**DRAFT August 2020**

Republic of Moldova

**Government**

**Decree** No. \_\_\_  
from \_\_\_\_\_\_\_

on approving the Regulation on electronic tendering procedure

for procurement of goods, services and works

via open tender

**REGULATION**

**on electronic tendering procedure**

**for procurement of goods, services and works**

**via open tender**

# GENERAL PROVISIONS

1. This regulation, to be known as the Regulation on electronic tendering procedure for procurement of goods, services and works via open tender (this Regulation), has as its subject-matter rules on conducting an open tender procurement procedure under article 51 - 53 of the Law on Public Procurement no. 131/2015 (**LPP**) within the MTender System. In connection with conducting an open tender this Regulation also provides for the use of electronic procurement documents, advertising and awarding a public procurement contract. This Regulation is intended to supplement the provisions of the LPP. In the case of any inconsistencies between the mandatory provisions of the LPP and this Regulation, the LPP shall prevail.
2. The terms used in this Regulation shall have the following meaning:

**Budgetary classification**– as defined by the Ministry of Finance Order no 209 from 24.12.2015, represents a unified system of codes that groups and systematizes budget indicators according to certain criteria, to ensure comparability, as well as methodological norms for their application;

**Budgetary line –** as defined by the Ministry of Finance Order no 209 from 24.12.2015, represents a combination of elements of the budgetary classification, expressed by a combination of codes, which express the budgetary indicators in terms of different aspects (revenue volumes, resources, expenditure limits, etc.);

**Contract Register** – an electronic online repository of information on public procurement contracts recorded in the MTender System, containing information on the complete life cycle of a public contract irrespective of its value and providing for public disclosure of public procurement contract information. Information about procurement procedures and public procurement contracts shall be automatically collected by the MTender System in accordance to the once-only principle. The once-only principle, as defined by the Government Decree no. 705/2018, means that once the information has been provided by the Registered User to the MTender System, this information shall be used throughout the electronic workflow without the necessity of it being inputted/inserted again.

**Contracting Authority –** a public body defined by article 13 of the LPP;

**Economic Operator** - may be resident or non-resident, a physical person or legal entity of a private or public law or association of such individuals or legal entities in conformity with article 16 of the LPP;

**Electronic Auction** - an online real-time electronic procurement technique utilized by the Contracting Authority to select the successful Tender, which involves the presentation by the Economic Operators of successively lowered quotation during several rounds in a scheduled period of time, and the automatic evaluation of these Tenders;

**Electronic Document -** information in electronic form, created, structured, processed, stored and / or transmitted by computer or other electronic devices, signed with electronic signature in accordance with the Law on Electronic Signature and Electronic Document no. 91/2014;

**ESPD (European Single Procurement Document) –** represents a self-declaration regulated by article 20 of the LPP as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the relevant economic operator fulfils the following conditions, qualification or selection requirements as provided in article 18 of the LPP.

**MTender networking electronic procurement platform** – an electronic procurement platform authorised and certified for networking with the central database unit of the MTender System and providing services supporting electronic tendering procedures for public procurement to Contracting Authorities or Economic Operators;

**MTender System** – as defined and regulated by the Government Decree no. 705/2018 on the approval of the technical concept of the MTender System, MTender represents a multi-platform networking Cloud-based informational and telecommunications electronic public procurement system hosted in the MCloud, including a web portal, central database unit and authorised networking electronic procurement platforms supporting electronic tendering procedures for public procurement;

**MTender web portal** – a single-window single-sign-on web portal owned and operated by the Ministry of Finance and accessible at the internet address <https://mtender.gov.md/> where public procurement information and the public contract register are accessible without a need to register;

**Procurement Officer –** a specialised member of the Working Group trained and authorised to access the MTender System to record decisions of the Working Group in relation to preparation and conducting of electronic tendering procedures and to submit for online publication on the MTender System relevant procurement notifications and documents, as appropriate for a public procurement procedure;

**Procurement Planning** – as defined by the Government Decree no. 1419/2016 on the approval of the Regulation on the Procurement Planning, represents an identification of public procurement contracts intended to meet the needs of goods, works or services for the entire budgetary year, reflected in the procurement plan of the Contracting Authority;

**Procurement Record** – a record of electronic public procurement procedure generated by the MTender System, including detailed information related to the subject matter of the public procurement contract, the Tender specifications and any documentation related to the award procedure for a contract. The Procurement Record shall be generated and signed solely as electronic documents and published online in the Contract Register for auditing purposes; no hard copies are required or accepted or shall be retained;

**Open Tender** - public procurement procedure regulated by the LPP and this Regulation, in which any interested Economic Operator can submit a Tender;

**Quotation** – represents the price or other values (non-price criteria) forming part of the Tender submitted by the Economic Operator within the electronic auction.

**Registered User** – person or persons who are representatives of Contracting Authorities or Economic Operators who upon acceptance of the MTender Terms of Use have identified and authenticated themselves by completing registration on the MTender networking electronic procurement platform, as defined by the Government Decree no. 705/2018 on the approval of the technical concept of the MTender System, and may have access to the MTender information and services.

**Responsive Tender** – represents the Tender that compromises all the documents requested in accordance with the published Tender Documents of the particular procurement procedure and is prepared and submitted following the instructions from the published Tender Documents of the particular procurement procedure.

**Tender** - the Tender defined by article 1 of the LPP, comprising the European Single Procurement Document (ESPD), Technical Proposal and Financial Proposal and any other document required and submitted by the registered user of the Economic Operator in the MTender System;

**Working Group** - a working group of specialists appointed by the Contracting Authority to conduct public procurement procedures in accordance with the Government Decree no. 667/2016 on approval of the Regulation on the activity of the Working Group;

Other terms used shall have the meanings as defined in the LPP, the Law on Electronic Commerce no. 284/2004 and the Law on Electronic Signature and Electronic Document no. 91/2014.

1. This Regulation establishes the legal basis for organizing and conducting an open tender procedure aimed at saving public money, streamline the procurement, meeting the needs of the Contracting Authorities and ensuring the wide participation of Economic Operators in public procurement procedures. ..
2. The Contracting Authority is responsible for awarding the public procurement contract via an open tender in compliance with the provisions of this Regulation, the LPP and other applicable regulations.
3. The public procurement contracts are concluded for one budgetary year. For a procurement whose execution period is longer than one year, the public procurement contract can be concluded for the entire procurement, but its execution is to be completed within the approved annual financial allocations provided for these purposes and specified in the public procurement contract.
4. All communications and exchanges of information pursuant to this Regulation shall be conducted electronically, in accordance with article 32 LPP, using the MTender System.

# CONDITIONS FOR INITIATING AN OPEN TENDER

1. The Contracting Authority may award a public procurement contract via an open tender provided that the estimated value of the procurement is equal or exceeds 200’000 lei for goods and services and 250’000 lei for works. The Contracting Authority may award a public procurement contract via an open tender even if the estimated value of the procurement is below the thresholds mentioned in the first sentence. If the Contracting Authority uses the Standard Tender Documents for open tender approved by the Ministry of Finance it shall be presumed that the Contracting Authority has chosen the open tender procedure even if the estimated value of the procurement is below the thresholds mentioned in the first sentence. For such procurement the LPP shall be applicable.
2. In conformity with article 2 (2) of the LPP a legal entity which does not qualify as a Contracting Authority shall use open tender, as regulated by the LPP and this Regulation, to procure works or services in case 50% from the value of these works or services are financed or subsidized by the Contracting Authority.
3. The estimated value of the public procurement shall be calculated in accordance with article 4 of the LPP.
4. The Contracting Authority shall not use open tender in a way so as to restrict competition.
5. The Working Group appointed by the Contracting Authority shall conduct open tender in the electronic tendering procedure through the MTender System and shall comply with the mandatory provisions of the LPP. The Procurement Officer shall be responsible for recording the decisions of the Working Group in the MTender System.
6. In accordance with articles 47 and 51 of the LPP, the Contracting Authority has discretion to choose between open tender or restricted tender as procurement procedures for awarding a public procurement contract. Nonetheless, it is recommended to use restricted tender only where there is a genuine need to prequalify Tenderers or where there is evidence that (after effective pre-procurement market engagement) the number of potential Tenderers is very high.

# INITIATION OF THE PROCUREMENT PROCEDURE

1. To initiate an open tender as an electronic tendering procedure, the Contracting Authorities shall access online their procurement plan on the MTender System, identify the relevant procurement in the procurement plan and its budgetary line and prepare the Contract Notice in the format prescribed by the MTender System. A public procurement contract can only be awarded via the open tender when this procurement method has been envisaged in the approved procurement plan of the Contracting Authority.
2. The Tender Documents shall be prepared following a standard form for the Tender Documents for the open tender approved by the Ministry of Finance. The Economic Operator is expected to examine all instructions, forms, terms, and specifications set in the Tender Documents. Failure to furnish all information or documentation required by the Tender Documents shall result in the rejection of the Tender, as appropriate
3. The Contract Notice shall contain all the information required by Annex 3 of the LPP and in the format approved by the Ministry of Finance.
4. The Contract Notice and the Tender Documents, approved by the Working Group or Procurement Officer, in accordance with the Government Decree no. 667/2016 on approval of the Regulation on the activity of the Working Group, shall be submitted for publication on the MTender System following the electronic submission procedures specified in the MTender Terms of Use. If the procurement is financed by the public budget, the MTender System shall publish the Contract Notice upon electronic online confirmation by the Treasury of the Republic of Moldova that relevant information regarding the procurement plan, CPV code, budget and budgetary line are correct. The relevant Contract Notice not confirmed by the Treasury will be rejected and shall be revised and resubmitted by the Contracting Authority.
5. When published, the Contract Notice and the Tender Documents shall be made available to all interested parties by accessing the MTender System and shall remain accessible online, on a free of charge basis, at least for the entire duration of the electronic tendering procedure, until a valid public procurement contract is registered in the public contract register, or the procedure has been terminated or annulled. In case of discrepancies in information provided in the Contract Notice and the Tender Documents, the Contract Notice shall prevail. In case of discrepancies in information included in the Contract Notice, the CPV code and budgetary classification, provided in the Ministry of Finance Order no 209 from 24.12.2015, shall prevail.
6. The deadline for submission of Tenders shall be sufficient to allow an Economic Operators, both national and international, to prepare and submit the Tenders before its closure. The Contracting Authority shall be responsible for setting the deadline for submission of Tenders.
7. In the case of open tender conducted through the MTender System where the value of the public procurement contract to be awarded, is less than the thresholds stipulated in article 2 (3) of the LPP, the period between the publication of the Contract Notice in the MTender System and the closing date for the submission of Tenders shall be at least 15 calendar days.
8. In case of open tender conducted through the MTender System in which the value of the contract to be awarded is equal to or higher than the thresholds stipulated in article 2 (3) of the LPP, the period between the date of publication of the Contract Notice in the MTender System and sending it for publication in the Official Journal of the European Union and the deadline for submission of the Tenders has to be of at least 30 calendar days.
9. If the Contracting Authority published a Prior Information Notice concerning the public procurement contract to be awarded in accordance with articles 28 and 47 (5) of the LPP, it has the right to reduce the period set out under point 20 by up to 15 calendar days.
10. The minimum deadlines for submission from points 18 to 20 are valid only if the Contracting Authority publishes in electronic format on MTender System the Prior Information Notice if applicable, the Contract Notice and the Tender Documents and allows direct and unrestricted access to them for the Economic Operators and accepts electronic submission of Tenders via the MTender System
11. Public procurements in which the value of the contract to be awarded is equal to or higher than the thresholds stipulated in article 2 (3) of the LPP should not take longer than 120 calendar days, measured from publication of the Contract Notice on MTender System until the awarding of the contract, except in the case of complex procurements.

# CLARIFICATIONS AND AMENDMENTS OF THE TENDER DOCUMENTS

1. The published Contract Notice and the Tender Documents shall be kept up-to-date and reflect any response to a request for clarification or amendment to either the Contract Notice or the Tender Documents made by the Contracting Authority.
2. The Contracting Authority shall respond to any request for clarification, provided that the request for clarification is received within the period provided in the Contract Notice published on the MTender System and in accordance with article 35 of the LPP. The Contracting Authority’s response is published on the MTender System immediately but without identifying its source. If the response is not published within the clarification period provided in the Contract Notice, the electronic tendering procedure shall be suspended by MTender System until all outstanding clarifications are published by the Contracting Authority.
3. The Contracting Authority may only amend the Tender Documents in the period for clarifications by issuing an addendum. Any addendum issued shall be part of the Tender Documents and shall be published at the same MTender System address as the original Tender Documents. When an addendum is issued, the Contracting Authority shall extend the deadline for the submission of Tenders to give reasonable time for Economic Operators to take an addendum into account in preparing their Tenders, by granting an extension to the deadline for submission of Tenders in accordance with article 41 (1) of the LPP.

# PREPARATION AND SUBMISSION OF TENDERS

1. An Economic Operator may be resident or non-resident, a physical person or legal entity of a private or public law or association of such individuals or legal entities in conformity with article 16 of the LPP. All Economic Operators shall be treated equally without any discrimination in the whole tendering procedure. Economic Operators may associate and form a consortium for the purpose of submitting a tender. In the case of a consortium:
   1. unless otherwise specified in the Tender Documents, all associates shall be jointly and severally liable; and
   2. the consortium shall nominate a representative who shall have the authority to conduct all businesses for and on behalf of any and all the associates of the consortium during the tendering procedure and, in the event the consortium is awarded the public procurement contract, during contract execution.
2. To participate in the open tender the interested Economic Operators are requested to register online on the MTender System, accept the MTender Terms of Use and prepare and submit the Tender before expiry of the Tender submission deadline. No supportive documentary evidence shall be required for registration on the MTender system. The Tender shall be submitted in the form of an electronic document and Economic Operators are required to follow the instructions provided by the MTender Terms of Use.
3. Tenders submitted outside of the MTender System will be rejected. Incomplete Tenders shall be rejected. The MTender System shall inform the Registered User of the Economic Operator that the Tender has been successfully uploaded by sending a notification by email providing the date and time the Tender has been recorded on the MTender System.
4. The Tender shall comprise the completed electronic documents requested in the Tender Documents.
5. Until expiry of the submission deadline the Registered User of the Economic Operator may withdraw or modify their Tender by submitting a new Tender. All Tenders submitted by the Economic Operator will be recorded but only the most recent Tender will be opened by the MTender System for evaluation. The opening of Tenders shall take place electronically in the MTender System only at the time specified in the Contract Notice. No one shall have access to the Tender before their opening.

# ELECTRONIC AUCTION

1. The Contracting Authority shall have discretion in deciding to use electronic auction to award the public procurement contract. The electronic auction shall be conducted in accordance with article 63 of the LPP and this Regulation.
2. In the case of procurement of works through open tender, the electronic auction may be conducted only if the technical specifications and requirements are drafted with sufficient precision.
3. When the public procurement is divided in lots, the electronic auction is conducted for each lot separately.
4. In the open tender, the electronic auction shall be used with award criteria of lowest price, lowest cost or price and quality ratio and all award criteria shall have an associated evaluation formula to be automatically evaluated by the MTender System.
5. The Contracting Authority shall set out in the Contract Notice the exact date, time and type of electronic auction. Only Economic Operators that have submitted a Tender shall be invited to register to participate in the electronic auction.
6. The MTender System provides for the following types of the electronic auction:
   1. with rounds, where the Economic Operators compete based on a number of rounds where each Economic Operator registered for an auction can provide a single quotation for each round. In this case, the Contract Notice shall provide the following information:
      1. number of rounds;
      2. duration of each round;
      3. duration of interval between rounds;
      4. minimum bid difference where the award criterion is the lowest price or lowest cost;
   2. time based, when Economic Operators compete during specified time periods, where each Economic Operator registered for an auction can provide any number of quotations within the specified time period. In this case the Contract Notice shall provide the following information:
      1. time periods for bidding;
      2. recourse to automated extensions, if applicable, providing for duration of the extensions, the time before the end of the bidding period during which, if a quotation is received, an extension will be triggered; and the maximum number of extensions;
      3. minimum bid difference only when the award criterion is the lowest price or lowest cost;
   3. combination of time and rounds, when Economic Operators compete based on rounds with certain time periods for bidding, where each Economic Operator registered for an auction can provide any number of quotations within each round. In this case the Contract Notice shall provide the following information:
      1. number of rounds;
      2. duration of each round;
      3. interval between each round;
      4. recourse to automated extensions, if applicable, providing for duration of the extensions, the time before the end of the bidding period during which, if a bid is received, an extension will be triggered; and the maximum number of extensions;
      5. minimum quotation difference only when the award criterion is the lowest price or lowest cost.
7. The MTender System shall launch the electronic auction at the scheduled date and time as specified in the Contract Notice, provided at least two Economic Operators submitted a Tender and registered for the electronic auction. If one Tender has been submitted, the electronic auction will not take place and the Working Group will decide whether to proceed with the evaluation of the Tender and award the Contract or to repeat the procurement procedure.
8. If the Contracting Authority decides to postpone the launch of the electronic auction, the Contracting Authority shall amend the Contract Notice and stipulate a new date and time of opening of the electronic auction. Once launched, the electronic auction cannot be suspended or prematurely terminated.
9. During the electronic auction, the Economic Operator shall be allowed to view in real time the status of the electronic auction. The MTender System shall display the code of the electronic auction, the type of the electronic auction used, the currency of tenders, the instructions for participants, the current best Tender and the current ranking of Tenders of the Economic Operators listed under codes obtained during registration for the electronic auction, and, if applicable, the time left to the end of the round, the possibility of automatic extension along with the number of possible extensions.
10. The electronic auction conducted on the MTender System shall be closed:
    1. at the date and time indicated in the Contract Notice;
    2. when no further new prices or new values which meet the requirements concerning minimum differences are received within the bidding period/s stipulated in the Contract Notice;
    3. when the number of rounds in the electronic auction stipulated in the Contract Notice have been completed.
11. When the electronic auction closes, the MTender System shall generate and publish on the MTender System the final ranking of Tenders for the completed electronic auction in order to notify the Tenderers about the winner of the electronic auction, ranking and detailed information of the Tenderers who participated in the electronic auction, and if applicable, ranking information per round.
12. The final quotation submitted by the Tenderer during the electronic auction cannot be amended. The Working Group is permitted to request clarifications when there is an objective reason to consider, in conformity with article 70 of the LPP, that the submitted price is abnormally low.
13. Electronic auction can be with and without fixed budget. In an electronic auction with a fixed budget, only best price-quality or cost-quality ratio award criteria shall be used. In an electronic auction with a fixed budget, the electronic auction shall be based on qualitative and quantitative criteria provided that they have an associated evaluation formula which shall allow automatic ranking of tenders in each round. The initial price for the electronic auction is set at the estimated value of procurement as published in the Contract Notice. In electronic auction without fixed budget the auction shall be based on price and/or qualitative and quantitative criteria provided that they have an associated evaluation formula which shall allow automatic ranking of tenders in each round.

# CONFLICT OF INTERESTS AND UNFAIR COMPETITION

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1. During the award procedure of the public procurement contract, the Contracting Authority shall have the obligation to take all necessary steps to avoid any situations liable to cause of a conflict of interests and/or unfair competition. Before commencing the evaluation of the Tenders in line with the methodology provided in this Regulation, each member of the working group has the obligation to sign a declaration of confidentiality and impartiality in the format and in accordance with the Regulation on the activity of the working group no. 667/2016, by which he undertakes to comply unconditionally with the provisions of LPP.
2. The Economic Operator has the obligation to reveal before the Contracting Authority via any textual means any existing or potential conflict of interest that may upset the equal treatment and transparency principles provided in Article 7 LPP.
3. The persons who participate directly in the process of verifying and evaluating the Tenders, shall not have the right to be a Tenderer, associated Tenderer or subcontractor and shall be excluded from the award procedure.
4. The individual or the legal entity who provided opinions, suggestions or recommendations to the Contracting Authority at the market consultation stage or participated in the elaboration of the tender documents also as a part of consulting services shall have the right, as an Economic Operator, to be a Tenderer, associated Tenderer or subcontractor, but only in case its’ involvement in the elaboration of the tender documents is not liable to distort competition. In such a case, the Contracting Authority shall include in the Tender Documents the relevant information which has been submitted in the context of the individual or legal entity's participation in the elaboration of the Tender Documents or resulting from that participation.
5. An Economic Operator may be considered to have a conflict of interest with one or more parties in this tendering procedure, if:
6. it is in a position to have access to information about or influence the decisions of the Contracting Authority regarding this tendering procedure; or
7. an Economic Operator, its affiliates or parent organisation has participated in the feasibility or design stages of a project, that Economic Operator, its affiliates or parent organisation shall not be eligible to participate in a tendering procedure for the public procurement contracts involving the supply of goods, works or services, including architectural or engineering services, for the project, unless it can be demonstrated that such participation would not constitute a conflict of interest; or
8. an Economic Operator participated as a consultant in the preparation of the Tender Documents; or
9. an Economic Operator or any of its affiliates has been hired, or is proposed to be hired, by the Contracting Authority for the supervision of the Contract.
10. The Contracting Authority shall take all remedies possible to avoid any existing or potential conflict of interest situation in conformity with the principle of proportionality. The exclusion of an Economic Operator due to a conflict of interest shall be allowed if there is no less restrictive means of avoiding the conflict of interest and ensuring compliance with the principle of equal treatment and fair competition.
11. An Economic Operator shall avoid any behaviour liable to distort competition and the equal treatment principle. The Economic Operator may be considered liable to distort competition and the equal treatment, if:
    1. they have controlling associates in common; or
    2. they receive or have received any direct or indirect subsidy from any of them; or
    3. they have the same legal representative for purposes of this tendering procedure; or
    4. they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the tender of another Economic Operator in relation to this tendering procedure; or
    5. an Economic Operator participates as an Economic Operator or an associate in a consortium in more than one Tender in this tendering procedure. Participation as an Economic Operator or an associate in a consortium in more than one Tender will result in the disqualification of all Tenders in which it is involved. However, this does not limit the inclusion of the same subcontractor in more than one Tender. For the purpose of this provision, a subcontractor is not deemed to be participating in the tendering procedure;
12. The scope of the provision from point 52 is to avoid situations when the Economic Operator, via its controlling undertakings, submits two Tenders circumventing the rule in the Tender Documents that forbid submission of alternative tenders. Thus, the list from point 52 is not exhaustive.
13. It is not generally prohibited for related undertakings to submit offers in a public procurement procedure provided that they were submitted independently from each other. Nonetheless, Tenderers are obliged to disclose the links between them to the Contracting Authority immediately after they become, or should have become, aware of this.
14. Submitted Tenders should be autonomous and independent. The Contracting Authority shall reject tenders that are coordinated or are the result of a concerted practice.
15. The Contracting Authority that acquaints itself with objective evidence calling into question the autonomous and independent nature of a Tender is obliged to examine all the relevant circumstances having led to the submission of the tender concerned in order to prevent and detect the elements capable of vitiating the tendering procedure and remedy them, where appropriate, requesting the parties to provide certain information and evidence.
16. In case the Contracting Authority, after the examination of direct and indirect evidence, concludes that there are objective and consistent evidence that the related Tenderers which form a single economic unit have submitted coordinated or concerted Tenders are to be rejected as submitted in violation with the principle of equal treatment.

# RULES APPLICABLE TO EXCLUSION GROUNDS

1. The grounds for exclusion of an Economic Operator are set forth in article 19 of the LPP. The Contracting Authority shall exclude an Economic Operator:
2. that has been sentenced in the past five years for criminal offences set in paragraph (1) of article 19 of the LPP.
3. that has been in past three years in one of the situations set in paragraph (3) letter (c) to (g) of article 19 of the LPP.
4. that falls under the grounds for exclusion set in paragraph (3) letter (a), (b) and (h) of article 19 of the LPP.
5. The Contracting Authority shall exclude the Economic Operator under article 19 (1) of the LPP only for those criminal offences falling within the ambit of those listed in the referred paragraph and listed in the Tender Documents. In case of doubt, the Contracting Authority shall evaluate if the public interest which is protected by that criminal offence prevents the Economic Operator from participation in the public procurement based on a fair balance exercise.
6. The Contracting Authority shall not exclude the Economic Operator under art. 19 (2) of the LPP if that employee has no powers of representation, decision or control therein even if it holds a managerial position. Article 19 (2) of the LPP is applicable to the *de facto* administrators of the Economic Operator as it is regulated in art. 197 (1) of the Civil Code.
7. The five-year exclusion term under art. 19 (1) of the LPP commences from the date the conviction handed by the court becomes definitive. In cases of decisions issued by Moldovan courts, it becomes definitive under art. 466 of the Code on Criminal Procedure either after the appeal period or after its examination in appeal in case it was appealed.
8. The five-year exclusion term shall be expired at the date when the Tender produces legal effects to avoid being excluded under art. 19 (1) of the LPP.
9. Criminal convictions issued by courts of other states shall be considered by the Contracting Authority provided that the criminal offence falls within the list mentioned in art. 19 (1) of the LPP and is satisfied that all the guarantees of fair trial were observed.
10. The Contracting Authority shall not automatically exclude the Economic Operator that falls within the exclusion ground from art. 19 (3) letter (b) of the LPP. The Contracting Authority shall evaluate whether the exclusion is proportional considering the amount of the arrears and the possibility of self-cleaning defence under art. 19 (10) to (13) of the LPP. In cases where the amount of arrears is insignificant compared to the value of the tender the Contracting Authority is obliged to allow the Economic Operator a reasonable time to submit a proof that this amount has been settled.
11. Within the meaning of art. 19 (3) letter (g) of the LPP in corroboration with art. 19 (6) of the LPP the three-year exclusion period commences from the date the Decision of the Competition Council is adopted acknowledging that the Economic Operator has concluded agreements that restrict competition.
12. The Contracting Authority should assess on case by case basis whether the Economic Operator falls within the exclusion ground from art. 19 (3) letter (f) of the LPP. Professional misconduct may include abuse of a dominant position, essential non-performance of a past public procurement contract, condemnation for criminal offences not listed in art. 19 (1) of the LPP, serious breach of an intellectual property right which cast doubt on the professional integrity of the Economic Operator.
13. Each Economic Operator is entitled to the self-cleaning defence under art. 19 (10) to (13) of the LPP. Further, art. 19 (13) of the LPP shall be applicable only when the decision of the court expressly excludes the Economic Operator from participating in the public procurement as a separate sanction. Accordingly, a decision which convicts the Economic Operator for a criminal offence listed in art. 19 (1) of the LPP and which does not include such a separate sanction shall be entitled to the self-cleaning defence under art. 19 paragraphs (10) to (13) of the LPP.
14. In addition to the information provided in this chapter, the Contracting Authority may adopt additional supporting guidance for the Economic Operators on the application and enforcement of the provisions on exclusion and self-cleaning in the Tender Documents.

# RULES ON QUALIFICATION OF THE ECONOMIC OPERATOR

1. The rules on qualification of the Economic Operator refer to:
   1. The economic and financial capacity (points 71 to 78 from this Regulation);
   2. The technical and professional capacity (points 79 to 92 from this Regulation);
2. The Contracting Authority shall follow the provisions from chapter X concerning the temporal rules on submission of documentary evidence confirming the qualification of the Economic Operator.
3. With regard to economic and financial capacity, the Contracting Authorities may impose requirements ensuring that Economic Operators possess the necessary economic and financial capacity to perform the contract and may consist in:
   1. minimum yearly turnover, and/or
   2. a certain minimum turnover in the area covered by the contract
   3. the existence of a certain amount of available funds, which cannot exceed the value of the tender or lot, necessary for the tenderer to execute the public procurement contract
   4. Positive ratio between assets and liabilities as per last year submitted Financial Report
   5. The current liquidation rate not less than 100% in accordance with last year submitted Financial Report
   6. Other requirements.
4. The minimum yearly turnover that Economic Operators are required to have shall not exceed two times the estimated contract value, except in duly justified cases such as relating to the special risks attached to the nature of the works, services or supplies as indicated in the Tender Documents. Where the tender is divided into lots the turnover figure shall apply in relation to each individual lot. In case the public procurement contract is planned to be valid for more than one year, the Contracting Authority may limit the minimum yearly turnover rule by reference to the annual contract value.
5. Contracting Authorities may request Economic Operators to provide the information from point 71. for the past three years. There may be cases where Economic Operators such as SMEs that may have been recently formed are unable to provide the information from point 71 for the past three years. For such cases Contracting Authorities are urged to exercise flexibility when specifying the economic and financial capacity requirements in order to ensure a wider participation of Economic Operators in public tenders.
6. The qualification requirements related to economic and financial standing may be demonstrated by providing to the Contracting Authority a bank statement on the availability of a credit in the amount specified in the Tender Documents and the guarantee that this amount be available to the Tenderer throughout the entire performance of the public procurement contract.
7. Evidence that may demonstrate the Economic Operator’s economic and financial capacity can include but is not limited to:
8. appropriate bank statements;
9. financial reports;
10. statements regarding the overall turnover or, if appropriate, regarding turnover in the area covered by the contract;
11. With regard to qualification requirements relating to economic and financial capacity an Economic Operator may, where appropriate and for a particular contract, rely on the capacities of other Economic Operators, regardless of the legal nature of the links which it has with them.
12. In case the Tenderer wants to prove compliance with qualifications criteria, in accordance with the provisions of point 75, by invoking the reliance provided by another entity, the former shall be required to prove the reliance s/he benefits from by submitting in writing a firm commitment of the relevant person, executed in authentic form, by which that person confirms that s/he will make available to the Tenderer the invoked resources. The Contracting Authority shall not require the Economic Operator to submit the documents which demonstrate the economic and legal links between the latter and the entity on which he relies.
13. The Contracting Authority shall verify whether the entities on whose capacity the Economic Operator intends to rely fulfil the relevant qualification requirements and whether there are grounds for exclusion pursuant to Article 19 (1) and para. (3) letter a), c) - g) of the LPP.
14. To demonstrate that the entities on whose capacity the Economic Operator intends to rely meet the latter requirement, they should submit a separate ESPD together with the Tender. In such cases, chapter X of this Regulation shall be applicable. The Contracting Authority shall require that the Economic Operator replaces an entity which does not meet the relevant qualification requirements, or in respect of which there are grounds for exclusion as mentioned in chapter VIII of this Regulation.
15. The exact list of documents as means of proving the economic and financial capacity shall be set in the Tender Documents.
16. For the purpose of checking the technical and professional capacity of the Tenderers, the Contracting Authority has the right to request relevant information, depending on the specifics, quantity, volume and complexity of the subject-matter of the contract and only to the extent to which this information is relevant for the performance of the contract and is not available in databases of public authorities or third parties.
17. In case of public procurement of goods, in conformity with point 79 and provided that it is not available in databases of public authorities or third parties the Contracting Authority has the right to request the following information:
    1. a list of supplies performed during the past 3 years, with indication of values, periods of delivery and beneficiaries. Such supplies shall be confirmed by submitting certificates issued or countersigned by the beneficiary. If the beneficiary is a private customer and, for objective reasons, the Economic Operator is unable to obtain a certificate/confirmation from such customer, the past experience shall be proven by a self-declaration of the Economic Operator. For cases where the past experience is not relevant for the performance of the contract, Contracting Authorities are urged to exercise flexibility when specifying it in order to ensure a wider participation of Economic Operators in public tenders;
    2. a declaration concerning the technical equipment and the measures applied to assure quality and, if applicable, the study and research resources;
    3. concerning the technical personnel/specialised body it has available or whose participation commitment was obtained by the Tenderer, in particular to ensure quality control;
    4. certificates or other documents issued by the authorized bodies in this respect, attesting the conformity of goods, clearly identified by reference to relevant specifications or standards;
    5. samples (to the extent to which the submission thereof is justified), descriptions and/or photos whose authenticity can be proven in case the Contracting Authority requests it;
18. In case of public procurement of services, in conformity with point 79 and provided that it is not available in databases of public authorities or third parties the Contracting Authority has the right to request the following information:
    1. a list of the main similar provision of services during the past 3 years, including values, periods of provision and beneficiaries. Performance of such services will be confirmed by the submission of certificates/documents issued or countersigned by the beneficiary. If the beneficiary is a private customer and, for objective reasons, the Economic Operator is unable to obtain a certificate/confirmation from such customer, the past experience shall be proven by a self-declaration of the Economic Operator. For cases where the past experience is not relevant for the performance of the contract, Contracting Authorities are urged to exercise flexibility when specifying it in order to ensure a wider participation of Economic Operators in public tenders;
    2. a declaration concerning the technical equipment and the measures applied to assure quality and, if applicable, the study and research resources;
    3. concerning the technical personnel/specialised body it has available or whose participation commitment was obtained by the Tenderer, in particular to ensure quality control;
    4. concerning the education, professional training and qualification of the management staff, as well as of the persons responsible for the performance of the services works provided that these are not part of an award criteria;
    5. statement on the annual average persons employed and management staff numbers during the past 3 years;
    6. if applicable, information regarding the environmental protection measures the economic operator can apply during performance of the services contract;
    7. information regarding the machineries, installations, technical equipment the Economic Operator has available for the proper performance of the services contract;
    8. information regarding the part of the contract the Economic Operator potentially intends to subcontract;
19. In case of public procurement of works, in conformity with point 79 and provided that it is not available in databases of public authorities or third parties the Contracting Authority has the right to request the following information:
    1. a list of similar works executed during the past 5 years, accompanied by good execution certificates for the most important works, in which at least one contract of similar works is contained having the value not less than 75% of the value of the future contract, or the cumulated value of all the contracts executed in the last year of activity to be equal to or higher than the value of the future contract. The respective certificates of good execution shall indicate the beneficiaries, the value, the period and place of execution, as well as whether such works were executed in accordance with the professional norms of the industry and if were successfully completed. For cases where the past experience is not relevant for the performance of the contract, Contracting Authorities are urged to exercise flexibility when specifying it in order to ensure a wider participation of Economic Operators in public tenders;
    2. concerning the technical personnel/specialised body it has available or whose participation commitment was obtained by the Tenderer, in particular to ensure quality control;
    3. information regarding the education, professional training and qualification of the management staff, as well as of the persons responsible for execution of the works provided that these are not part of an award criteria;
    4. statement on the annual average persons employed and management staff numbers during the past 3 years;
    5. if applicable, information regarding the environmental protection measures the Economic Operator can apply during performance of the works contract;
    6. declaration concerning the machineries, installations, technical equipment the Economic Operator has available for the proper performance of the contract;
    7. information regarding the part of the contract the Economic Operator potentially intends to subcontract;
20. Where available, the experience shall be demonstrated by providing a list enumerating the number of awarded public contracts or concluded framework agreements, registered in the contract register of the State Treasury of the Republic of Moldova for the period of the last three years, if otherwise not mentioned in the Tender Documents.
21. An Economic Operator which intends to individually submit a tender may not rely on the experience of a group or consortium of Economic Operators of which it was a member, in connection with the execution of another contract, if it has not actually and directly participated in the performance of the latter.
22. With regard to qualification requirements relating to technical and professional ability an Economic Operator may, where appropriate and for a particular contract, rely on the capacities of other Economic Operators, regardless of the legal nature of the links which it has with them.
23. In case the Tenderer wants to prove compliance with qualifications requirements, in accordance with the provisions of point 85, by invoking the reliance provided by another entity, the former shall be required to prove the reliance s/he benefits from by submitting in writing a firm commitment of the relevant person, executed in authentic form, by which that person confirms that s/he will make available to the Tenderer the invoked resources. The Contracting Authority shall not require the Economic Operator to submit the documents which demonstrate the economic and legal links between the latter and the entity on which he relies.
24. The Contracting Authority shall verify whether the entities on whose capacity the Economic Operator intends to rely fulfil the relevant qualification criteria and whether there are grounds for exclusion pursuant to Article 19 (1) and para. (3) letter a), c) - g) of the LPP.
25. To demonstrate that the entities on whose capacity the Economic Operator intends to rely meet the latter requirement, they should submit a separate ESPD together with the Tender. In such cases, chapter X of this Regulation from the shall be applicable *mutatis mutandis*. The Contracting Authority shall require that the Economic Operator replaces an entity which does not meet the relevant qualification criteria, or in respect of which there are grounds for exclusion as mentioned in chapter VIII of this Regulation.
26. With regard to criteria relating to the professional capacities, Economic Operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these professional capacities are required. In such cases the entities on whose professional capacity the Economic Operator intends to rely shall be a subcontractor or an associate within the consortium.
27. The exact list of documents as means of proving the technical and professional capacity shall be set in the Tender Documents.

# EUROPEAN SINGLE PROCUREMENT DOCUMENT

1. The Economic Operator shall submit the European Single Procurement Document (ESPD), consisting of a self-declaration as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the Economic Operator fulfils the following conditions:
2. it is not in one of the exclusion situations referred to in Article 19 of the LPP;
3. it meets the relevant qualification requirements that have been set out by the Contracting Authority in the Tender Documents;
4. Whenever possible, the examinations of the ESPD Declaration shall be based upon information extracted via the MTender System from relevant available databases of the public authorities or third parties. Where this is not possible, determination shall be based upon supplementary documentary evidence and certificates submitted by the Economic Operator.
5. As a general rule the Contracting Authority will ask for supporting documents as evidence of the information contained in the ESPD Declaration as follows:
6. From the Economic Operator who has been successful in the electronic auction;
7. In tendering procedures without electronic auction, from the Economic Operator whose Tender has been declared as the most economically advantageous tender, provided that his tender meets the technical requirements and any other relevant tender condition;
8. In exceptional cases where this is necessary to ensure the proper conduct of the procurement procedure, the Contracting Authority may request Tenderers, before the stage specified in point 95, to submit all or part of the supporting documents as evidence of the information contained in the ESPD Declaration. In such cases the Contracting Authority has to justify its decision.
9. During the tendering procedure, as appropriate, the Contracting Authority shall determine to its satisfaction whether the Economic Operator that was selected as having submitted the most economically advantageous Tender meets the qualification requirements specified in Tender Documents, to award the public procurement contract. An affirmative determination shall be a prerequisite to qualify the Economic Operator and award the Contract to the Economic Operator.
10. A negative determination shall result in disqualifying the Economic Operator and rejecting its Tender, if submitted. In such cases the Contracting Authority shall proceed to the next ranked Tender for a similar determination of that Economic Operator’s qualification.

# SUBCONTRACTING

1. Subcontracting is as a general rule allowed and encouraged and may be limited only in exceptional cases. Subcontracting may be limited:
2. In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, Contracting Authorities may require that certain critical tasks be performed directly by the Tenderer itself or, where the tender is submitted by a consortium of Economic Operators, by a participant in that consortium;
3. When the Contracting Authority is unable due to objective reasons to scrutinise the subcontractor against exclusion grounds;
4. In the case envisaged in point 91;
5. In exceptional cases due to the nature of the task provided that the principle of proportionality and equal treatment is observed.
6. The Economic Operator has the obligation to disclose the part of the tender the Tenderer intends to subcontract and the names and addresses of subcontractors in his tender. If the Economic Operator indicates only the part of the Tender the Tenderer intends to subcontract without specifying the exact subcontractors, the Contracting Authority shall presume that these parts shall be performed directly by the Tenderer.
7. No subcontractor should be admitted to perform the public contract without the Contracting Authority’s approval, unless otherwise mentioned in the Tender Documents. Any change in subcontractors shall be subject to the Contracting Authority’s prior approval.
8. Only in exceptional circumstances is the Contracting Authorities allowed, due to the nature of the task, to cap the maximum percentage of work or service which an Economic Operator can subcontract. Quantitative restrictions of subcontracting should not be set *in abstracto* and without checking if the essential nature of the tasks in question justify it.
9. The Contracting Authority may set a minimum percentage of work or service which an Economic Operator shall be required to subcontract in order to support SMEs.
10. Unless the subcontractor supports at the same time the capacities of the Economic Operator, the subcontractor shall be obliged to demonstrate that he is not in one of the exclusion situations referred to in Article 19 of the LPP. The subcontractor shall provide a separate ESPD filling in Chapter II section A and B and Chapter III of the ESPD.
11. In open tender procedures no negotiations between the Contracting Authority and the Tenderers are allowed. The Tender shall be evaluated by the Working Group, as duly appointed by the Contracting Authority, and only on the basis of the electronic documents comprising a Tender submitted by the Economic Operator via the MTender System. In accordance with point 10 of the Government Decree no. 705/2018 on the approval of the technical concept of the MTender System, until the Tender submission deadline the Tenders are kept confidential and the MTender System shall not allow their disclosure. The MTender System shall disclose the content of the submitted Tender, in accordance with the sequence prescribed in points 111 and 112, only after the deadline for Tender submission and at the date and time mentioned in the MTender System Contract Notice.
12. The Working Group is recommended to examine and evaluate the tenders received within the tenders validity period with due account that the public procurement procedure may be contested to the National Complaint Settlement Agency in accordance with Article 83 of the LPP.
13. To facilitate automated evaluation supported by the MTender System, the evaluation process in the electronic tendering procedure is organised in accordance with MTender Terms of Use. All award criteria which have an associated evaluation formula shall be automatically evaluated by the MTender System. Award criteria which cannot be expressed in the evaluation formula shall be evaluated by the Working Group. The maximum score provided for the overall valuation of the Technical and Financial proposal shall be equal to 100 points in accordance with weights and award criteria provided in the MTender System Contract Notice.
14. All submitted Tenders shall be subjected to an arithmetical check by the Working Group, supported by automated services of the MTender System whenever possible. In the event that any Tender is identified as containing an arithmetical error, the Tenderer shall be requested to accept the Working Group’s correction of the evaluated price in accordance with methodology set out in the Tender Documents.
15. At the evaluation stage the Contracting Authority has the right to request from the Tenderer only written explanations concerning the content of its tender if the information and documents submitted are not clear. At the evaluation stage the Contracting Authority shall not accept any changes in the Tender.
16. The evaluation of tenders received in response to an open tender shall be undertaken by the Working Group in accordance with the following methodology:
    1. For open tender with an electronic auction, the Working Group shall only subject the Tender of the winner of the electronic auction to a detailed evaluation to determine whether the Tender is responsive to the Tender Documents. In electronic tendering procedures with award criteria of lowest price, lowest cost or price and quality ratio where award of the contract has been made with an electronic auction, the electronic documents of the Tender shall be unlocked only for the winner of the electronic auction. Upon completion of the electronic auction, the MTender System shall unlock and publish online the electronic documents of the Tender of the Economic Operator who submitted the winning tender in the electronic auction. In the event that this Economic Operator is disqualified or the Tender has been rejected by the decision of the Working Group as being substantially non-responsive to the Tender Documents, the Procurement Officer after registering this in the MTender System shall unlock for evaluation the next best ranked tender from the electronic auction and so forth until the winning Tender is determined to be responsive.
    2. In open tender without electronic auction, the Working Group shall only subject the Tender with lowest cost or price to a detailed evaluation to determine whether the Tender is responsive to the Tender Documents. In such cases the MTender System shall initially unlock and publish online the electronic documents of the Tender with the lowest price or the lowest cost. In the event that the Economic Operator that has submitted the lowest price or the lowest cost is disqualified or the Tender has been rejected by the decision of the Working Group as being substantially non-responsive to the Tender Documents, the Procurement Officer after registering this in the MTender System shall unlock for evaluation the next best ranked tender and so forth.
    3. In open tender with award criteria the best price-quality ratio or the best cost-quality ratio, and without the electronic auction to award the Contract, upon expiry of the submission deadlines the Working Group shall first evaluate the Tender that has been ranked first as a result of the Economic Operators self-evaluation when submitting the Tender via the MTender System. If the Tender is rejected as not being responsive to the Tender Documents or the Tenderers self-evaluation does not correspond to his submitted Tender, the Working Group via the Procurement Officer shall record this on the MTender System and shall unlock simultaneously for evaluation the next best ranked Tender and so forth until the winning Tender is determined to be responsive.
17. In all cases provided in point 111 of this Regulation and in the event that the winning Tender is determined to be responsive, the Working Group shall establish whether the Economic Operator meets the qualification requirements as provided in article 18 of the LPP and in chapters VIII, IX and X of this Regulation in accordance with Tender Documents. The Contracting Authority shall request the qualification documents only from the winning Tenderer as indicated in chapter X of this Regulation. The Contracting Authority shall request the qualification documents that confirm the statements made in the electronically signed and submitted ESPD Declaration. In the event that the Economic Operator is determined to be qualified, the Economic Operator shall be selected by the Working Group for contract award.
18. After completion of the evaluation, the Working Group shall publish the evaluation report on the MTender System containing all the details, minutes and information about the evaluation process.
19. The award decision of the Working Group including the evaluation report shall be published by the Contracting Authority on the MTender System to notify the Economic Operators about results of the electronic tendering procedure. The award decision shall have the content provided in Annex 3 to the LPP and in the format approved by the Ministry of Finance. Before signing the public procurement contract the Contracting Authority shall issue and publish on the MTender System a procurement record in line with article 78 of the LPP.
20. Unsuccessful Economic Operators who participated in the Tender, including the electronic auction if applicable, are entitled to submit a contestation following the notification of the award of the Contract. An Economic Operator who submitted a contestation within the prescribed period mentioned in article 83 (1) of the LPP shall publish a notification on the MTender System providing a reference number of the submitted contestation. In such cases, the Contracting Authority is not allowed to conclude the public procurement contract for a period of up to 20 calendar days, or until a decision of the National Complaint Settlement Agency concerning the contestation is published on the MTender System.

# PUBLIC PROCUREMENT CONTRACT ISSUANCE AND SIGNING

1. Upon expiry of the standstill period of 6 calendar days where the value of the public procurement contract to be awarded, is less than the thresholds stipulated in article 2 (3) of the LPP and 11 calendar days where the value of the public procurement contract to be awarded, is equal or higher than the thresholds stipulated in article 2 (3) of the LPP, as provided in article 32 (1) of the LPP, following the data of notification of the award of contract, subject to point 115, the Working Group shall generate the electronic document comprising the contract in accordance with the terms and conditions of contract set out in the Tender Documents for execution of the contract.
2. In cases where payments for the contract are to be made by the Contracting Authority through the Treasury System, written confirmation of the availability of funds with the Treasury of the Republic of Moldova for the contract must be received by the Contracting Authority prior to it signing the contract and sending it via the MTender System to the successful Tenderer.
3. When the contract is signed by the Contracting Authority, the MTender System shall inform the successful Tenderer that a contract has been issued and may be accessed online for their acceptance and signature.
4. Upon signature of the contract by the successful Tenderer, if applicable the MTender System shall submit the contract for electronic online registration by the Treasury of the Republic of Moldova. The Treasury shall register the contract within 24 hours from its receipt, provided the Contracting Authority and the Tenderer have furnished full and accurate contract information in the prescribed contract registration form. If the contract is not registered within 24 hours from the submission by the MTender system, it shall be considered rejected by the Treasury. The Treasury shall provide reasons for not registering the public procurement contract. If inaccuracies or mistakes in the contract registration form can be corrected, the Contracting Authority shall rectify the form and resubmit the contract for registration.
5. Starting from the registration of the contract, the Contract Register shall record management of the Contract, including publication of contract milestones and payment schedules, amendments and extensions of the contract, if applicable, receivables, performance guarantees, termination or completion of the contract and all payments processed under the Contract.