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Annex I Guidance Note

Prevention of corruption in procurement at various government levels, including good practices, lessons learned and challenges, and the effective use of technology to prevent, detect, deter and counter corruption in procurement

1. The Secretariat has produced this Guidance Note to assist States parties in providing information on initiatives and practices they have implemented regarding the topics under consideration at the fifteenth session of the Working Group on the Prevention of Corruption taking place from 28 August to 6 September 2024.
2. The Secretariat wishes to recall paragraph 12 of the report of the Working Group on Prevention on its second intersessional meeting, which noted that in advance of each meeting, States parties and signatories should be invited to share their experiences of implementing the provisions of the Convention under consideration, preferably by using the self-assessment checklist.
3. In furtherance of this, the Secretariat outlines a set of questions, based on those in the self-assessment checklist, which States parties and signatories may wish to use as a guide when providing information regarding the two topics under consideration. States parties and signatories are encouraged to view the questions below only as guidance and are free to provide any information believed to be relevant to the topics under consideration.

I - Information requested from States parties and signatories in relation to prevention of corruption in procurement at various government levels and the effective use of technology to prevent, detect, deter and counter corruption in procurement (arts. 9 and Conference resolution 10/9).

1. Please describe (cite and summarize) the measures/steps your country has taken (or is planning to take) to implement this provision of the Convention.

In relation to integrity in public procurement processes, States parties and signatories may wish to cite and describe measures that:

- Ensure the national procurement system is based on principles of transparency, competition and objective criteria in decision-making;
- Establishing in advance the conditions for participation, including selection and award criteria and tendering rules;
- Provide for sufficient time to potential tenders to prepare and submit their tenders and using by default an open tender procedure;
- Provide for transparent publishing of all procurement decisions including publishing the invitations to tender;
- Establish procedures, rules and regulations for review of the procurement process, including a system of appeal;

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- Provide for a thorough selection of personnel responsible for procurement, including screening procedures; as well as establishing a conflict of interest management system with declarations of interest and methods to resolve conflicts in particular cases;
- Put in place other administrative practices promoting integrity in procurement (such as the rotation of personnel, debarment procedures, etc.).

Ministry of Finance of the Republic of Moldova

The national field of public procurement is governed by Law No 131/2015 on public procurement and the secondary regulatory framework. Efficient use of public money and minimizing the risks of contracting authorities; transparency of public procurement; ensuring competition, combating anticompetitive practices in the field of public procurement and taking responsibility in public procurement procedures are some of the principles governing public procurement relations set out in Article 7 of the same law.

In accordance with Article 40 of Law No 131/2015, the contracting authority shall set out in the tender documentation any requirements, criteria, rules and other information necessary to ensure that economic operators are informed of the requirements or elements of the procurement, the subject matter of the contract and the manner in which the award procedure is carried out, including technical specifications or descriptive document, proposed contractual conditions, formats for submitting documents and information on the general obligations applicable.

At the same time, according to Art. 18 of Law No. 131/2015, the contracting authority applies proportionate qualification and selection criteria related to the subject matter of the contract, referring only to:

- a) the eligibility of the tenderer or candidate;
- b) ability to exercise professional activity;
- c) economic and financial capacity;
- d) technical and/or professional capacity;
- e) quality assurance standards;
- f) environmental protection standards.

Article 26 of Law No 131/2015 provides that the public contract is to be awarded to the tenderer who submitted the most economically advantageous tender. The most economically advantageous tender shall be determined by the contracting authority on the basis of the award criterion and the evaluation factors set out in the award documentation, namely:

- a) the lowest price;
- b) the lowest cost;
- c) the best "quality-price" ratio;
- d) the best "quality-to-cost" ratio.

In accordance with Article 36 of Law No 131/2015, the contracting authority is responsible for setting the deadline for submitting and receiving requests to participate and tenders. When setting the deadline, contracting authorities will take into account the complexity of the intended procurement, the area of early subcontracting and the usual time for sending tenders by mail from the country and abroad.

Law No 131/2015 on public procurement establishes the obligation for the contracting authority to publish in the Public Procurement Bulletin, where applicable in the Official Journal of the European

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Union, prior information notices, contract notices, award notices and contract amendment notices. In accordance with Article 78, the report on the public procurement procedure and the report on the cancellation of the procedure shall be drawn up by the contracting authority and published in the Public Procurement Bulletin no later than the date of conclusion of the contract or the date of issue of the decision to cancel the public procurement procedure.

Chapter X of Law No 131/2015 regulates the procedure for lodging appeals, the procedure for examining and settling appeals.

Any person who has or has had an interest in obtaining a public contract and considers that the action of the contracting authority in the public procurement process infringes his or her legally recognised right, as a result of which he or she has suffered or may suffer harm; has the right to challenge such an action in the manner established by this Law.

Appeals filed in public procurement procedures are examined by the National Agency for Solving Complaints, an autonomous public authority independent from other public authorities.

The contracting authority shall carry out its functions through a working group set up for that purpose within the available staff of the contracting authority, staff and specialists with professional competence in the field of public procurement. Depending on the subject-matter of the procurement, the contracting authority may set up one or more working groups. The work of the working group is regulated by Government Decision No 10/2021.

The member of the working group is obliged to sign a declaration of confidentiality and impartiality on his/her honour.

The rules to avoid conflicts of interest are laid down in Article 79 of Law No 131/2015.

2. Please describe (cite and summarize) the measures/steps your country has taken, if any (or is planning to take, together with the related appropriate time frame) to promote the effective use of technology to prevent, detect, deter and counter corruption in procurement.

States parties and signatories may wish to provide information on measures that:

- Utilize technology, such as online platforms for the distribution of information relating to public procurement and tenders as a way to prevent corruption, enhance transparency and ensure competition and objective criteria in procurement decision-making.

Information sought may, in particular, include the following:

- Description of any electronic system of public procurement, including, for example:
 - The means by which tender invitations are published;
 - The inclusion of all pertinent information on the award of contracts;
 - Ways in which applications may be submitted (including the use of electronic procurement platforms); and
 - Ways in which the criteria to be used for selection and award are publicized.
 - Any other ways, in which technology is used in the procurement process
 - Any other ways, in which technology is used to detect corruption or identify irregularities.

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When providing information on the use of technology to prevent, detect, deter and counter corruption in procurement, States parties and signatories may wish to refer to their submissions for the sixth meeting of the Working Group, held in 2015.

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The provisions of Law no. 131/2015 establish the obligation of communications and exchange of information, especially electronic filing, to be carried out by electronic means of communication. In order to ensure electronic communication, public institutions use the Automated Information System ‘State Register of Public Procurement’, which is an online electronic system, accessible via the internet at a dedicated address, used for the electronic application of public procurement processes, as well as for the publication of invitations/announcements at national level, the submission and evaluation of tenders and the award of contracts. The SIA RSAP electronic system ‘MTender’ provides all interested parties with access to information on public procurement procedures.

Also, as measures to prevent and combat corruption, we can mention:

- promoting and actively involving civil society in the monitoring of public procurement, by ensuring open access to data on procurement procedures available in the electronic system;
- the impossibility of substituting and modifying the tender documentation and the bids uploaded to the electronic system, these being stored on the cloud;
- the use of electronic signature and interconnection with the governmental electronic service MLog, ensures the logging of events in the process of using the electronic system;
- establishing the anti-corruption hotline at the Ministry of Finance, the Public Procurement Agency and the National Anti-Corruption Centre;
- publication on the website of public institutions of information on the decisions of the National Agency for Solving Complaints, annual procurement plans, reports on the monitoring of public procurement contracts.

3. Please outline actions required to strengthen or improve the measures described above and any specific challenges you might be facing in this respect.

Examples of the types of challenges States parties and signatories may have faced include:

- Challenges in developing the proper legislative framework;
- Coordination challenges between government agencies responsible for integrity in procurement and other bodies;
- Communication challenges between government bodies, agencies responsible for integrity in procurement, and business community representatives;
- Other implementation challenges; and
- Financial challenges with respect to maintaining sufficient and consistent funding for government bodies and other government agencies responsible for integrity in procurement and management of public finances.

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In order to strengthen the public procurement system in order to fight fraud and corruption and to prevent, identify and remedy situations likely to lead to a conflict of interest and/or distortion of competition, the following measures have been taken:

– Amending and supplementing several legislative acts by approving Law No 215/2020, the so-called Offshorisation Law, which provides that natural and legal persons that are registered, have their residence or carry out their main economic activity in jurisdictions or autonomous regions that do not implement international transparency standards may not participate as economic operators, as well as legal persons that include, directly or indirectly, one or more persons (founders, associates, shareholders, administrators, beneficial owners) that are registered, have their residence or carry out their main economic activity in such jurisdictions or autonomous regions. The methodology for establishing jurisdictions that do not implement international transparency standards, as well as the list of such jurisdictions, for the purposes of this law, shall be approved by the Government, at the proposal of the Office for the Prevention and Fight against Money Laundering, after consulting the National Bank of Moldova and the National Commission for the Financial Market.

– In order to identify the beneficial owners and their non-compliance with the conviction for participation in activities of a criminal organisation or group, for corruption, fraud and/or money laundering, the Ministry of Finance approved Order No 145/2020 approving the Declaration on the confirmation of the identity of beneficial owners and their non-compliance with the conviction for participation in the activities of a criminal organisation or group, for corruption, fraud and/or money laundering, which is part of the tender documentation.

– Order No 146/2020 of the Ministry of Finance amended the Standard Form of the Single European Procurement Document, approved by Order No 72/2020 of the Minister for Finance, to include provisions relating to the identification of beneficial owners.

– Government Decision No 10/2021 approving the Regulation on the work of the working group in the field of public procurement introduced an obligation for the members of the working group to take the necessary measures to avoid situations likely to give rise to a conflict of interest and/or to carry out an anti-competitive practice.

– Government Decision No 870/2022 approving the Regulation on low-value public procurement introduced the obligation to initiate, conduct and report procurements under the Automated Information System ‘State Register of Public Procurement’, which ensures transparency and fair competition.

– Government Decision No 625/2023 approved the National Development Programme of the public procurement system for 2023-2026, which complied with integrity and anti-corruption measures in the field of public procurement, and formulated detailed monitoring indicators and complex actions.

As regards the actions to be taken by the Ministry of Finance in order to reduce the risks of corruption and fraud in the field of public procurement, we would mention the following:

– Strengthening the transparency of public procurement by increasing the degree of

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alignment of Law no. 131/2015 on public procurement with the EU directives (Directive 2014/24/EU and Directive 89/665/ECC), in order to improve and make transparent the management of public property according to the standards and practices imposed by the European legislation;

- preparing and approving the draft Government Decision on amending the Regulation on the planning of public procurement contracts, in order to ensure competition, efficiency and transparency of public procurement procedures;

- re-engineering the electronic procurement system to meet national and European requirements and achieving at least 80% of the value of purchases initiated annually using the electronic e-procurement system for the entire procurement cycle (planning, procedure, award, contract management – amendments), starting in 2025.

4. Do you require technical assistance in relation to the measures described above? If so, please specify the forms of technical assistance that would be required. In case you have received or are receiving technical assistance to implement these measures, please indicate so in your response.

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