**DRAFT July 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** - a public or private entity entitled to participate in public tenders as defined by 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.

**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.
3. The Contract Notice shall specify in particular whether the Economic Operators shall tender for one or more lots and shall provide the Common Procurement Vocabulary (CPV) code related to the subject matter of the contract or lot and indicate that an electronic auction with rounds shall be used by the Contracting Authority to award the contract and it shall inform the Economic Operators of the number of rounds, duration of each round, duration of interval between rounds and the minimum tender difference where the award criterion is the lowest price or lowest cost.
4. The Contract Notice and the Tender Documents 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, 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. 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. At any time prior to the deadline for submission of Tenders, the Contracting Authority may amend the Tender Documents 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. 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. 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
2. 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.
3. The Tender shall comprise the completed electronic documents requested in the Tender Documents.
4. 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 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. In an electronic auction with a fixed budget, only best price-quality or cost-quality ratio award criteria shall be used. The initial price for the electronic auction is set at the estimated value of procurement as published in the Contract Notice. In such cases the competition within the electronic auction is based on qualitative and quantitative criteria.
14. In the electronic auction organised in rounds where Tenderers compete based on a number of rounds, each Economic Operator registered for an electronic auction can provide a single quotation for each round. The initial price for the electronic auction is set on the basis of the price of the Tender as submitted by the Economic Operator. In an electronic auction conducted in rounds, the initial price for the next round is set at the price submitted by the Economic Operator in the previous round; in each round of the electronic auction the Economic Operator who submitted the lowest price in the previous round is tendering last.

# EVALUATION AND AWARD

1. In open tender procedures no negotiations between the Contracting Authority and the Tenderers are allowed. The Tender shall be evaluated only on the basis of the electronic documents comprising a Tender submitted by the Economic Operator via the MTender System.
2. 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.
3. 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.
4. The evaluation of tenders received in response to an open tender shall be undertaken by the Working Group as duly appointed by the Contracting Authority 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 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 until the winning Tender is determined to be responsive.
   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.
5. In cases when the MTender System does not provide for fully automated qualification or evaluation of the technical or financial proposal in the tendering procedure, the Working Group shall conduct evaluation of Tenders offline and maintain appropriate records of the evaluation. In such cases, the Working Group shall manually undertake scoring of the Technical Proposals and Financial Proposal in accordance with the award criteria and their weightings set up by the Contracting Authority in the Contract Notice and Procurement Officer shall record results of evaluation of the technical proposal and financial proposal in the MTender System.
6. In all cases provided in point 49 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 in accordance with Tender Documents. The Contracting Authority shall request the qualification documents only from the winning Tenderer. 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.
7. 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.
8. 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.
9. Unsuccessful Economic Operators who participated in the Tender, including the electronic auction if applicable, are entitled to submit a complaint following the notification of the award of the Contract. An Economic Operator who submitted a complaint 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 complaint submitted. In such cases, the electronic tendering procedure shall be suspended for a period of 20 calendar days, or until a decision of the National Complaint Settlement Agency concerning the complaint is published on the MTender System.

# PUBLIC PROCUREMENT CONTRACT ISSUANCE AND SIGNING

1. Upon expiry of the standstill period as provided in article 32 (1) of the LPP following the data of notification of the award of contract, subject to point 53, 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. 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.