation (the scope of work) is fixed at a rate of MDL 200 (US\$16).²

The economic operator's offer is valid up to the deadline specified in the tender documents. Unless otherwise provided in the tender documents, the bidder may amend or withdraw its offer before the expiration of the deadline for submitting offers, without losing its deposit for the offer. The amount of the deposit for the offer shall not exceed three per cent of the estimated value of the procurement contract.

Upon procurement of goods and works, the contracting authority shall request that the bidder submit, upon the time of the conclusion of the contract, an insurance of its performance. The amount of the insurance for contract performance shall not exceed 15 per cent of the estimated value of the procurement contract. Upon the procurement of goods of less than MDL 200,000 and works of less than MDL 1 million, the contracting authority is entitled not to request from the economic operator a deposit for the offer or an insurance for its execution.

The contracting authority shall award the "*economically most favourable offer*", taking into consideration the preferential margins of 20 per cent provided pursuant to Article 5(2) of Law No. 96-XVI of 13 April 2007. In accordance with Article 45, the criteria of the "*economically most favourable offer*" are as follows:

- (a) in case of public procurement contracts for goods – price, terms of delivery, terms of payment, profitability, quality, aesthetic, functional and technical characteristics, the possibilities and costs of technical servicing and technical support;
- (b) in case of public procurement of works – the offered quality, cost of one operator of bidder's product at the end of works, total price, bidder's experience etc; the rate of relevance of the price in the total evaluation of the offers shall not be less than 80 per cent;
- (c) in case of public procurement of services – the offered quality, cost of one operator of bidder's product, total price, bidder's experience etc; the rate of relevance of the price in the total evaluation of the offers shall not be less than 40 per cent.

² Paragraph 4 of the Regulations on generation and use of special resources of the public institutions from the provision of tender documents (Government Decision No. 98 of 31 January 2005).

When awarding a contract, economic operators that directly or indirectly encourage professional development, employment of disabled and special needs, fight against unemployment and environmental safety, including during the performance of the contract, employment of the unemployed or implementation of professional development actions for the unemployed or youth, improvement of labour conditions and labour safety, rural development and professional agriculture development, protection and support of small and medium enterprises, inclusive as part of subcontracting mechanics, may be granted priority. Such facilities shall always be published in the participation invitation (Article 66, Law No. 96-XVI of 13 April 2007).

Acquisition contracts of the winning offers enter into force upon their registration with PPA and one of the operators of the State Treasury. Unregistered contracts have no legal power (Articles 47(4) and 67(8), Law No. 96-XVI of 13 April 2007).

"*Restricted tender*" means a procedure used in procurement of goods, works and services having a complex character or where a high number of economic operators are active on the market. A restricted tender is carried out by the same rules as for the opened tender, subject to the pre-selection procedures based on the qualifications of the economic operators mentioned in Article 16 of the Law No. 96-XVI of 13 April 2007, in particular managerial competence, experience, good repute, qualified personnel, financial condition, technical base, other competencies that are necessary for a qualitative performance of the contract during the entire period of validity of the public procurement contract etc. The preliminary sign-up in the List of Qualified Economic operators, which is managed by the Agency pursuant to the regulations approved by the Government, is not mandatory (Article 17(2) and (3), Law No. 96-XVI of 13 April 2007).

Further, when evaluating the qualifications of each economic operator that has submitted an application for pre-selection, only the pre-selection criteria specified in the pre-selection documents shall apply. Additionally, Article 15(5) of the Law No. 96-XVI guarantees the non-discrimination in the qualifications of the supplier for the purposes of the provisions of Articles VIII and X of the WTO Agreement on Government Procurement (Article IX of the revised text).

"*Tender based on a Framework Agreement*" means a procedure carried out by entering into an agreement by one or several contracting authorities and one or several economic operators, agreeing on the terms and conditions for contracts that shall be awarded during a specified period of time, in particular as regards prices and, if the case may be, expected quantities (Article 50).

"*Tender based on a Competitive Dialogue*" means a procedure of open tender carried out in two stages, applicable in case of "especially complex" procurement contracts (Article 51(2)) in which any business person may request to participate and in which the contracting authority undertakes a dialogue with the candidates admitted to the tender, with a view to developing one or several alternative solutions capable of responding to needs based on which selected candidates will be invited to submit offers (Article 51).

"*Tender based on Negotiated Procedures*" means a tender procedure in which contracting authorities negotiate with bidders the offers submitted thereby, in order to adapt them to the needs expressed in the participation announcement, scope of work and additional documents, if any, and in order to identify the most favourable offer. The cases of use of tender based on negotiated procedures are provided for in Article 52(1) of the Law No. 96-XVI of 13 April 2007.

"*Procurement from a Single Source*" means a procurement procedure used in the special cases specified by the applicable legislation, in particular in case of "*maximum urgency*" as a result of unpredictable events which render impossible the compliance with the periods of time specified for open or negotiated procedures, by publishing a participation announcement. The situations invoked to justify a "*maximum urgency*" must not be attributable to the contracting parties (Article 53). The

manner of carrying out of the procurement from a single source is established by the Regulations approved by Government Decision No. 951 of 4 August 2003.

"Procurement based on an invitation to bid" means a procurement procedure where each economic operator may submit one single bid, without being entitled to change it. No negotiations may take place between the contracting authority and the bidder on the terms of the bid. The procedure may be used for contracts of procurement of goods, works and services that have a defined specification, provided however that the estimated value of the procurement does not exceed MDL 200,000 for goods and services and MDL 1 million for works. The manner of carrying out of the procurement through invitation to bid is laid down in Regulations approved by Government Decision No. 832 of 13 August 2001.

"Tender based on the Dynamic Procurement System" means an entirely electronic procurement procedure of current use whose characteristics, generally available on the market, meet the needs of the contracting authority, being limited in time and opened for the entire period to any economic operator meeting the selection criteria and which submits an estimated offer according to the requested needs. The tender based on the dynamic procurement system is carried out in compliance with the requirements for open tenders at all its stages up to the award of the contract within the said system. All bidders meeting the selection criteria and which have submitted an estimated offer consistent with the scope of work and the additional documents, if any, are invited and admitted in the system; estimated offers may be improved at any point in time, provided that they will continue to be consistent with the scope of work.

"Electronic Tender" means a procurement procedure implying an electronic device displaying in descending order new prices and/or new values relative to certain elements of the offer, which are made after a first complete evaluation of offers, allowing their classification based on automated evaluation methods. Certain contracts for services and certain contracts for works which refer to intellectual activities, such a designing works, may not form the object of electronic tenders. The manner of carrying out of the procurement through electronic tender is laid down in Regulations approved by the Government.

"Procurement in case of Social Housing Plans" means a special awarding procedure used for public procurement contracts for designing and developing a facility of social housing intended to identify the members of the works development team (Article 57).

"Procedure of Procurement of Consultancy Services" means the procedure provided for by Chapter VII (Article 60-64) of the Law No. 96-XVI of 13 April 2007. Generally procurement of consultancy services take place via announcements published in the Public Procurement Newsletter and in media outlets of international coverage, of offers for services or calls for pre-selection. In all cases where there is doubt as to whether the subject of procurement is a good or a service, the procurement shall be treated as a procurement of goods.

In general terms, the deadline for submitting and receiving participation applications and offers shall be sufficient to allow economic operators both Moldovan and foreign to prepare and submit offers before the ending of the tender procedures (Article 26, Law No. 96-XVI of 13 April 2007). When determining the deadline, contracting authorities shall take into account the complexity of the expected procurements, the anticipated area of subcontracting and the usual time for the transmittance of offers through mail from the country and abroad.

Further, in case of open or restricted tenders, the period for submission and receipt of participation applications and of offers shall be of at least 15 calendar days as of the publication of the participation announcement, and in case of public procurements directly subsidised by more than 50 per cent by contracting authorities (Article 2(3), Law No. 96-XVI of 13 April 2007), of at least

40 calendar days. In case of repeated contract and in case of urgency, the offer submission period may be reduced to not less than 10 calendar days.

In case of procedures by way of invitation to bid, the period for submission and receipt of offers shall be of at least 10 calendar days for works and services and three calendar days for goods as of the date of the launch of the participation invitation, and in case of public procurements directly subsidised by more than 50 per cent by contracting authorities (Article 2(3), Law No. 96-XVI of 13 April 2007), of at least 25 calendar days. In case of secondary procurements, repeated contracts and in case of urgency, justified by the contracting authority, the offer submission period may be reduced to not less than five calendar days for works and services and two calendar days for goods.

Offers shall be opened at such time as shall be specified in the tender documentation as deadline of the submission of offers or such time as shall be specified as the deadline of the prolonged period, in such place and in conformity with the procedures provided for in the tender documentation. Bidders or their representatives are entitled to participate in the opening of the offers (Article 43(2), Law No. 96-XVI of 13 April 2007).

The name and contact information of each bidder whose offer is opened and the cost of the offer shall be communicated to those present at the opening, as well to those who were not present or not represented at the opening, upon their request, and shall be registered in the procurement procedure report (Article 43(3), Law No. 96-XVI of 13 April 2007).

VI. INFORMATION (TRANSPARENCY OF PUBLIC PROCUREMENT)

25. Article XIX:1 of the Agreement (Article VI of the revised text) foresees the publication of laws, regulations, judicial decisions, administrative rulings of general application and procedures regarding government procurement. Please give the name of the relevant publication(s) and indicate the media used for this purpose. Please also provide, where available, the address of an Internet website where the legislation referred to in questions 1 and 2 can be found.

26. Article IX:1 (Article VII:1 of the revised text) of the Agreement foresees the publication of invitations to participate for all cases of intended procurement by entities. Please give the name of the relevant publication(s) and indicate the media to be used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.

27. Please specify the types of information that your legislation requires to be included in notices of invitation to tender or in tender documentation, and identify the relevant provisions of your legislation.

28. Article IX:1 of the Agreement (Article IX:7 of the revised text) foresees publication of permanent lists of qualified suppliers by entities maintaining such lists. Please give the name of the relevant publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where such lists are published.

29. Article XVIII:1 of the Agreement (Article XVI:2 of the revised text) foresees the publication of details of contract award notices by entities. Please give the name of the relevant publication(s) and indicate the means to be used for this purpose. Please also provide, where available, the address of an Internet website where such notices are published.

30. Please specify the types of information that notices of contract awards should contain in your country and identify the relevant provisions in your legislation.

31. Please specify the relevant provisions in your legislation enabling, as foreseen in Article XVIII:2 (Article XVI:1 of the revised text), the provision of information to other Parties and unsuccessful tenderers regarding the reasons why a tender was not selected.

All laws, decrees, decisions of the Government and other regulatory documents of the Republic of Moldova shall be published, pursuant to the Law on the Manner of Publication and Entry into Force of Official Documents, No. 173-XIII of 6 July 1994, in the *Official Monitor of the Republic of Moldova* and also on the official web-sites of the Parliament, Government, relevant ministries and departments. Publication is effected in the official language, accompanied by a Russian translation. The Government provides free and unrestricted access via the Internet to all laws and regulations that are duly published, as well as access to updates as and when they are being amended (Article 10/1 of Law No. 173-XIII). Official documents, except those that constitute state secret, may not enter into force without being officially published (Article 1(5) of Law No. 173-XIII). Laws and regulations that modify the conditions of import or export may not enter into force before the expiration of 30 days following their adoption.

The contracting authority is bound to publish all announcements of intentions of expected public procurements as well as all invitations to submit offers both in the Public Procurement Newsletter and the Agency's website (Article 19-20, Law No. 96-XVI of 13 April 2007). After the publication of the announcement in the Public Procurement Newsletter these may also be published in other media outlets, both national and international. If after the publication of the invitation to bid, but before the deadline for opening or receiving offer, it is necessary to correct or republish the invitation, the corrected invitation shall be published in the same media outlets and shall have equal value as the original one.

Announcements of intentions to organize a tender should be published separately for goods, works and services within a maximum of 30 calendar days as of the date of approval of the relevant contracting authority's own budget. The announcement of intention shall include all public procurement contracts expected to be awarded before the end of the budgetary year. For the procurement contracts whose estimated value for goods and services is less than MDL 200,000, and for works - less than MDL 1 million, the publication of the announcement is not mandatory (Article 19(3), Law No. 96-XVI of 13 April 2006).

The contracting authority may specify in the scope of work the entity or entities from which candidates or bidders may obtain relevant information on the obligations related to taxes, environmental safety and the labour conditions in the Republic of Moldova, which shall be applied to works on site or to services provided during the period of performance of the contract.

Announcements awarding public procurement contracts shall be published within 30 calendar days as of the date of the conclusion of the public procurement contract (Article 21, Law No. 96-XVI of 13 April 2007).

The contracting authority shall inform the bidders participating in the procurement procedures, upon their request, about all contract awarding decisions. Further, upon the request of candidates and bidders, the contracting authority is under an obligation to offer explanations on the procurement procedures applied, as well as the reasons for not selecting a rejected bidder, the characteristics and relative advantages as well as the complete firm name of the awarded bidder (Article 22, Law No. 96-XVI of 13 April 2007).

VII. BID CHALLENGE PROCEDURES

32. Please provide information on existing challenge procedures.

33. Are there specific provisions enabling access of foreign suppliers to challenge procedures?

34. To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so:

- (i) The time-limit to launch a complaint contained in the Agreement is "not less than 10 days" from the time when the basis of the complaint is known or reasonably should have been known. What are the limits in your domestic legislation?**
- (ii) What body is responsible for the challenge procedures? Is this a "court" or an "impartial and independent review body"? If the latter:
 - How are its members selected?**
 - Are its decisions subject to judicial review?**
 - If not, how will the requirements of paragraph 6 of Article XX (Article XVIII:6 of the revised text) be taken into account?****
- (iii) What is the applicable law by reference to which the challenge body will examine complaints?**
- (iv) Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial opportunities?
 - Do these measures include the possibility to suspend the procurement process? On what conditions?****
- (v) How do challenge procedures provide for correction of the Agreement? What types of compensation for loss or damages suffered can the challenge body order?**
- (vi) Give any available information on the time-periods for the stages of the challenge process, including to obtain interim measures and a final decision.**
- (vii) What are the usual costs to conduct a challenge procedure? Are there possibilities foreseen to do so free of charge?**

The procurement procedure may be cancelled by contracting authorities or upon the request of the Agency, following an audit. Cancellation may be undertaken before the date of issuance of the communication regarding the results of the application of the public procurement procedure but, in any case, before the date of the conclusion of the contract, for the grounds specified in Article 59(1) of the Law.

Furthermore, any economic operator alleging that within the procurement procedures the contracting authority, by its decision or the procedure applied had breached the law, a right recognized by law of the economic operator, which resulted or may result in loss, may challenge the

decision or the procedure applied by the contracting authority with PPA, in the manner provided for by the Law No. 96 of 13 April 2007. The Law on Public Procurement does not require the payment of stamp duties for the launch of the challenge proceedings.

The Law allows the reimbursement of loss caused by the unlawful actions of the contracting authorities, except for lost profits or the lost possibility to obtain income. Damages shall be allotted only based on final court judgement (Article 72(7) Law No. 96-XVI of 13 April 2007).

The following may not be challenged:

- (a) choice of the procedures for the selection of consultancy services offers;
- (b) limitation of participation in the procurement procedure, resolved pursuant to the applicable legislation (Article 15(1), Law No. 96 of 13 April 2007);
- (c) decision to reject all offers;
- (d) failure to make reference to this Law, other regulatory documents on public procurement, as well as failure to inform on right to challenge.

The general period for submission of challenges is up to 10 calendar days as of the date when the economic operator took knowledge of the circumstances that based its challenge, of the decision of the procedure applied by the contracting authority. Challenges of invitations to participate in tenders or of tender documentation may be submitted before the opening by the contracting authority of the offer packages.

Following a prima facie review of the challenge, the Agency may decide (Article 72(4) Law No. 96 of 13 April 2007) the following:

- (a) initiate the procedure of amicable resolution of the claim;
- (b) totally or partially satisfy the claim;
- (c) totally or partially dismiss the claim;
- (d) request that offers be re-evaluated;
- (e) take other resolution measures pursuant to the applicable legislation.

Generally, the law applicable to the substance of the challenge shall be the Law No. 96-XVI of 13 April 2007, as well as other governmental regulatory documents in this field. Upon need, the Agency and the administrative court may additionally apply the conflict of laws rules of the private international law, contained in the Civil Code of the Republic of Moldova.

The Agency shall review the challenge within 20 working days from its submission and shall issue its decision within the same period of time based on the documents presented or following its review in an open session, inviting in writing and with the participation of at least the Agency's representative, the challenger, the contracting authority and the awarded bidder, if any. In the process of review of the challenge, the Agency may invite field experts that would submit written and/or verbal reports in the hearings on the challenges (Article 73(6), Law No. 96 of 13 April 2007).

The Agency may, either upon the request of the interested economic operator or ex officio, order the suspension of the conclusion/performance of the public procurement contract if the challenge is material and contains a statement which, being proven, confirms that:

- (a) without such suspension the economic operator shall incur losses;
- (b) there is a chance of satisfaction of the challenge;
- (c) the suspension shall not damage the parties involved in the procurement procedure.

Upon the proposal of the Agency and/or the economic operator participating in the procurement challenging proceedings, challenges may be solved amicably (Article 72(5), Law No. 96 of 13 August 2007).

If the Agency fails to deliver its decision within the specified deadline or if the economic operator is not satisfied with the Agency's decision, it may file an action with the competent administrative court. After the filing of such action, the Agency is no longer competent in resolving the challenge (Article 73(10), Law No. 96 of 13 April 2007).

The contracting authority is bound to prepare and maintain the public procurement file for five years after the initiation of the procurement procedure (Article 32(1), Law No. 96-XVI of 13 April 2007).

VIII. OTHER MATTERS

35. To what extent is information technology being used in the process of government procurement? Are notices of invitations to tender and/or notices of contract awards published electronically? Please provide the address of such electronic publications.

36. Is there a contact point in your country for responding to enquiries from suppliers, other governments and the wider public relating to laws, regulations and procedures and practices regarding government procurement at the central and/or sub-central level? Please provide the address.

Moldova widely uses information technology in the field of public procurement. For further information on the activity of the Public Procurement Agency and the field of public procurement please see: www.tender.gov.md.

ANNEX*

THE PARLIAMENT OF THE REPUBLIC OF MOLDOVA

**LAW
ON PUBLIC PROCUREMENTS
No. 96-XVI of 13 April 2007**

Official Gazette "Monitorul Oficial" No. 107-111/470 of 27 July 2007

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CHAPTER I: GENERAL PROVISIONS

Article 1. Definitions

For the purposes of this law, the following definitions shall be used in the following meaning:

Public procurements: Acquisition of goods, works performed or services provided for the needs of one or more Contracting Authorities;

The Public Procurement Agency: the central specialized administrative authority subordinated to the Ministry of Finance, with the functions of government regulation, supervision, control and inter-industry coordination in the sphere of public procurements;
[Art. 1, the definition as in the PL 109 of 04.06.2010, MO 131-134/30.07.10 art. 443]

The contracting authority: Public administration authorities, legal entities under public law as well as associations of such authorities or entities;

Public funds: The funds from the state budget, local budgets of administrative territorial units, the public social insurance budget, specialized foundations, specialized provisions of public institutions, the Statutory Medical Insurance Fund, external loans accounted for as direct or guaranteed state debt;

Public procurement contract: A remunerative contract concluded in writing between one or several suppliers and one or more Contracting Authorities and having as its subject matter the acquisition of goods, works performed or services provided within the meaning of this law;

Standardized documentation: The documents which comprise all information regarding the subject matter of the public procurements contract and the procedures for its awards, including the terms of reference or description, as the case may be;

Bid guarantee: An amount of money or a guarantee to provide such amount, which is presented by the Bidder to the Contracting Authority together with the bid and which secures the validity of such bid;

Contract execution guarantee: The guarantee securing the execution of the contractual obligations provided for in the public procurements contract concluded between the Contracting Authority or authorities and the bidder awarded the contract;

The procurements workgroup: The group of professionals within the Contracting Authority, which implements the public procurement procedures;

Open Tender: The public procedure, under which any interested supplier may submit a bid;

Closed Tender: The public procedure, under which any interested supplier may apply for the participation and under which only the suppliers short-listed (pre-selected) by the Contracting Authority may submit their bids;

Electronic means: The means which uses electronic data procession equipment, including digital compression and storage of data, which can be diffused, transmitted and received via cable, radio, optical devices or other electromagnetic devices;

The bid most advantageous in economic terms: The bid selected as the winning bid according to the criteria laid down in this law and in the procedure of awarding a public procurements contract;

A bidder: The supplier who has submitted a bid according to the procedure of awarding a public procurements contract;

A supplier: Supplier of goods, works and/or services, who can be an individual or an entity, or a public law entity, or an association of such persons and/or entities which supply goods, works and/or services at the market.

Article 2. *The scope of the law*

(1) This law shall apply to public procurement contracts, which are not covered in Article 4 and which have an estimated value without value-added tax (VAT) no less than the threshold levels below:

- (a) for public procurement contracts to procure goods: MDL 20,000;
- (b) for public procurement contracts to procure works and services: MDL 25,000.

(2) This law shall apply also to public procurement contracts directly subsidized by the Contracting Authority by more than 50 per cent, where they are not covered by the exceptions specified in Article 4.

(3) This law shall provide also for the specific details regarding the public procurement contracts, which are not covered in Article 4 and which have an estimated value without value-added tax (VAT) no less than the threshold levels below:

- (a) for public procurement contracts to procure goods and services: MDL 2,500,000;
- (b) for public procurement contracts to procure works: MDL 99,000,000.

(4) The public procurement contracts which have an estimated value without VAT less than the threshold levels specified in Paragraph (1) shall be dealt with in conformity with the Government-approved Regulation on low value public procurements.

(5) The present law is applied in the appropriate manner to different types of public-private partnership that are not forbidden by the law.

[Art. 2 par. (5) introduced by PL 181 of 15.07.10, MO 155-158/03.09.10 art. 559]

Article 3. *Calculation of the estimated value of public procurement contracts and planning of such contracts*

(1) The estimated value of a public procurement contract shall be calculated based on the total amount payable, without VAT, as assessed by the Contracting Authority. The structure of the total amount payable shall include all types of remuneration, including eventual bonuses, fees, commissions, obtained income and/or premiums or payments to the benefit of the bidders, with account at all times of possible options and eventual contract extensions.

(2) The exact methods for calculation of the estimated value of public procurement contracts and their planning shall be laid down in a separate regulation approved by the Government.

Article 4. The exceptions

The provisions of this law shall not apply to:

- (a) R&D service contracts, under which the Contracting Authority is the sole beneficiary, where the deliverables are used for in-house purposes and to exercise its functions, provided the supplied services are paid solely by the Contracting Authority and the prices for the provided services do not exceed or are within the range of the market prices for similar services;
- (b) public procurement contracts which have arbitration and/or reconciliation services as their subject matter;
- (c) public procurement contracts in respect of the issue, purchase, sale or transfer of titles or other financial instruments, and in particular in respect of the operations to accumulate the Contracting Authorities' funds or capital;
- (c¹) the contracts of printing the banknotes and minting coins, as well as their transportation;
[Art. 4 letter (c¹) introduced by the PL 41-XVI of 06.03.08, MO 63-65/28.03.08 art. 205]
- (c²) contracts of adhesion nature, signed by National Bank of Moldova with international financial institutions, with non-resident economic agents, according to which are delivered goods, services, and construction services that ensure the service of automated interbank payment system, state securities market and inter-banking securities market, administrating the state's currency reserves, administration of state's currency operations, including the external debt, the external audit of the annual financial reports, accounts and registers of National Bank;
[Art. 4 letter (c²) introduced by the PL 124 of 18.06.10, MO 121-123/16.07.10 art. 380]
- (d) the services provided by the National Bank of Moldova;
- (e) public procurement contracts declared secret under the applicable legislation, where their execution necessitates special security measures required by the law;
- (f) public procurement contracts which have employment contracts as subject matter;
- (g) concession contracts for public services and works;
- (h) public procurement contracts awarded by a Contracting Authority to any other Contracting Authority or an association of Contracting Authorities based on the exclusive rights they are holding according to the law;
- (i) public procurement contracts which have as their subject matter the acquisition of goods for subsequent resale;
- (j) contracts for the procurement of goods by the Contracting Authority from the state provisions of tangible resources and emergency provisions;

- (k) contracts for the procurement of goods, works and services connected with the manufacture of or trade in armaments, ammunition and armament systems;
- (l) public procurement contracts regulated by different norms and procedures and awarded according to:
 - the international agreements concluded by Moldova and one or more third countries in respect of the goods or services required for joint implementation or operation of a certain venture by the signatory states, or regarding the services necessary for the joint implementation or operation of a certain project by the signatory states;
 - the international agreements regarding the deployment of troops and connected with the engagements of Moldova or a third country;
 - the specific procedures of an international organization.
- (m) contracts of printing the voting-papers and other electoral documents, of supplying with materials and equipment designated for electoral institutions in the electoral period.
[Art. 4 let. (m) introduced by PL 216 of 17.09.10, MO 191-193/01.10.10 art. 634]
- (n) the public procurement contracts signed between Diplomatic missions and Consular offices of Republic of Moldova and suppliers residents of the State in which the first ones activate.
[Art. 4 let. (n) introduced by PL 267 of 23.12.11, MO 13-14/13.01.12, in force from 13.01.12]

Article 5. *The special regime*

- (1) The Contracting Authorities operating in the sphere of the national defense, public order and national security shall be obliged to apply the provisions of this law, excepting the situations covered in Article 4.
- (2) The right to participate in the procedures to award public procurement contracts may be reserved by the Government - to the extent not to exceed 20 per cent of the total volume of the procurements - for the Association of the Blind; the Association of the Handicapped; the Association of the Deaf; the production facility of the National Psychiatric Hospital; penitentiary system institutions and other disadvantaged parties; alternatively such parties may enjoy preferential terms and conditions for the participation in such procedures within the framework of employment programs, as provided for in the legislation.

Article 6. *The principles regulating the public procurement relationships*

The relations arising in connection with the public procurements shall be regulated on the basis of the following principles:

- (a) the efficient use of public funds and minimization of the risks for the Contracting Authorities;
- (b) transparency of the public procurements;

- (c) ensuring of the competition and prevention of unfair competition in the sphere of public procurements;
- (d) environment protection and promotion of the sustainable development principles via public procurements;
- (e) maintenance of the public order, morale and security; protection of human health and human life, flora and fauna;
- (f) liberalization and expansion of international trade;
- (g) free circulation of goods, liberty to establish and provide services;
- (h) equal treatment, impartiality and non-discrimination for all bidders and suppliers;
- (i) support for the suppliers resident in Moldova - to the extent which does not come in conflict with the international laws to which Moldova is a party;
- (j) responsibility within the framework of the public procurement procedures.

Article 7. *The legal framework*

- (1) The relations arising in connection with the public procurement are regulated by this law and other laws and Government resolutions adopted in conformity with this law.
- (2) Should an international agreement or treaty to which Moldova is a party establish the norms different from those provided for in this law, the provisions of the international treaty shall prevail.

**CHAPTER II
STATE REGULATION OF THE PUBLIC PROCUREMENTS**

Article 8. *The Public Procurement Agency*

[Art. 8 title in the revision of PL 109 of 04.06.10, MO 131-134/30.07.10 art.443]

(1) The Public Procurement Agency, further "*the Agency*", is a public authority with the legal status of a specialized administrative authority, which is subordinated to the Ministry of Finance and established with the objective to exercise state regulation, supervision, control and inter-sector coordination in the sphere of public procurements. The Agency is an independent functional unit.

[Art. 8 par. (1) amended by the PL 109 of 04.06.10, MO 131-134/30.07.10 art.443]

(2) The Agency shall have its own balance sheet, bank account(s), the stamp bearing the State Ensign of Moldova and the name of the Agency in the state language.

Article 9. *The Agency's principal functions in the sphere of public procurements*

- (1) The Agency shall perform the following principal functions:
 - (a) develop and submit to the Government for approval the draft regulations necessary to exercise this law; develop suggestions regarding the introduction of modifications and amendments to the public procurements legislation;

- (b) coordinate, monitor, assess and control compliance of the Contracting Authorities with the public procurement procedures and procedures for the awarding of public procurement contracts;
- (c) produce, update and maintain the list of qualified supplies and supplier disqualification lists;
- (d) develop and implement standardized documentation for the public procurement procedures;
- (e) examine and register the tender documentation submitted by the Contracting Authorities during 15 calendar days starting with the date of presentation and registration of these at the Agency;
[Art.9 par. (1) let. e) amended by PL 65 of 30.03.12, MO 92/15.05.12 art. 308]
- (f) examines reports on the public procurement procedures;
- (g) examine and register public procurement contracts concluded as result of implementing the procurement procedures during 15 calendar days from the date of deposit and registration at the Agency of tender documents (excepting the contracts concluded as result of implementing the request for price quotations procedure);
[Art.9 par. (1) let. g) amended by PL 65 of 30.03.12, MO 92/15.05.12 art. 308]
- (h) request re-examination or cancellation, as the case may be, of the results of public procurement procedures;
- (i) maintain the automated public procurements register;
- (j) examine and settle disputes between the parties participating in the public procurement procedures;
- (k) provide methodology assistance and advice regarding the public procurements to the Contracting Authorities, initiate and support training efforts for the Contracting Authority staff involved in the preparation and implementation of the public procurement procedures and awarding of the public procurement contracts;
- (l) issue the public procurements bulletin; develop and place in the Internet the web page "Moldova's Public Procurements", which is the formal venue for publication of invitations to tender, requests for proposals and information on the public procurements and awards of public procurement contracts;
- (m) submit to the Government quarterly and annual reports and statistical analysis on public procurements;
- (n) request and obtain from the relevant authorities the information on the suppliers participating in the public procurement procedures as well as any other information required by the Agency to perform its functions;
- (o) collaborate with international agencies and similar foreign entities operating in the sphere of public procurements;
- (p) coordinate the use of foreign technical assistance in the sphere of public procurement;
- (q) perform other functions provided for in this law and other applicable laws and regulations.

(2) The Agency shall perform its functions at the regional level via its territorial offices.
[Art.9 par. (2) amended by PL 267 of 23.12.11, MO 13-14/13/01.12 art. 32, in force 13.01.12]

Article 10. *The Agency's operation and administration*

The Agency's operation and administration shall follow the Regulations approved by the Government.

Article 11. *The Agency's budget*

- (1) The Agency's budget shall be comprised of:
 - (a) own income resulting from activities which are not contrary to this law;
 - (b) allocations from the state budget;
 - (c) other additional lawful sources.
- (2) The Agency's budget shall be developed, examined, approved and reported in compliance with the law.

**CHAPTER III
PARTICIPANTS IN THE PUBLIC PROCUREMENT PROCEDURES**

SECTION 1. THE CONTRACTING AUTHORITIES

Article 12. *The status of the Contracting Authority*

- (1) The Contracting Authority may be any public authority within the meaning of the term defined in the legislation of Moldova, including legal entities under the public law, associations of such authorities or persons.
- (2) A legal entity under the public law shall mean any entity:
 - (a) established exclusively to satisfy public needs, without any profit targets (industrial or commercial);
 - (b) with a separate legal identity;
 - (c) whose operations are secured to a major extent with public funds, or whose management is subject to the controls exercised by a public authority or another legal entity under the public law, or whose Administrative, Management or Supervision Board has more than 50 per cent of the members appointed by the above entities.
- (3) Furthermore, the Contracting Authority may be an association of several Contracting Authorities, whose members appoint a legal entity from their midst by a civil law act to represent them as a single buyer in the relationships with any Supplier, contractor to perform works or service provider.
- (4) Other legal entities with an obligation to perform public procurements may be qualified as the Contracting Authorities by a Government decision according to this law, where they operate at the markets in which the competition is excluded on the force of a regulation or an administrative ruling or due to the existence of a monopoly.
- (5) Any other entity, which does not satisfy the aggregate of the requirements specified in Paragraph (2) hereof, may be qualified upon request or decision of a competent governance body as a

Contracting Authority subject to the performance of the procurements in strict compliance with this law.

(6) A Contracting Authority may be a public authority appointed by the Government to organize and perform in a centralized way the public procurement procedures with the objective to satisfy certain needs in the respective goods, works or services for some other Contracting Authorities.

Article 13. *The functions of the Contracting Authorities in the sphere of public procurements*

(1) The Contracting authorities shall perform the following actions in the sphere of public procurement:

- (a) establish work groups in charge of implementing the public procurements within the Contracting Authority;
- (b) develop annual and quarterly public procurement plans;
- (c) issue requests for proposals / invitations to tender within the framework of the public procurement procedures;
- (d) develop tender documentation packages and other documents applicable within the framework of the procurement procedures;
- (e) initiate and perform the public procurement procedures;
- (f) ensure the extensive participation of Suppliers in the public procurement procedures;
- (g) examine, assess and compare the bids submitted by Suppliers within the framework of the public procurement procedures;
- (h) conclude public procurement contracts with Suppliers;
- (i) produce reports on the results of the public procurement procedures and submit them to the Agency;
- (j) execute and manage public procurement contracts according to their terms and conditions;
- (k) keep records of all documents produced and applied within the framework of the public procurement procedures.

(2) The Contracting Authority shall:

- (a) ensure the efficiency of the public procurements;
- (b) ensure the objectivity and impartiality within the framework of the public procurement procedures;
- (c) ensure the transparency and publicity of the public procurement procedures;
- (d) submit upon the Agency's request any information regarding the conclusion and execution of the public procurement contracts.

Article 14. Performing of the Contracting Authority's functions

- (1) The Contracting Authority shall exercise its functions through the procurements work group, established for that purpose of the Contracting Authority's officers and experts with the relevant professional experience and expertise in the sphere of public procurements, which are selected from among the listed staff. Depending on the subject of the procurements, the Contracting Authority may establish one or more procurements work groups.
- (2) The Contracting Authority may invite, if necessary, professionals and experts in the sphere of particular procurements to act as advisors in the procurements work group. In special cases provided for in the law, such professionals and experts may be granted a voting right in the work group.
- (3) A member of the work group must sign (at his/her personal responsibility) a declaration in writing regarding the confidentiality and impartiality, in which he/she undertakes to observe unconditionally the provisions of this law and presents furthermore that he/she:
 - (a) is not a spouse, relative or in-law (to the third degree inclusive) of any of the bidders;
 - (b) has not been within the last three years a party to an employment contract or a cooperation contract concluded with any of the bidders, as shown in the labor record book, or has not been a member of the bidder's administrative board or any other of the bidder's governance or management bodies;
 - (c) does not hold a stake or shares in the authorized and subscribed capital of any of the bidders.
- (4) Should a work group member present prior to the bid opening meeting to fall into one or several of the categories listed in Paragraph (3), he/she must request promptly his/her immediate removal from the work group and replacement with another person.
- (5) The Agency may cancel the procurement process in the case of non-compliance with the provisions of the Paragraphs (3) and (4) above.
- (6) The procurements work group shall be guided in its activities by this law and the Regulations approved by the Government.

SECTION 2. THE SUPPLIER

Article 15. The Suppliers' participation in the public procurement procedures

- (1) Any Supplier with the status of a resident or non-resident business company (including individuals as well as legal entities) has the right to participate according to the stipulations of the present law, to the procedures of awarding the public procurement contract.
[Art. 15 par. (1) amended by PL 267 of 23.12.11, MO 13-14/13.01.12, art. 32, in force 13.01.12]
[Art. 15 par. (1) amended by the PL 124 of 18.06.10, MO 121-123/16.07.10 art. 380]
- (2) Non-resident suppliers shall enjoy the rights and remedies similar to those granted to resident suppliers under this law solely in the case of the public procurements provided for in Article 2 Paragraph (3) subject to compliance with the requirements of Paragraph (3) hereof.
- (3) A foreign supplier shall enjoy in Moldova the rights in respect of the participation in the procedures of awarding public procurement contracts similar to the rights enjoyed by the Moldovan suppliers in the foreign supplier's home country.

(4) Suppliers may form associations for the purposes of submitting their bids and/or act as joint bidders. An association (a group of suppliers) might be obliged to obtain a certain legal status - where such transformation is necessary for the proper execution of the contract.

(5) The participation terms and conditions set for the suppliers (which may include financial guarantees, technical qualifications and the information necessary to assess the supplier's financial, commercial and technical capacity and to check his qualifications) may not be less favorable for non-resident suppliers than those required from resident suppliers or otherwise discriminatory for the non-resident supplier.

Article 16. The supplier's qualifications

(1) To confirm the supplier's qualifications for the purposes of the public procurement procedures, the supplier must submit the documents issued by the competent authorities indicated by the Contracting Authority for the purposes of the public procurement procedures and evidencing:

- (a) the Supplier's managerial competencies, experience, good repute, availability of the skilled staff and equipment, financial capacity and other capacities necessary for adequate execution of the public procurements contract throughout the lifetime of such contract;
- (b) authority to conclude the public procurements contract;
- (c) good standing, implying the availability of certificates confirming that the supplier is not in the process of liquidation or bankruptcy, its assets are not under sequestration and its business operations are not suspended;
- (d) payment of taxes and other statutory charges in compliance with the laws of the supplier's home country;
- (e) non-application during the last three years of any disciplinary, administrative or penal sanctions to the supplier's managers in connection with their professional activities or submission of erroneous data for the purposes of concluding a public procurements contract;
- (f) the list of founders/shareholders and affiliates (affiliated persons).

(2) The Contracting Authority shall take into account the Supplier's rights connected with the protection of its intellectual property and commercial secrets.

(3) The Contracting Authority shall assess the Supplier's qualifications, using the criteria and procedures described in the request for proposals/invitation to tender.

(4) The Contracting Authority may disqualify the bidder at any stage of the procurement process in case it is found that the information submitted by the supplier for the qualification purposes is untrue or incomplete, or in other cases provided for in this law and other applicable laws and regulations.

(5) The Bidder may be disqualified if he does not present the supplementary information requested by the Contracting Authority within the requested term.

(6) The bidder may not be disqualified due to the fact that the qualification information presented by him is inaccurate or incomplete to an immaterial degree.

(7) The Contracting Authority may request the bidders to present the documentary evidence, if necessary, and should it have any doubts regarding the bidder's and supplier's personal situation, it may request cooperation and the necessary information from the competent authorities, including foreign ones.

(8) The competent authorities and the authorities protecting and enforcing the law and order should present upon request of the Contracting Authority and free of charge within 10 calendar days the systematized information or any other information regarding the supplier's legal status, involvement/non-involvement in criminal associations or groups as well as other information about the respective bidder and supplier, specified in this law. In the case of non-resident suppliers such information may be sought from the competent foreign authorities according to the accepted international practices.

Article 17. *The list of qualified suppliers*

(1) The list of qualified suppliers is a formal list maintained to ensure the suppliers' accessibility during the public procurement procedures.

(2) The inclusion in the List of qualified suppliers may not be an obligatory requirement; it is performed upon the supplier's request with the issuance of the confirming certificate upon such inclusion.

(3) The list of qualified suppliers shall be developed, maintained and updated by the Agency according to the Regulations approved by the Government.

Article 18. *The list of prohibited suppliers*

(1) The list of prohibited suppliers is a formal list developed and maintained by the Agency for the purpose to restrict for three years the participation of prohibited suppliers in the public procurement procedures covered by this law.

(2) The list of prohibited suppliers shall be developed, maintained and updated by the Agency according to the Regulations approved by the Government.

**CHAPTER IV
PUBLICITY AND TRANSPARENCY**

Article 19. *The notice of intended procurement*

(1) The Contracting Authority must publish a notice of intended procurement in the Public Procurements Bulletin regarding the scheduled public procurements. In the case of the public procurements covered by Article 2 Paragraph (3), the announcement of intent shall be published also in "The Official Journal of the European Community".

(2) The notice of intended procurement shall be published separately for the goods, works and services within 30 days upon approval of the respective Contracting Authority's budget.

(3) The notice of intended procurement shall cover all public procurement contracts scheduled to be awarded prior to the end of the budgetary year. It shall not be necessary to publish an announcement of intent in respect of the procurement contracts for goods and services with the estimated value of up to MDL 200,000 and for works - up to MDL 1,000,000.

(4) The publication of the notice of intended procurement shall not create an obligation for the Contracting Authority to perform the respective public procurements.

Article 20. General rules regarding the development and publication of a request for proposals

(1) The Contracting Authority must publish a request for proposals (further "RFP") in the Public Procurement Bulletin and on the Agency's web page in all cases provided for by this law in accordance with the applied procurement procedures. In the case of the public procurements covered by Article 2 Paragraph (3), the RFP shall be published also in "The Official Journal of the European Community".

(2) The RFP shall be published in the state language and, if necessary, in one of the internationally used languages.

(3) Standardized formats approved for the purpose shall be used to develop and adjust the RFP, making it possible to publicize the public procurements.

(4) To ensure the maximum transparency, the Contracting Authority may publish the RFP in other national or international mass media; however, it may be done solely upon publication of the respective RFP in the Public Procurements Bulletin and on the Agency's web page. The RFP published in the other local, national or international mass media should make reference to the issue number and date of the Public Procurements Bulletin where the RFP has been first published, and it may not contain any information additional to that published in the Public Procurements Bulletin.

(5) The RFP shall be published well in advance to provide a realistic possibility for any interested supplier to participate without discrimination in the procedures of awarding the public procurements contract.

(6) Should it become necessary to adjust or publish anew the RFP after its initial publication, but prior to the deadline specified for the opening or submission of the bids, the adjusted RFP must be published in the same media and indicate the same value as the initial RFP.

Article 21. The announcement regarding the award of the public procurement contract

(1) The Contracting Authority must publish the announcement regarding the award of the public procurements contract in the Public Procurements Bulletin and on the Agency's web page within 30 calendar days after the conclusion of such contract.

(2) The announcement regarding the award of the public procurements contract shall contain at least the following information:

- (a) the nature and quantity of the goods, works or services forming the subject matter of the awarded contract;
- (b) the name and address of the Contracting Authority which has awarded the contract;
- (c) the day of awarding the contract;
- (d) the name and other information identifying the winning supplier;
- (e) the value of the awarded contract;
- (f) the legal grounds for the use of the respective contract award procedure;

- (g) the used procedure.

Article 22. Notices to the bidders

- (1) Upon request of the bidders, the Contracting Authority must provide:
 - (a) explanations regarding the applied procurement procedures;
 - (b) to the rejected bidders – the reasons for choosing a different bid as well as the relative characteristics and advantages and full name of the winning bidder.
- (2) The Contracting Authority shall notify the bidders participating in the procurement procedures, upon their request, about all contract award decisions.
- (3) Such information on the awarded contract shall not be provided, the disclosure of which is contrary to the law or public interest.
- (4) The rejected bidder may request the information, which evidences the impartiality of the procurement process. For that purpose the Contracting Authority shall provide free of charge the information regarding the relative characteristics and advantages of the winning bidder and the contract price, excepting the cases where the disclosure of such information might prejudice the competition at future tenders.

**CHAPTER V
THE PRINCIPAL REQUIREMENTS TO THE PROCUREMENT PROCEDURES**

Article 23. The rules regarding notices

- (1) The notices, amendments to the information and their storage shall ensure the integrity of the data and the confidentiality of bids and applications for participation as well as the possibility of scrutiny and analysis in substance of the bids and applications for participation by the Contracting Authority solely after the deadline specified for their submission.
- (2) The tools used for electronic communications and their technical characteristics must be continuously available to the public and compatible with the generally used information and communication technologies.
- (3) The use of devices for electronic transmission and reception of the bids as well as the devices for electronic reception of the applications for participation should satisfy the following requirements:
 - (a) the information regarding the specifications necessary for the submission of bids and applications for participation via electronic channels, including their coding/encoding, must be available to the interested parties;
 - (b) the bids submitted electronically must be confirmed with a digital signature.

Article 24. Communication forms

- (1) All notices may be given and all exchange of information may take place, upon the Contracting Authority's choice, by mail, by fax, electronically, by phone or using a combination thereof.

(2) The chosen communication means should be generally accessible and they must not limit the suppliers' access to the procedure of awarding the public procurements contract.

Article 25. *The requirement to confirm the documents*

The Contracting Authority may request the bidder to provide the evidence confirming the documents presented by him – according to the conditions laid down for the relevant document category.

Article 26. *The timing for the submission and receipt of the applications for participation and bids*

(1) The deadline for the submission and receipt of the applications for participation and bids must be established sufficiently well in advance to enable the domestic as well as foreign suppliers to prepare and submit their bids prior to the completion of the tender procedures.

(2) Establishing the deadline, the Contracting Authority must take into consideration the complexity of the scheduled procurements, the anticipated subcontracted areas and the time normally required to receive the bids sent by the domestic and international mail.

(3) The Contracting Authority shall be responsible for the establishment of deadlines for the submission and receipt of applications for participation and bids.

(4) In the case of an open or closed tenders, the term for the submission and receipt of the applications for participation and bids may be no less than 15 calendar days after the day on which the RFP is published, and in the case of the public procurements covered by Article 2 Paragraph (3) – no less than 40 calendar days. In the case of repeated contracts and in emergency situations (which must be substantiated by the Contracting Authority) the term for the submission of bids may be reduced, however, it may not be less than 10 calendar days.

(5) In the case of the procedures implying the request to submit price quotations, the time for the submission and receipt of the bids may be no less than three calendar days for the goods and 10 calendar days for the works and services after the RFP is circulated. In the case of auxiliary procurements, repeated contracts and in the emergency situations (which must be substantiated by the Contracting Authority) the term for the submission of bids may be reduced, however, it may be no less than two calendar days for the goods and five calendar days for the works and services.

(6) The hour and date of opening the bids will coincide with the deadline for submission of applications for participation and receipt of the bids.

[Art. 26 par. (6) introduced by the PL 77 of 12.04.12, MO 103/29.05.12 art. 347]

Article 27. *The rules for the description of the goods, works and services*

(1) The characteristics of the goods, works and services requested by the Contracting Authority shall be an exact and complete description of the subject matter for the procurements, making it possible to comply with all requirements and criteria established by the Contracting Authority.

(2) The characteristics of the subject matter for the procurements must correspond to the Contracting Authority's requirements regarding the quality, efficiency, testing, security, dimensions, symbols, terminology, packaging, transportation, marking, labeling, production processes and techniques as well as conformity assessment procedures, as specified in the tender documents.

(3) Upon adjustments to the technical characteristics, projects, technical designs, drawings and descriptions requested by the Contracting Authority:

- (a) physical description of the requested goods, works and services shall be provided on the basis of the objective and relevant technical specifications and quality characteristics;
- (b) the characteristics shall be provided in terms of the operational performance of the goods and the efficiency of works and services in cases where physical description is impossible or where the efficiency or performance is of primary significance;
- (c) the standardized characteristics, requirements, symbols and terms or the international and national standards accepted internationally and approved by the national standardization body shall be used for the purposes of describing the requested goods, works and services.

[Art. 27 par. (3), let. c) amended by the PL 109 of 04.06.10, MO 131-134/30.07.10 art. 443]

(4) The technical characteristics shall make no reference to a certain trade mark, brand or company, patent, drawing or type of the goods, works and services; no specific place of origin, manufacturer or supplier shall be indicated. Should it be impossible to detail the procurement requirements with sufficient exactness without such references, the wording of the characteristics shall include the words "or their equivalent".

(5) Technical specifications shall be based on the international or national standards, national technical regulations or construction codes, if applicable.

Article 28. *The language of the standardized documentation*

(1) The short-listing or tender documents and other public procurement documents shall be produced and published in the state language.

(2) The documents covered by Paragraph (1) may be produced furthermore in one of the internationally used languages where:

- (a) the nature of the requested goods, works and services implies the involvement of foreign suppliers, resources or technologies, provision of foreign professional services or involvement of foreign competitors;
- (b) the estimated price of the requested goods, works and service is in excess of the threshold levels specified in Article 2 Paragraph (3).

(3) The bids shall be submitted in the state language. Any supplier may make reference to the tender documents and formulate requests in the language of the bid.

Article 29. *The rejection of all bids*

(1) Contracting Authority may reject all bids at any time prior to their receipt. Such action may be justified by the absence of effective competition, the impossibility of funding or non-compliance of the bids with the requirements specified in the tender documents.

(2) The notice regarding the rejection of all bids shall be given to all bidders within no more than three calendar days. The Contracting Authority shall communicate the grounds for the rejection upon inquiry of any bidder.

Article 30. Acts of corruption on the part of suppliers

(1) The Contracting Authority shall reject the bid in the case the supplier submitting it offers or agrees to offer, directly or indirectly, a favor in any form or to extend an employment offer, or to provide any other service to any of the Contracting Authority's former or current officers or employees as remuneration for certain actions, decisions or use of certain procurement procedures to his advantage.

(2) The rejection of the bid and the grounds for the rejection shall be indicated in the report on the procurement procedure and communicated promptly to the relevant suppliers.

(3) The Agency shall report promptly each case of corruption or attempted corruption acts on the part of the supplier or a representative of the Contracting Authority to the competent authorities.

(4) The public procurement contracts awarded as result of the corruptive acts confirmed by the definitive court decision shall be considered null and void.

Article 31. The conditions regarding taxes, environmental issues and labor safety

(1) The Contracting Authority may indicate in the terms of reference (TOR) an authority or authorities where the bidders can obtain pertinent information regarding the obligations connected with taxes, environment protection, labor safety and labor legislation in Moldova, which would be applied to the works performed on site or the services provided during the execution of the contract.

(2) The Contracting Authority which provides the information as per Paragraph (1) shall request the bidders to mention that they took into account during the preparation of the bid the obligations ensuing from the applicable labor safety norms and labor regulations effective in the location of the works or services.

Article 32. The public procurements file

(1) The Contracting Authority must produce the public procurements file and ensure its safekeeping for five years after the initiation of the procurement procedure.

(2) The documents which should be included in the public procurements file as well as those which should be transmitted to the Agency are specified in the Regulations approved by the Government.

**CHAPTER VI
THE PUBLIC PROCUREMENT PROCEDURES**

SECTION 1. THE TYPES OF THE PUBLIC PROCUREMENT PROCEDURES

Article 33. The public procurement procedures

(1) The award of the public procurements contract may be performed using the following procedures:

- (a) open (public) tender;

- (b) closed tender;
- (c) framework contract;
- (d) competitive dialogue;
- (e) negotiations;
- (f) procurement from a single source;
- (g) request for price quotations;
- (h) dynamic procurement system;
- (i) electronic auction/tender;
- (j) procurements for the social housing construction schemes;
[Art. 33 par. (1), let. k) repealed by PL 124 of 18.06.10, MO 121-123/16.07.10 art. 380]

(2) The open tender shall be the basic procedure for the awards of public procurement contracts. Other procurement procedures may be used solely on conditions expressly provided for in this law.

SECTION 2. THE OPEN TENDER

Article 34. *The initiation of an open tender*

(1) The open tender procedure involves the reception of bids from all suppliers who are willing to participate in the tender.

(2) The Contracting Authority shall publish according to the provisions of Article 26 a prior invitation to participate in the open tender in order to notify the potential participants and to enable them to prepare their bids.

Article 35. *The invitation to participate in the open tender*

The invitation to participate in the open tender shall indicate:

- (a) the Contracting Authority's name and address;
- (b) the goods, their quantities and the address for their delivery; the works and their location; the services and the location for their provision;
- (c) the term for the supply of the goods or completion of the works, the time schedule for the provision of the services;
- (d) the suppliers' qualification criteria and assessment procedures;
- (e) the provision which cannot be amended at a later stage, stating that: either the suppliers may participate in the procurement procedure irrespective of their country of residence, or the circle of participants is limited according to Article 15 Paragraph (1);

- (f) the procedure and address for obtaining the tender documents;
- (g) the fee payable for the tender documents, if applicable;
- (h) the currency and procedures to pay the fee for the tender documents;
- (i) the language(s) of the tender documents;
- (j) the address and deadline for the submission of bids.

Article 36. *The conditions regarding the offer of tender documents*

The Contracting Authority shall offer the tender documents to the suppliers on the terms and conditions specified in the invitation to participate in the tender (RFP). The fee which the Contracting Authority might choose to request for the tender documents may include only the costs of their multiplication and delivery to the suppliers. The tender documents shall be offered free of charge to the Association of the Blind, the Association of the Handicapped, the Association of the Deaf, the production facility of the National Psychiatric Hospital, the penitentiary system institutions and other disadvantaged parties.

Article 37. *The tender documents*

The structure and contents of the tender documents shall be established in the standardized documents approved by the Government.

Article 38. *The explanations regarding the tender documents and their modifications*

(1) Any supplier may request explanations regarding the tender documents from the Contracting Authority. The Contracting Authority shall provide an answer to any such request/inquiry, which is received prior to the deadline for the submission of the bids, within the term which gives the supplier the possibility to submit his bid on time. Without indicating the source of the inquiry, the Contracting Authority shall provide the respective explanations to all suppliers who have obtained the tender documents.

(2) The Contracting Authority may modify the tender documents prior to the deadline for the submission of the bids at its sole discretion or as the reaction to the inquiry to provide explanations received from a supplier. The information on any such modifications shall be communicated without delay to all suppliers who have been offered the tender documents by the Contracting Authority, thus enabling them to take it into account during the preparation of the bids, and the Agency.

(3) In the case a meeting of the suppliers is convened, the Contracting Authority shall produce the meeting minutes, including the inquiries and requests expressed at the meeting to provide explanations in connection with the tender documents and the answers to such requests, without indication of the source. The Contracting Authority shall distribute the meeting minutes without delay to all suppliers who have obtained the tender documents, thus enabling them to take the document into account during the preparation of the bids, and notify the Agency accordingly. The meeting minutes shall form an integral part of the tender documents and due reference shall be made to their respective provisions where the Contracting Authority intends to introduce modifications or amendments.

Article 39. The bid submission terms and conditions

- (1) The Contracting Authority shall specify the venue and the deadline for the submission of bids, indicating the exact day and time. This deadline shall be established in conformity with Article 26.
- (2) Where the Contracting Authority provides explanations or introduces amendments to the tender documents or where it convenes a meeting of the suppliers, the deadline for the submission of the bids may be postponed, if necessary, to give the suppliers sufficient time to take into account the relevant explanation, amendment or provisions of the meeting minutes.
- (3) The Contracting Authority may extend the period for the preparation of the bids at its sole discretion prior to the deadline for the submission of the bids.
- (4) The Contracting Authority shall give the notice regarding the extension of the preparation period without delay to all suppliers who have obtained the tender documents and the Agency.
- (5) The bids shall be submitted in writing, stamped, in a sealed envelope. The Contracting Authority must issue the supplier a receipt indicating the day and time of receiving the respective bid.
- (6) The bids received by the Contracting Authority after the deadline for the submission of the bids shall be returned to the respective suppliers unopened.

Article 40. The bid validity term, amendments and withdrawal

- (1) The bid shall be valid for the term specified in the tender documents.
- (2) Prior to the expiry of the bid the Contracting Authority may request the bidder to extend its validity term. The Bidder may:
 - (a) refuse to comply with the request, retaining the right to withdraw the guarantee deposited for his bid;
 - (b) accept the request, either extending the validity term of the guarantee deposited to secure the bid or providing a new bid guarantee to cover the extended bid validity term. The bidder which does not extend the validity term of the guarantee deposited to secure the bid or provide a new bid guarantee shall be deemed to reject the request to extend the bid validity term.
- (3) Unless the tender documents provide otherwise, the bidder may amend or withdraw the bid prior to the deadline for the submission of bids, without losing the right to withdraw the guarantee deposited for his bid. Such amendment or a notice regarding the withdrawal of the bid shall be valid provided it is received by the Contracting Authority prior to the deadline for the submission of bids.

Article 41. Alternative bids

- (1) The bidder may submit additionally other bids termed as "alternative bids" – solely provided the bid assessment criterion is "*the most advantageous bid in technical and economic terms*". Only alternative bids may deviate to a certain extent from the requirements specified in the documentation regarding the development and submission of bids.
- (2) The Contracting Authority must specify the minimum obligatory requirements in the tender documents, with which the alternative bids should comply in order to be considered. Therefore where

the Contracting Authority does not intend to permit the submission of alternative bids, it must state that ban expressly in the RFP/invitation to tender.

- (3) The Contracting Authority may not reject an alternative bid solely on grounds that:
 - (a) it is prepared using technical specifications differing from those given in the TOR – provided the bidder is able to show that the proposed solution ensures the adequate fulfillment of all technical requirements put forward by the Contracting Authority;
 - (b) in the case where it can be declared a winning bid:
 - the public procurements contract for the goods, which should be awarded in the tender, is transformed in the public procurements contract for the services; or
 - the public procurements contract for the services, which should be awarded in the tender, is transformed in the public procurements contract for the goods.

Article 42. *The guarantee to secure the bid and the execution of the contract*

- (1) In case of the procurements of goods or works, the supplier shall submit the bid together with the guarantee securing the bid.
- (2) The tender documents may specify the requirements of the Contracting Authority regarding the admissibility of the party issuing the guarantee to secure the bid or, if applicable, the party backing the guarantee; the form, terms and conditions of the guarantee to secure the bid. The Contracting Authority may not reject the bid on the grounds that the guarantee is issued by a foreign resident, where it is not contrary to the legislation, provided the bid guarantee and the guarantor comply with the requirements specified in the tender documents.
- (3) Prior to the submission of the bid, the supplier may request the Contracting Authority to confirm the admissibility of the guarantor issuing the bid guarantee or the party backing it. The Contracting Authority shall respond to such request promptly. Such confirmation may not prevent the Contracting Authority from the rejection of the bid guarantee, if the guarantor or the party backing the guarantee becomes insolvable or loses its credibility.
- (4) The Contracting Authority shall specify the requirements in the tender documents regarding the guarantor, format, amount and other basic requirements of the guarantee securing the bid as well as the requirements to the supplier submitting the bid guarantee for the following situations:
 - (a) the supplier withdraws or amends the bid after the deadline for the submission of the bids;
 - (b) the winning bidder refuses to sign the procurement contract;
 - (c) the bidder does not agree to correct mistakes in calculations;
 - (d) the winning bidder refuses to secure the execution of the contract upon acceptance of his bid or does not fulfill any of the prerequisites for signing of the procurement contract, which are specified in the tender documents.

(5) The Contracting Authority may refrain from the request to the supplier to provide a bid guarantee in the case of the procurements of goods with the total estimated value below MDL 200,000 and works with the total estimated value below MDL 1,000,000. Where the Contracting Authority requests such guarantee, the supplier shall comply with the provisions of this Article.

(6) The amount of the bid guarantee should not exceed three per cent of the value of the submitted bid.

(7) The Contracting Authority may not claim payment on the bid guarantee and it shall return the bid guarantee without delay upon occurrence of any of the below circumstances:

- (a) expiry of the bid guarantee validity term;
- (b) signing of the procurement contract and provision of the guarantee securing its execution, where such guarantee is required by the tender documents;
- (c) suspension of the tender procedures without awards of the procurement contract;
- (d) withdrawal of the bid prior to the bid submission deadline - unless the tender documents prohibit expressly such withdrawal.

(8) In the procurement of goods and works, the Contracting Authority shall request the bidder to provide the security for the contract execution at the time of its signing.

(9) Contracting Authority shall specify the requirements in the tender documents regarding the guarantor, format, amount and other basic terms and conditions of the required guarantee securing the execution of the contract.

(10) Prior to the provision of the guarantee securing the execution of the contract, the supplier may request the Contracting Authority to confirm the admissibility of the proposed guarantor issuing the guarantee or the party backing it. The Contracting Authority shall respond to such request without delay.

(11) In the procurements of goods to the estimated value below MDL 200,000 and works to the estimated value below MDL 1,000,000 the Contracting Authority may refrain from the request to the bidders to provide a guarantee securing the execution of the contract. If the Contracting Authority chooses to request such guarantee, it shall comply with the provisions of this Article.

(12) The amount of the guarantee securing the execution of the contract may not exceed 15 per cent of the nominal value of the procurement contract.

Article 43. Opening of the bids

(1) Opening of the bids and their subsequent examination, evaluation and comparison shall fall within the powers and responsibility of the Contracting Authority.

(2) The bids shall be opened on the day and at the time specified in the tender documents as the deadline for the submission of the bids or on the day and at the time specified as the new deadline in case of an extension, in the venue and according to the procedures established in the tender documents. The bidders or their representatives may participate in the opening of the bids.

(3) The name and contact details for each bidder whose bid is opened and the bid price shall be notified to the parties present at the bid opening procedure and, upon their request, to those who were

absent or had no representative at the opening procedure; and the respective information shall be entered in the report on the procurement procedure.

Article 44. Examination, evaluation and comparison of the bids

(1) The examination, evaluation and comparison of the bids shall be performed in the absence of the bidders or their representatives. To facilitate the examination, evaluation and comparison of the bids, the Contracting Authority may request the bidder to provide additional explanations in writing regarding the bid. No amendments, including price amendments, shall be allowed for the purpose to bring the bid in compliance with the requirements with which it did not comply initially. The Contracting Authority shall correct only arithmetic errors found in the bid during its examination, notifying the bidder accordingly without delay.

(2) The Contracting Authority may consider the bid as complying if it contains immaterial deviations from the provisions of the tender documents, errors or omissions which can be corrected without affecting the essence of the bid. Any deviation of that kind shall be given quantitative assessment – to the extent possible – and taken in consideration during the evaluation and comparison of the bids.

(3) The Contracting Authority shall not accept the bid where:

- (a) the bidder does not comply with the qualification requirements;
- (b) the bidder does not agree to correct an arithmetic error;
- (c) the bid does not comply with the requirements specified in the tender documentation;
- (d) the corruptive acts are shown to take place.

(4) The Contracting Authority shall evaluate and compare the submitted bids to determine the winning bid, using the procedures and criteria described in the tender documents. It may not use any criteria not mentioned in the tender documents.

(5) The winning bid shall be the bid found to be the most advantageous economically according to Article 45.

[Art. 44 par. (6) repealed by PL 267 of 23.12.11, MO 13-14/13.01.12 art. 32, in force 13.01.12]

(7) Where the bid prices are expressed in two or more currencies, the prices of all bids shall be recalculated in a single currency according to the exchange rate specified in the tender documents in order to facilitate the evaluation and comparison of the bids.

(8) If the bidder does not fulfill the requirement of the Contracting Authority to re-confirm the qualification data for the conclusion of the contract, the bid shall be rejected and the second best bid shall be selected as winner from among the remaining valid bids. However, the Contracting Authority may reject all other bids.

(9) The information regarding the examination, evaluation and comparison of the bids may not be disclosed to the bidders or other persons not involved formally in those procedures or in the determination of the winning bid.

Article 45. *The bid most advantageous in the economic terms*

The bid most advantageous in the economic terms shall be the bid identified as the winning bid based on the following criteria:

- (a) in the case of public procurement contracts for the goods: price, delivery terms, payment terms, profitability, quality, aesthetic and functional characteristics, technical characteristics, availability and costs of service maintenance, technical assistance;
- (b) in the case of public procurement contracts for the works: the proposed quality, price per unit of bidder's products upon completion of the works, total price, the bidder's experience, etc. The significance of the price in the total bid evaluation shall be no less than 80 per cent;
- (c) in the case of public procurement contracts for the services: the proposed quality, price per unit of bidder's products, total price, the bidder's experience, etc. The significance of the price in the total bid evaluation shall be no less than 40 per cent;

Article 46. *A bid with an abnormally low price*

(1) A bid with an abnormally low price shall mean a bid to sell the goods, perform works or provide the services at a price which is significantly lower in comparison with the bids of other bidders, where:

- (a) the Contracting Authority finds errors during the check and recalculation of price components, which are the reason for indication of an abnormally low bid price;
- (b) the bidder is unable to demonstrate any special access or technology or more advantageous market conditions, which enable him to offer an abnormally low bid price;
- (c) the bidder does not comply with the technical requirements specified in the TOR.

(2) The Contracting Authority must provide the supplier the possibility to justify the abnormally low bid price.

Article 47. *Bid acceptance, awards and conclusion of the procurement contract*

(1) The Contracting Authority shall give the bidder a written notice on bid acceptance within three calendar days from the day of acceptance.

(2) The tender documents may contain a requirement to the bidder submitting the winning bid to sign the procurement contract within 20 calendar days after the contract is forwarded to the winner for signing. The Agency may suspend the conclusion of the contract in the cases specified in Article 74.

(3) The contract shall be considered concluded on the day it is signed by the parties and it shall become effective upon its registration in due course as provided for in this law. The time necessary for such registration should be indicated in the tender documents. If the contract is not registered within that time, the validity of the bid or bid guarantee. A guarantee might be requested in that case unless the Contracting Authority and the bidder agree otherwise in writing.

(4) If, upon expiry of the term provided for in Paragraph (2), the bidder who has received the bid acceptance notice does not sign the procurement contract or present the requested security for the execution of the contract, the Contracting Authority may reject the bid and select another winning bid from among the remaining valid bids. However, the Contracting Authority may reject all other bids according to the provisions of Article 29 of this law.

(5) The Contracting Authority shall notify the other bidders participating in the tender about the conclusion of the procurements contract within 10 calendar days upon its conclusion, indicating the name and contact data of the supplier to whom the contract was awarded and the contract price.

SECTION 3. THE CLOSED TENDER

Article 48. The conditions for holding a closed tender

(1) The Contracting Authority may hold a closed tender where the goods, works and services are of complex nature or available to a large number of suppliers operating at the market.

(2) The closed tender shall be held according to the rules similar to those for an open tender, subject to the application of pre-selection (short-listing) procedures preceded by the publication of a request for proposals (invitation to the participation in pre-selection).

(3) The invitation to the participation in the short-listing shall indicate:

- (a) the procedures and venue for the acquisition of pre-selection documents;
- (b) if applicable, the fee payable for the pre-selection documents;
- (c) the currency and procedures for paying the fee for the pre-selection documents;
- (d) the language(s) for the production of pre-selection documents;
- (e) venue and deadline for the submission of applications for pre-selection.

Article 49. Pre selection (short-listing) procedure

(1) The Contracting Authority shall perform pre-selection (short-listing) of the candidates to identify qualified suppliers prior to the submission of the bids according to the provisions of Article 16.

(2) In case of applying the above procedures the Contracting Authority shall offer a package of the pre-selection documents to each supplier applying for them based on the invitation to participate in the pre-selection and paying the requested fee for such documents. The fee may include only the costs of producing the documents and their delivery to the suppliers. Such documents shall be offered free of charge to the Association of the Blind, the Association of the Handicapped, the Association of the Deaf, the production facility of the National Psychiatric Hospital, the penitentiary system institutions and other disadvantaged parties.

(3) The pre-selection documents shall comprise:

- (a) the instructions regarding the preparation and submission of the applications for pre-selection;

- (b) summary description of the principal terms and conditions of the procurement contract which would be concluded based on the results of the procurement procedures;
- (c) the detailed list of the documents to be presented by the supplier to confirm his qualifications;
- (d) the information on the procedures, venue and deadline (exact day and time) for the submission of applications for pre-selection;
- (e) any other requirements regarding the preparation and presentation of applications for the pre-selection and pre-selection procedures, which the Contracting Authority establishes in conformity with this law, other laws and regulations and the standardized documents;
- (f) the information specified in Article 35 Paragraph (1) letters (a), (e) and (h), and, if known, the information specified in letter (j) of the above Article.

(4) The Contracting Authority must respond to all inquiries of the suppliers regarding the obtained pre-selection documents no later than 10 calendar days prior to the deadline for the submission of applications for the pre-selection. The Contracting Authority must respond within a reasonable term so that the supplier has the possibility to submit his application on time. The response to each inquiry, which might be of interest for the other suppliers, should be distributed to all suppliers obtaining the pre-selection documents from the Contracting Authority, without indicating the source of the inquiry.

(5) The pre-selection criteria shall be specified in the pre-selection documents. Only those criteria may be applied for the evaluation of the qualifications demonstrated by each supplier applying for pre-selection.

(6) When the pre-selection results are registered, the Contracting Authority shall communicate them promptly to each supplier applying for the pre-selection and present the list of all short-listed (pre-selected) suppliers upon request of any public applicant. Only short-listed suppliers may participate in the subsequent procurement procedure.

(7) The Contracting Authority might notify each supplier who was not pre-selected, upon the latter's request, about the grounds for such decision; however, the Contracting Authority shall have no obligation to substantiate its decisions.

SECTION 4. OTHER PUBLIC PROCUREMENT PROCEDURES

Article 50. The framework agreement

(1) The framework agreement shall mean an agreement concluding between one or more Contracting Authorities on the one part and one or more suppliers on the other part; the subject matter of such agreement is to establish the terms and conditions for the contracts which would be awarded during a certain period, in particular prices and, if applicable, the estimated quantities.

(2) Concluding a framework agreement, the Contracting Authorities shall observe at all stages the requirements provided for herein till the awards of the contracts based on the respective framework agreement. The parties to the framework agreement shall be selected via application of the awarding criteria as per Article 45.

(3) The contracts based on the framework agreement shall be awarded in compliance with this law and the Regulations approved by the Government.

Article 51. *The competitive dialogue*

(1) The competitive dialogue is an open tender procedure held in two stages, which should be applied in the case of extremely complex procurement contracts; any supplier may apply to participate and the Contracting Authority conducts a dialogue with the candidates admitted to such tender with the aim to produce one or more alternative solutions satisfying the requirements; the selected candidates are invited to submit their bids based on the results of the dialogue.

(2) A public procurement contract is considered to be "*particularly complex*" where the Contracting Authority is not able to define due to objective reasons:

- (a) the technical means which could satisfy its needs and objectives; and/or
- (b) the legal and/or financial nature of the project.

(3) In the first stage of the procedure, the tender documents should request the suppliers to submit bids without price quotations and to provide the information regarding the technical characteristics, quality and other specifics of the goods, works and services, the contract terms and conditions, the supplier's professional and technical skills and qualifications, if necessary.

(4) At this stage of the procedure the Contracting Authority may start negotiations with any supplier whose bid is not rejected.

(5) In the second stage of the procedure, the suppliers participating in the first stage whose bids are not rejected should submit their final bids, quoting prices. The Contracting Authority may exclude or amend any initial provision of the tender documents or add new characteristics or criteria according to this law. The information about such exclusion, amendment or modification to the tender documents shall be communicated to the suppliers in the invitation (RFP) to present their final bids. The suppliers not willing to submit final bids may withdraw from the tender procedure at this stage without losing the right to withdraw their bid guarantees. The final bids shall be evaluated and compared to determine the winning bid.

Article 52. *The negotiation procedures*

(1) Contracting Authority may award public procurement contracts using the negotiation procedure, upon publication of the invitation to participation, in the following cases:

- (a) in the case incorrect or unacceptable bids are submitted in the open/closed tender or a competitive dialogue, provided the initial terms and conditions of the contract are not modified substantially. The Contracting Authority may choose not to publish an invitation to participation where the negotiation process includes all bidders or only the bidders which comply with the quality criteria required for the selection and which have submitted bids complying with the formal requirements of the contract awarding procedure at an earlier stage in the open/closed tender or a competitive dialogue;
- (b) in the exceptional cases, which involve the goods, works or services whose nature or the involved risks do not permit to estimate the total price in advance;

- (c) in the sphere of the services, including intellectual services, such as the development of the works design - to the extent the contract specifications cannot be established with sufficient exactness due to the nature of the services to be provided in order to make possible the contract awards via selection of the most advantageous bid according to the regulations for the open/closed tender procedure;
- (d) in the case of the public procurement contracts for the works - where such works are performed solely for the purposes of R&D or trials rather than to generate profits or cover the R&D costs.

(2) In the cases provided for in Paragraph (1) the Contracting Authority shall negotiate with the bidders based on the bids submitted by them in order to adapt them to the requirements specified in the invitation to participation, TOR and the eventual supplementary documents and to identify the most advantageous bid.

Article 53. Procurements from a single source

(1) In the case of the public procurement contracts for works, goods and services, the Contracting Authority may procure from a single source where:

- (a) no adequate bids or candidates are identified during the open tender or negotiations unless the initial contract terms and conditions are amended substantially;
- (b) to the extent strictly necessary - where the terms for an open tender or negotiations with the RFP publication cannot be observed for reasons of the utmost urgency as result of the events, which could not be foreseen reasonably by the relevant Contracting Authority. The situations referred to in order to justify the utmost urgency may in no case be imputable to the Contracting Authorities;
- (c) for technical or creative reasons, for reasons connected with the protection of exclusivity rights or any other objective reasons the required goods, works and services are available only from a single supplier, or a single supplier holds the priority rights to them and there exists no alternative, or the supplier is established by the law.

(2) In the case of the public procurement contracts for goods, the Contracting Authority may procure from a single source where:

- (a) the respective goods are produced solely for the purposes of the R&D or trials. This provision shall not apply to large-scale industrial production performed to determine the product's commercial viability or to amortize the R&D costs;
- (b) the public procurements contract involves supplementary deliveries performed by the initial supplier with the aim either to replace partially the goods or installations currently in use, or to extend the existent goods or installations, if the change of a supplier would require the Contracting Authority to acquire technical material with different characteristics, resulting in the incompatibility or disproportionate technical problems in operation and maintenance; as a general rule, the duration of such contracts or renewed contracts may not exceed three years;
- (c) the goods to be procured are subject to quotas and acquired at the raw materials exchange;

- (d) the public procurements contract involves the acquisition of the goods on particularly advantageous terms and conditions – either from a supplier who winds up his business, or from the curators or liquidators of a bankrupt business, or in any other process of similar nature in accordance with the national legislation or regulations.
- (3) In the case of the public procurement contracts for services, the Contracting Authority may procure from a single source where the respective contract results from competition and must be awarded according to the applicable rules to the winner or one of the winners in such competition. In the latter case all winners in the competition should be invited to participate in the negotiations.
- (4) In the case of the public procurements contracts for works and services, the Contracting Authority may procure from a single source:
- (a) supplementary works or services which are not covered by the initial cost estimate or the initial contract and which have become necessary as result of an unexpected situation to make possible the provision of the above works or services covered thereby, provided the contract is awarded to the supplier executing the respective works or services, where:
- the respective supplementary works or services cannot be segregated for technical or economic reasons from the initial contract without creating a major inconvenience for the Contracting Authority; or
 - the respective works or services, notwithstanding the possibility of their segregation from the initial contract, are absolutely necessary to complete the contract. The aggregate value of the contracts awarded for supplementary works or services may not exceed 30 per cent of the total value of the initial contract;
- (b) new works or services, which consist in the repetition of similar works or services awarded by the same Contracting Authority to the supplier under the initial contract, provided the respective works or services are in conformity with the initial project and form part of the subject of the initial contract awarded in an open or closed tender;
- (c) if during the procurement procedure the Contracting Authority receives a single bid in response to the RFP, and it is not feasible to hold a new tender.
- (5) The possibility of using the procedure mentioned in Paragraph (2) Letter (b) and Paragraph (4) letters (a) or (b) shall be announced at the time of launching the RFP for the first project, and the Contracting Authority shall take into account the total estimated value of continuing the works or services. In the above cases, the procedure described in Paragraphs (1) – (4) may be used only within three years upon conclusion of the initial contract.
- (6) The procedures for the implementation of procurements from a single source shall be established in the Regulations approved by the Government.

Article 54. *The request for price quotations*

- (1) The Contracting Authority may award contracts via requests for price quotations for the procurements of goods, works and services, which should comply with pre-defined specifications, provided the estimated value of the procurements does not exceed MDL 200,000 for goods and services and MDL 1,000,000 for works.

(2) The Contracting Authority may set other requirements in addition to the price, which would be considered during the assessment of price quotations. In such cases the request for price quotations shall indicate each such requirement and its relative significance in the ultimate assessment.

(3) Each supplier may submit a single price quotation without the right to change it subsequently. The Contracting Authority may not negotiate any such quotations with the bidder.

(4) The winning quotation shall be the quotation, which satisfies all requirements at the lowest price.

(5) The Contracting Authority shall publish a notice of intended procurement in the Public Procurement Bulletin and on the public procurement web page Prior to the procurements of goods and services with the estimated value in excess of MDL 50,000 and in the procurements of works with the estimated value in excess of MDL 100,000.

[Art. 54 par. (5) amended by the PL 267 of 23.12.11, MO 13-14/13.01.12 art. 32, in force 13.01.12]

(6) The procedures for the implementation of procurements via request for price quotations shall be established in the Regulations approved by the Government.

Article 55. The dynamic procurements system

(1) The dynamic procurements system shall mean a totally electronic procurements process to procure the current consumption goods generally available at the market, whose characteristics satisfy the requirements of the Contracting Authority. The dynamic system is limited in time and open throughout the process to any supplier, which satisfies the selection criteria and submits a preliminary bid in line with the requested requirements.

(2) To implement a dynamic procurements system, the Contracting Authorities shall respect the requirements regarding the open tender at all stages thereof till the award of the contracts within the respective system. All bidders should be invited and admitted in the system who satisfy the selection criteria and have submitted a preliminary bid complying with the TOR and the eventual supplementary documents. Preliminary bids may be improved at any moment, provided they remain in compliance with the TOR.

(3) To apply the dynamic procurements system, the Contracting Authorities shall:

- (a) publish a RFP specifying that the contract would be awarded within a dynamic procurements system;
- (b) specify in the TOR, among other things, the nature of the scheduled procurements which form subject of the respective system and other necessary information on the procurement system, the electronic equipment used as well as the connection arrangements and technical specifications;
- (c) offer free, direct and total access via electronic communication channels to the TOR and all supplementary documents for the period from publication of the RFP to the expiry of the system's application term and the RFP should specify the Internet address where the respective documents can be accessed.

(4) The Contracting Authorities may apply the dynamic procurements system to award public procurement contracts on terms and conditions provided for by this law and according to the procedures established in the Regulations approved by the Government.

Article 56. An electronic auction

- (1) An electronic auction shall mean a repeating process which involves the use of electronic equipment to present in the descending order new prices and/or new values of certain bid elements, which are used upon the first complete evaluation of the bids, permitting their classification with automated evaluation methods. Certain contracts for services and works, whose subject matter is intellectual activities, such as work designs, may not form the subject matter of the electronic auction.
- (2) The Contracting Authorities may use electronic auctions to award public procurement contracts on terms and conditions provided for by this law and according to the procedures established in the Regulations approved by the Government.
- (3) The Contracting Authorities holding an electronic auction shall mention that fact in the invitation for participation and in the standardized documents.
- (4) Prior to the launch of an electronic auction, the Contracting Authority must perform an initial integrated assessment of the bids in conformity with the specified criteria for the contract awards.
- (5) Contracting Authority must invite all bidders which have submitted complying bids to submit new price quotations and/or, as the case may be, new values for the bid components. The invitation is communicated electronically to all such bidders simultaneously.
- (6) The invitation must indicate the starting day and time of the electronic auction as well as any information necessary to perform individual connection to the electronic equipment used in it.
- (7) The Contracting Authority may not start the electronic auction earlier than in two working days from the day on which the invitations are communicated.
- (8) The electronic auction is held in several successive rounds.
- (9) During each round of the electronic auction the Contracting Authority must communicate simultaneously to all bidders at least the information required by them to determine at any moment their respective positions in the rating.
- (10) The electronic auction comes to an end in any of the following situations or combination thereof:
 - (a) At the exact moment in time specified in advance and communicated to the bidders in the invitation for participation in the auction;
 - (b) After a certain number of the auction rounds held according to the exact schedule specified in advance and communicated to the bidders in the invitation for participation in the auction;
 - (c) When no more new price quotations and/or values are submitted satisfying the requirements regarding the minimum auction step (difference in bid prices); in that case the invitation to participate in the auction must specify the deadline for the completion of the electronic auction after the submission of the last bid.
- (11) The Contracting Authority must award the public procurements contract on the terms of Article 65 based on the results achieved on completion of the electronic auction.

Article 57. Procurements in the case of the social housing construction schemes

(1) A special contract awards procedure may be used in the case of the public procurement contracts connected with the design and construction of social housing ensembles where the scope, complexity and the estimated duration of the works require that planning be based from the very beginning on very close collaboration in the workgroup comprised of the persons representing the Contracting Authorities, experts and contractors performing the works and responsible for the execution of the works; such procedure should ensure the selection of the contractor to perform the works, who is best able to integrate in the workgroup.

(2) The Contracting Authorities must include the most detailed description of the works in the RFP - so that interested contractors could assess realistically the project to be implemented - and the qualitative and organizational selection criteria as well as economic, social, legal, financial, technical and personal requirements which all bidders should satisfy.

[Art. 58 repealed by PL 124 of 18.06.10, MO 121-123/16.07.10 art. 380]

Article 59. Cancellation of the results of procurement procedures

(1) The Contracting Authority may cancel - on its own initiative or upon the Agency's request based on the results of performed checks - the procedures to award the public procurements contract, provided such decision is made prior to the day of notifying the results of applying the public procurements procedure and in any case prior to the conclusion of the contract where:

- (a) it was impossible to ensure a satisfactory competition level, i.e. the number of bidders is lower than the minimum required number of bidders set by the law for each procedure;
- (b) none of the bidders satisfies the qualification requirements provided for in the documentation on the production and submission of the bids;
- (c) in the case of the public procurements of works, the bid price is more than 20 per cent higher than the estimated value of the works calculated by the Contracting Authority according to the established procedures;
- (d) only non-complying bids were submitted, i.e. the bids:
 - submitted after the deadline for the submission of bids;
 - produced and presented not in compliance with the requirements of the documentation regarding the production and submission of bids;
 - quoting prices in the financial proposal, which are evidently not the result of free competition and which cannot be reasonably justified;
 - containing such proposals regarding the contract terms and conditions, which are obviously disadvantageous for the Contracting Authority;
 - with such price quotations included in the financial proposal, where every quoted price exceeds the amount allocated for the implementation of the respective public procurements contract;
- (e) exceptional circumstances affect the procedure of awarding the public procurements contract or make the conclusion of such contract impossible;

- (f) a corruptive act is shown and confirmed by the definitive court ruling.
- (2) The procurement procedures may be declared null and void solely by the Agency after the communication of the results of applying the public procurements procedure and after the conclusion of the contract in the cases provided for in Paragraph (1).
- (3) The decision to cancel the results of the public procurements procedure shall not create any liability on the part of the Contracting Authority or the Agency to the participants in the public procurement procedure, excepting the return of the guarantee securing the bid and the execution of the contract.
- (4) The Contracting Authority must notify all participants in the public procurements procedure in writing within two days after the cancellation about the termination of the obligations created for the both parties on the force of submitting the bid as well as the grounds for the cancellation.

CHAPTER VII

THE SPECIFICS OF THE PUBLIC PROCUREMENTS FOR ADVISORY SERVICES

Article 60. *The attraction of bids for advisory services*

- (1) In the case of any doubts as to whether the subject matter of the procurements should be categorized as goods or as services, the procurements shall be deemed to be the procurements of goods.
- (2) The Contracting Authority shall attract the bids for services or applications for pre-selection via announcement in the Public Procurements Bulletin and in the international circulation mass media. The announcements shall specify the Contracting Authority's name and address, provide a brief description of the requested services, the procedures for obtaining of the RFP documents for the services or pre-selection documents and the fee payable for such documents, if applicable.
- (3) The Contracting Authority shall not apply the provisions of Paragraph (2) where:
 - (a) the requested services are available to a limited number of suppliers, provided a RFP is given to all such suppliers;
 - (b) the costs of examination and evaluation of a large number of bids are disproportionably high as compared to the price of the requested services, provided the bids are attracted from a sufficient number of suppliers to ensure efficient competition;
 - (c) a direct request is the sole method to ensure confidentiality or is required by the national interests, upon conditions provided for in Letter (b).
- (4) Skilled consultants may be invited for the procurement of advisory services.
- (5) The Contracting Authority shall offer the suppliers RFP documents for the services or pre-selection documents – either according to the procedure and requirements specified in the announcement or directly to the suppliers in the cases covered by Paragraph (3). The fee, which the Contracting Authority may collect for the RFP or pre-selection documents, may include only the costs of their production and delivery to the suppliers. If pre-selection procedures are initiated, the Contracting Authority shall deliver the RFP to each pre-selected (short-listed) supplier, who has paid the application fee.

Article 61. *The RFP for the advisory services*

The RFP structure and contents in the case of advisory services shall be established in the standardized documents approved by the Government.

Article 62. *The evaluation criteria for the bids for advisory services*

The Contracting Authority shall approve the evaluation criteria in respect of the bids for advisory services as well as the relative significance of each criterion and the procedures for its application. Such criteria shall be communicated to the suppliers in the RFP and they shall refer to:

- (a) the qualification data, experience, reputation, reliability, professional and managerial skills of the supplier in general and specifically of his staff involved in the provision of the services;
- (b) bid efficiency;
- (c) bid price, including the auxiliary or related expense;
- (d) the national defense and security needs.

Article 63. *The procedure for the selection of the advisory service bids*

(1) If the Contracting Authority decides to use the procedure of selecting the bids for advisory services without negotiations, it shall establish certain requirements regarding the quality and technical characteristics of the bids according to the criteria other than price specified in the RFP, and evaluate each bid for compliance with those criteria, using the procedure described in the RFP. The winning bid shall be the bid with the optimum combined value (the highest number of awarded points) according to the criteria mentioned in Article 62.

(2) Where it is decided to apply the advisory services selection procedure via consecutive negotiations with the bidders, the Contracting Authority shall:

- (a) establish the level of requirements according to Paragraph (1);
- (b) invite the bidder with the highest number of awarded points to the negotiations regarding the bid price according to Paragraph (1);
- (c) notify the bidder about the termination of negotiations, should it be found impossible to achieve an acceptable price;
- (d) invite the bidder with the second highest number of awarded points to the negotiations; if the contract is not concluded with that bidder either, the remaining bidders shall be invited to the negotiations in the descending order of the points awarded to them till the contract is concluded or till all bids are rejected.

Article 64. *Confidentiality*

(1) The Contracting Authority shall ensure the confidentiality of the bid examination.

(2) The negotiations held shall be confidential. None of the parties participating in the negotiations may disclose any information regarding the issues discussed during the negotiations to a third party without consent of the counterparty.

**CHAPTER VIII
THE PUBLIC PROCUREMENT CONTRACT
PROCUREMENT PROCEDURE REPORT**

Article 65. The principles of awarding a public procurements contract

The awards of the public procurement contract shall be based on the following principles:

- (a) observance of the law, order, public morale and professional ethics during the assessment and award of the contract;
- (b) selection of the bid most advantageous in technical and economic terms;
- (c) ensuring the environment protection and support of social programs in the process of executing the contract.

Article 66. Preferences in the awards of public procurement contracts

For the purposes of awarding public procurement contracts preference shall be given to the suppliers who have a direct or indirect objective to encourage professional training on the job, creation of jobs for the unemployed, young people and persons with integration problems, reduction of the unemployment rates, professional training for the unemployed and the young people, environment protection, improvement of labor conditions and labor safety, rural development and professional training in agriculture, protection and support of small and medium-sized enterprises (SME businesses), including during the contract execution period and their involvement as sub-contractors. Such available preferences must be specified in the invitation for participation (RFP).

Article 67. The public procurements contract

- (1) The public procurements contract must be concluded according to the procurement procedures provided for in this law, for the total amount allocated for the procurements for the year in line with the procurements plan.
- (2) During the procurement procedures via tender the winner's notification and the conclusion of the procurement contract shall be performed according to Article 47.
- (3) In the case of using any other procurement method, the bidders shall be informed about the terms and conditions of concluding the procurements contract at the time of giving them a request for their proposals.
- (4) It shall not be allowed to introduce any amendments in the details of the winning bid, to set new requirements to the winning bidder or to involve any bidder other than the one who has submitted the bid most advantageous in economic terms at the time of concluding the procurement contract.
- (5) The term(s) for the execution of the contract established reasonably according to the Contracting Authority's needs shall be determined with account of the complexity of the scheduled procurements, the anticipated scope of sub-contracts and the time required realistically to produce, stock and transport the goods from the supplier's facilities or to provide the services.
- (6) The terms and conditions for the execution of the contract shall not include any clauses directly or indirectly discriminatory in their nature.

(7) Upon conclusion, the procurement contract shall be submitted to the Agency for examination and registration within five days, accompanied with the documents confirming the implementation of the respective procurements procedure.

(8) The public procurements contract registered with the Agency shall be registered subsequently with one of the State Treasury offices. The contracts not registered in due manner shall have no legal effect.

[Art. 67 par. (8) amended by PL 108-XVIII of 17.12.09, MO 193-196/29.12.09 art. 609, in force 01.01.10]

Article 68. Sub-contracts

In the terms of reference the Contracting Authority may request the bidder to indicate in his bid the parts of the contract scope which he intends to sub-contract to a third party and the proposed sub-contractors, including SME businesses and other sub-contractors, if applicable. Such details shall not result in any exemptions from the principal bidder's responsibility.

Article 69. The ban on the procurements fragmentation or increase

(1) Where the procurements are not fragmented initially, the Contracting Authority may not fragment the procurement by concluding separate contracts enabling it to apply a procedure different from the procurements procedure, which must be used in conformity with this law. The exception is the seasonal procurements of goods and services, which involve the conclusion of separate contracts for different periods of time. In the case of the procurements of goods, works and services with the implementation period above one year, the contract may be concluded for the total procurements, although its implementation should be ensured within the limits of annual allocations scheduled for the purpose and specified annually in the contract.

(2) The Contracting Authority may not increase the amount of the goods, works and services specified in the concluded contracts to avoid a new procurement, excepting the cases provided for in this law.

(3) It shall not be allowed the assignment of debt as well as to amend any part of the concluded contract or to introduce new terms and conditions, where such actions result in deviations from the terms and conditions of the bid, which are the reason for its selection, or to increase the contract value.

[Art. 69 par. (3) as stipulated in PL 267 of 23.12.11, MO 13-14/13.01.12 art.32, in force 13.01.12]

(4) In the case of the public procurement contracts providing for the continuous execution and concluded for a long term exceeding one year, it shall be allowed to adjust the value of the public procurement contract from time to time according to the procedure established by the Government in order to take into account the changes in prices for the cost items of the goods, works or services forming the subject matter of the contract.

(5) The supplier must observe unconditionally the provisions of the concluded contract, complying with the quality requirements and the established price. A breach or improper fulfillment of the contractual obligations shall result in the supplier's liability in conformity with the legislation and the provisions of the contract.

(6) The competent controlling authorities shall apply financial sanctions prescribed by the law to any supplier, irrespective of the latter's legal status, who amends unilaterally the terms and conditions of the procurements contract, or performs works, or provides the services not included in the contract, or increases the contract prices without adequate substantiation.

[Art. 69 par. (6) as stipulated in the PL 108-XVIII of 17.12.09, MO 193-196/29.12.09 art. 609, in force 01.01.10]

Article 70. The report on the procurements procedure

(1) The report on the procurements procedure shall be prepared by the Contracting Authority and submitted to the Agency within five days after the day of concluding the contract. The report shall include:

- (a) summary description of the goods, works and services for which the Contracting Authority has requested proposals;
- (b) the date and the registration number of invitations sent directly to the bidders, the names and contacts of the invited suppliers as well as the name and contacts of the bidder which is awarded the procurements contract and the contract price;
[Art. 70 par. (1) let. b) amended by PL 77 of 12.04.12, MO 103/29.05.12 art. 347]
- (c) the bidders' qualifications;
- (d) the bid price or the basis for its calculation, a summary description of the other essential terms and conditions of each bid and the procurements contract;
- (e) summary conclusions regarding the evaluation and comparison of the bids with account of using the preferential margin;
- (f) the respective decision with valid arguments substantiating the rejection of all bids, if applicable;
- (g) the grounds for choosing the respective procurement method - in the case of using a procurements procedure different from an open tender;
- (h) the decision and its grounds in the case of using a procurements procedure different from an open tender, where such procedure fails to achieve the conclusion of the procurements contract;
- (i) the reasons for the rejection in the case of bid rejection according to the provisions of Article 30;
- (j) the grounds for choosing the selection procedure in the case of the procurement of services;
- (k) explanation of the reasons for the application of the respective method in the case of using the procurement procedures requesting direct submission of bids for the services;
- (l) explanation of the reasons for the restrictions in the case of the procurement procedures where the Contracting Authority restricts the participation of suppliers;

- (m) summary of the received inquiries and requests to provide explanations regarding the pre-selection documents or tender documents, the respective responses and summary explanations for each amendment introduced in the above documents.
- (2) The information specified in Paragraph (1) Letters (a) and (b) shall be provided upon request of any party upon acceptance of the bid or completion of the procurements procedure which did not result in the conclusion of a procurements contract.
- (3) The information specified in Paragraph (1) Letters (c) to (h) and (m) shall be provided on the request of the suppliers who have submitted their bids or applications for pre-selection and upon acceptance of the bid or completion of the procurement procedure which did not result in the conclusion of a procurements contract. Excepting the cases where the request comes from the court, the Contracting Authority shall not disclose the information specified in Paragraph (1) Letters (c) to (e) and (m), if the disclosure of such information is contrary to the law and state interests, or if it might prejudice the lawful commercial interests of the parties or be harmful for fair competition.

CHAPTER IX SETTLEMENT OF DISPUTES AND LEGAL RESPONSIBILITY

SECTION 1. SETTLEMENT OF DISPUTES

Article 71. The right of appeal

- (1) Any supplier who believes that the Contracting Authority has injured the supplier's lawful rights during the procurements procedure because of the decision made or the procurements procedure applied with infringements of the law and resulting in the actual or threatening damage for the supplier, may challenge in due course provided for in this law the relevant decision made or the procedure applied by the Contracting Authority.
- (2) The subject of the appeal may not be:
 - (a) the choice of the procedure for the selection of the bids for advisory services;
 - (b) the restrictions on the participation in the procurements procedure provided for in Article 15 Paragraph (1);
 - (c) the decision to reject all bids;
 - (d) the lack of a reference to this law or other laws and regulations regarding the procurements procedure, or the lack of a note regarding the right of appeal.
- (3) Appeals regarding the RFP, invitations to tender and tender documents may be submitted prior to the opening of the bid envelopes by the Contracting Authority.

Article 72. Submission and examination of appeals

- (1) The Supplier may submit a substantiated claim to the Agency regarding the Contracting Authority's actions, decisions or applied procedures within 10 calendar days after it becomes aware of the circumstances which are the grounds for the appeal.
- (2) The Agency shall not examine claims submitted upon expiry of the term provided for in Paragraph (1) hereof.

- (3) The claim must be submitted in writing and it must specify:
 - (a) the supplier's complete name and the name and first name of its representative, the document (in copy) confirming the representative's authority, the registered office and contact details;
 - (b) the Contracting Authority's name, registered office and contact details;
 - (c) the essence of the claim and its grounds with indication of the claimant's lawful rights and interests injured during the procurement procedures;
 - (d) the list of the documents attached to the claim.
- (4) Based on the examination of the claim, the Agency may:
 - (a) initiate, if applicable, the procedure for settlement of the dispute in negotiation;
 - (b) accept the claim in its integrity or in part;
 - (c) reject the claim in its integrity or in part;
 - (d) request re-evaluation of the bids;
 - (e) take other measures to settle the dispute according to the law.
- (5) The dispute underlying the claim may be settled amicably, on the suggestion of the Agency and/or the supplier participating in the procurement procedures, with the invitation of all suppliers involved in the procedure of challenge. The amicable settlement of the dispute shall be formalized and confirmed via drawing of the respective protocol, which is signed by all participants.
- (6) Where the dispute is not settled amicably within 10 calendar days after registration of the claim according to the provisions of Paragraph (5) hereof, within 20 calendar days after submission of the claim the Agency shall issue a substantiated decision specifying the measures which must be taken to redress the situation in the case the claim is found valid in its integrity or in part.
- (7) The Contracting Authority shall be obliged to repair the damage incurred to the supplier due to the illegal actions confirmed by the definitive decision of the competent courts, illegal decisions or application of illegal procedures; however, the liability shall not include lost profits or missed opportunities to obtain benefits.

Article 73. Claim examination procedures

- (1) The Agency shall notify the Contracting Authority and all suppliers participating in the procurements procedure about the essence of the claim promptly upon its receipt.
- (2) The Agency may request from the Contracting Authority to submit within five working days all documents necessary for the examination of the respective claim and, if necessary, explanations in writing with comments to the submitted claim.
- (3) The supplier or the public authority whose interests are or might be injured by the claim may participate in the procedure. The supplier which has not participated in the claim examination procedure may not submit claims regarding similar issues at a later stage.

(4) The Agency shall leave the claim without examination and issue the respective decision in its respect where:

- (a) the claim is submitted upon expiry of the established term;
- (b) the claim does not comply with the requirements specified in Article 72 Paragraph (3).

(5) Where the claim does not comply with the requirements of Article 72 Paragraph (3), the Agency shall return the claim to the claimant and give him two working days to rectify the non-compliances. If the identified non-compliances are not rectified within the established term, the Agency shall leave the claim without examination and the claimant shall lose the right to submit a new claim.

(6) The Agency shall examine the claim and issue a decision regarding it within 20 working days after its submission, based on the submitted documents or their examination in an open meeting, with invitations given in writing to and the presence of at least the Agency's representative, the claimant, the Contracting Authority and, if applicable, the winning bidder. During the examination of the claim the Agency may invite experts in the relevant area to give their opinions in writing and/or orally at the meeting convened to examine the claim.

(7) Should any or the both parties to the dispute fail to appear at the announced meeting, the Agency may examine the claim and issue the respective decision based on the submitted documents.

(8) The Agency's decision shall be communicated within three working days after it is made to the claimant supplier and to any other supplier or public authority participating in the claim examination procedure. The claim and the decision shall be notified immediately to all the involved parties on condition of non-disclosure if such disclosure is contrary to the legislation or public interests or if it might injure the lawful commercial interests of the parties or fair competition.

(9) The examination of the claim shall terminate with the production of the respective protocol, where:

- (a) the claim is left without examination in the cases provided for in Paragraph (4);
- (b) the claim is withdrawn by the claimant;
- (c) the Contracting Authority accepts the claim as substantiated;
- (d) the Agency decides to accept or reject the claim;
- (e) the dispute underlying the claim is settled amicably as per Paragraph (5) Article 72.

(10) If the Agency fails to issue a decision within the established term or if the supplier is not satisfied with the decision, the latter may appeal to the competent administrative court, and the Agency's competence to settle the dispute shall be terminated thereupon.

Article 74. *Suspension of the procurements procedure*

(1) Upon receipt of the claim within the established term the Agency may order, acting upon on the request of the claimant supplier or on its own initiative, to suspend the conclusion/execution of the public procurements contract, if such claim is substantial and contains statements which are shown to confirm that:

- (a) the supplier would suffer damage without such suspension;
 - (b) there exists a probability to satisfy the claim;
 - (c) the suspension would cause no damage to the parties involved in the procurements procedure.
- (2) The Agency shall order the suspension as per Paragraph (1) till the examination of the claim is terminated for any of the reasons specified in Article 73 Paragraph (9). Upon expiry of the suspension term specified herein the Contracting Authority must conclude the public procurements contract according to the requirements specified in Article 47.
- (3) The suspension shall not apply where the Agency considers that urgent public interests, such as: national defense and security, operation of public institutions, provision of public services, require the continuation of the procurements.

SECTION 2. RESPONSIBILITY FOR THE INFRINGEMENT OF THE PUBLIC PROCUREMENT LAW

Article 75. The forms of responsibility

The infringements of the public procurements legislation may result in the disciplinary (including the financial), civil, administrative and penal responsibility according to the legislation in force.

[Art. 75 amended by the PL 77 of 12.04.12, MO 103/29.05.12 art. 347]

CHAPTER X CONCLUDING AND TRANSITIONAL PROVISIONS

Article 76. Coming into effect. Terminations. The Government's obligations

- (1) This law shall come into effect upon expiry of three months after its publication.
- (2) As soon as this law comes into effect the Law on the procurement of goods, works and services for the state needs No. 1166-XIII of 30 April 1997 shall cease to be effective.
- (3) The Government shall within six months after the publication of this law:
 - Submit suggestions to the Parliament regarding the actions needed to bring the other legislation in compliance with this law;
 - Bring its regulations in compliance with this law;
 - Ensure the development and approval of the regulations provided for in this law.

THE CHAIRMAN OF THE PARLIAMENT

Marian LUPU

Chisinau, 13 April 2007

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