

## **TOOLS AND MECHANISMS FOR ACHIEVING SUSTAINABLE PUBLIC PROCUREMENT IN THE CONTEXT OF ENSURING NATIONAL ECONOMIC SECURITY**

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**Abstract.** *This study underscores the premise that national economic security is also described by the phenomenon of the public procurement contract, which will take into account the rigors imposed by the legislator, respecting the fundamental principles and capitalizing on concepts such as good management of public money, green procurement, wise procurement, control managerial quality, through the responsible involvement of all participating actors. The achievement of sustainable public procurement requires an extensive, complex process, which includes a set of effective tools and mechanisms. If we are to mention the public procurement contract and especially the procedures expressly provided by the Moldovan legislator, we can mention that this type of contract can be awarded through the following procedures: open tender; restricted tender; competitive dialogue; negotiated procedures; request for price offers; solution contest; acquisition in the case of social housing construction plans. The study includes a brief synthesis of the reasoned opinions of some authors, experts in the field of public procurement, regarding the development of the concept of ensuring economic security. The research methods used were varied: documentary analysis, comparative analysis, synthesis, the method of induction and deduction. The importance of knowing and capitalizing on tools and mechanisms for sustainable public procurement, in the context of ensuring national economic security, will take into account, first of all, the fundamental principle of the efficient use of public money, which will involve following a well-determined direction.*

**Keywords:** *public procurement, public procurement procedures, national economic security, effective tools and mechanisms, economic security viewed through the lens of the implementation of sustainable public procurement.*

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### **INTRODUCTION**

This study was carried out with the intention of researching and analyzing what are the tools and mechanisms for achieving sustainable public procurement in the context of ensuring national economic security. The main beneficial changes in the given system, conditioned by the normative improvements, elaborated according to the provisions of the European directives and the harmonization of the national legal framework show that, despite some shortcomings, challenges, this set of instruments and mechanisms is continuously developing, the impact of which has a positive connotation both at national level and in relation to external evaluation mechanisms.

The social dialogue between the authorities responsible for carrying out sustainable procurements and the other actors involved, the involvement of civil society in monitoring the correct and efficient progress of procurements, the increasingly daring implementation of green public procurements, increasing the efficiency of the use of public money, the evaluation of management in the field of public procurements from the stage from initiation to control - all these tools, mechanisms, as well as others are to be addressed,

tangentially, in this research. The study includes a brief synthesis of the reasoned opinions of some authors, experts in the field of public procurement, regarding the development of the concept of ensuring economic security, the emphasis being mainly on this aspect. The research methods used were various: documentary analysis, comparative analysis, synthesis, the method of induction and deduction etc.

## **DISCUSSIONS AND RESULTS**

In accordance with art. 72 of the Law [1], which provides the essence of the principles of awarding the public procurement contract, we highlight the idea that the public procurement contract is awarded based on the following principles, namely: a) compliance with the law, legal order, good morals and professional ethics; b) selecting the most advantageous offer; c) ensuring environmental protection and supporting social programs in the process of executing the contract.

In the same way, we can mention the special conditions for the execution of the public procurement contract, which must be provided in the notice/invitation to participate or in the specifications. Therefore, they can have as their objective, in particular, the encouragement of professional training at the workplace, the employment of the unemployed, young people and people with integration difficulties, the reducing the number at the unemployment level, the professional training of the unemployed and young people, the protection of the environment, the improvement of working conditions and work security, the development of the rural environment and the professional training of farmers, the protection and support of small and medium-sized enterprises, including during the execution of the contract and under subcontracting conditions. [1, art. 73]

The authors Ulian G. and Mulic A. support the idea that "with the help of the public procurement system, important tasks are solved, such as respecting national security, creating and supporting state material reserves, ensuring the life of the population, etc.". [2, p. 39]

However, international experience reveals that the problem of corruption in public procurement can have a very diverse impact: financial, economic, on the environment, human health and safety, innovation, etc. Corruption in public procurement causes the erosion of human values and trust in government at the central and local level, when the danger appears for the competition and economic development of the country. [3, p. 242]

In France, the different stages of public procurement are governed by the fundamental principles characteristic of public procurement, expressly provided in art. 3 of the Public Procurement Code. It is about: freedom of access to public procurement; equal treatment of candidates and transparency of procedures. In this sense, the regulations applicable to public procurement are aimed at preventing violations of any nature, such as, for example, conflicts of interest, acts of corruption, favoritism, etc. These breaches of integrity could be of concern to all public procurement stakeholders. [4, p. 9]

Public officials have the obligation to exercise their functions with impartiality, probity, integrity, dignity and to ensure that any conflict of interest is prevented or stopped immediately. These principles apply to all public servants (public servants, especially those seconded to public institutions and contract workers in the three public services). [4, p.11]

Researcher Osmoschescu N. claims that "...from a legal point of view, the right to a healthy environment is a fundamental right from the category of social-economic rights, civil rights that ensure the material, physical and cultural development of the person, allowing him to participate as actively as possible, to social life". [5]

According to the researcher Odainic M., in the Republic of Moldova, the propagation of the concept of sustainable public procurement among the contracting authorities remains a priority even today, so that it is absolutely necessary that the degree of awareness and implementation by the contracting authorities of the standards of sustainability in the processes of purchasing products, services and works to increase. We cannot deny that, in particular, public procurement legislation, together with the constitutional framework and subsequent national environmental legislation, regulate important standards that, if implemented, would increase the positive impact of public procurement on the environment. And this becomes a global emergency in the conditions in which every part of the globe already feels, more intensely or more attenuated, the effects of climate changes that have become a reality experienced today by each of us. [6, p. 52]

If we are to analyze, in essence, the institution of the public procurement contract and especially the procedures expressly provided by the Moldovan legislator, we can mention that this type of contract can be awarded through the following procedures: a) open tender; b) restricted tender; c) competitive dialogue; d) negotiated procedures; e) request for price offers; f) solutions competition; g) acquisition in the case of social housing construction plans.

Therefore, the basic procedures for awarding the public procurement contract *are the open tender and the restricted tender*. The contracting authority can use special award methods only in the cases expressly provided by law. It should be noted that the contracting authority has the right to use the following specific techniques and instruments for awarding public procurement contracts: *the framework agreement; the dynamic purchasing system; electronic auction; electronic catalogs*.

The choice of the award procedure denotes the ability of the contracting authority to describe its need/necessity, respectively to detail the technical specifications related to the goods/services/works it intends to purchase. We are also talking about the estimated value of the public procurement contract, but also about the level of competition on the market between the economic operators that can supply the goods/services/works that the contracting authority intends to purchase.

One of the basic procedures is the *open tender*. The open tender procedure includes offers from all economic operators who wish to participate in the tender. The rule is the awarding of the public procurement contract through an open tender, the other procedures can be used only by way of exception, under the conditions established by law. The notice of participation in the open tender is published in the Public Procurement Bulletin (BAP).

The period between the date of publication of the notice of participation and the deadline for submission of offers must be at least 20 days. If, for technical reasons, the award documentation cannot be published electronically, the contracting authority has the obligation to make the award documentation available to the economic operator as quickly as possible, within a period that must not exceed 2 days from receiving a request from him. [7]

The open tender is initiated by the transmission for publication of a notice of participation by which economic operators are requested to submit offers. This takes place in a single stage, it can be completed by an additional stage of electronic auction. It should be noted that it is recommended to be applied when the offer on the market is not surplus. Likewise, it can be organized entirely electronically. Open bidding is used for the awarding of most public procurement contracts, regardless of their subject matter.

Another basic procedure is the *restricted tender*, which is carried out according to the same rules as for the open tender, provided that a pre-selection procedure is applied,

preceded by the publication of a notice of participation in the pre-selection. The restricted tender procedure is carried out in two stages: the selection of candidates, by applying the qualification and selection criteria; and the evaluation stage of the offers submitted by the selected candidates, by applying the award criteria. [art. 51, 1]

The limited tender is initiated by the publication in the BAP of a participation announcement, through which interested economic operators are requested to submit candidacies. The period between the date of publication of the notice of participation in the BAP and the deadline for submitting candidacies must be at least 20 days.

The contracting authority has the obligation to indicate in the notice of participation the selection criteria and applicable rules, the minimum number of candidates it intends to select and, if applicable, their maximum number. The minimum number of candidates, indicated in the notice of participation must be sufficient to ensure real competition and, in any case, cannot be less than 5. The number of candidates selected in the first stage of the restricted tender must be at least equal with the minimum number indicated in the participation notice. If the number of candidates who meet the selection criteria is lower than the minimum number indicated in the notice of participation, the contracting authority must cancel the restricted tender procedure. It is forbidden to invite to the second stage of the restricted tender an economic operator who did not apply in the first stage or who did not meet the selection criteria. [7]

*The request for price offers* represents the simplified procedure by which the contracting authority requests offers from several economic operators, in order to purchase goods, works or services, which are presented according to concrete specifications.

The contracting authority, through the request for price offers, can award contracts for public procurement of goods, works or services, which are presented according to concrete specifications, provided that the estimated value of the acquisition does not exceed 800,000 lei for goods and services and 2,000,000 lei for works. The contracting authority can establish, in addition to the price, other requirements that will be taken into account when evaluating the price offers. In this case, each such requirement and its relative value shall be indicated in the request for price offers. Each economic operator can submit a single price offer, without the right to change it, except for the cases provided for in para. (8) of the Law on public procurement. On such an offer, no negotiations take place between the contracting authority and the offeror. The bid that meets all the requirements according to the award criteria provided in the announcement/invitation to participate is declared the winner. [art. 57, paragraph 1-5, 1]

The procedure for requesting price offers for the purchase of goods and services for which the participation notice was not published in the BAP is considered to have been carried out only if at least 3 offers have been submitted. If, as a result of the invitation to participate, the required number of offers has not been accumulated, the results of the procurement procedure are canceled and it is organized repeatedly with the prior publication of a participation notice in the BAP.

If, during the repeatedly organized procedure, it is found that there are less than 3 qualified economic operators, the contracting authority is entitled to award the contract according to the initially established criteria, with the exception of the procedure for requesting price offers for works with an estimated value higher, less than or equal to 200,000 lei.

The contracting authority, within no more than 3 days after the establishment of the winning offer, will inform all participants with a note about the results of the COP procedure, as well as about the reasons for rejection in the case of rejected offers and about

the reasons for disqualification in the case of disqualified bidders. The contract will be concluded no earlier than 6 days from the date of transmission of the communication regarding the result of the application of the award procedure. Within 5 days from the date of conclusion of the contract or additional agreement (regarding the modification/termination of the contract), the contracting authority will draw up and submit a report to the Agency for examination. In the event that no offer was submitted to the respective procedure, as well as in the event of its cancellation, the contracting authority, within 5 days after the deadline for submitting the offers indicated in the invitation/announcement to participate, will present to the Agency.

The legislator defined *the negotiation procedure* as the procedure in which the contracting authority consults the economic operators regarding their options and negotiates the contractual conditions with one or more of them. [art. 1, 1]

*The negotiating procedures* are the procedures in which, in order to identify the most advantageous offer, the contracting authorities negotiate with the bidders the offers presented by them in order to adapt them to the requirements expressed in the notice of participation, in the descriptive documentation and in any additional documents. It should be noted that the choice of this procedure does not depend on the estimated value of the contract.

The negotiation with the prior publication of an invitation to participate takes place in three stages: *the candidate qualification stage; the negotiation stage with qualified candidates; evaluation of the final offers submitted by them and designation of the winner.*

*The negotiation with the prior publication of a tender notice* is applied in the following cases: in the case of the presentation of incorrect or unacceptable offers within an open or restricted tender procedure, of a request for price offers or within a competitive dialogue, if they are not modified substantially the initial conditions of the contract. The contracting authority has the right not to publish a notice of participation if it includes in the negotiated procedure all bidders or only bidders who meet the qualitative selection criteria and who submitted, during the previous open or restricted procedure, the procedure for requesting price offers or the previous competitive dialogue, offers compliant with the official requirements of the award procedure. [7]

The application of the negotiated procedure in this case is possible only after the cancellation of the initial procedure. It is applied in the following cases: in exceptionally well-reasoned cases, if it is about goods, works or services whose nature or whose risks do not allow the prior and definitive establishment of prices; in the field of services, including intellectual ones, such as the design of works, to the extent that, due to the nature of the services to be provided, the contract specifications cannot be established precisely enough to allow the award of the contract by selecting the most advantageous offer, according to the rules regarding the open procedure or the restricted procedure; in the case of public procurement contracts for works performed or services provided exclusively for the purpose of research-development or experimentation and not to ensure a profit or to cover research-development costs.

Before the initiation of the negotiation procedure, the working group has the obligation to verify the meeting of the conditions provided for the conduct of this procedure. The result of the verification is concretized by drawing up the working group that becomes part of the public procurement file. The decision regarding the application of the negotiation procedure for the award of the public procurement contract is adopted with the majority of votes of the working group members and is recorded in a minutes. If there are separate opinions, they are recorded in the minutes. The negotiation procedure is

initiated by submitting for publication in the BAP a notice of participation, by which the economic operators are invited to participate in the negotiation procedure. The period between the date of publication of the notice of participation in the BAP and the deadline for submitting candidacies must be at least 20 days.

In the negotiation procedure with the publication of a call for participation, the minimum number of invited candidates cannot be less than 3. In any case, the number of invited candidates must be sufficient to ensure real competition. In case, the number of candidates preselected is lower than the minimum number provided in the call for participation, either due to the fact that not enough applications were submitted, or due to the fact that some of the candidates did not meet the minimum qualification requirements, the contracting authority will cancel the negotiation procedure with prior publication of an announcement of participation. The period granted for the preparation of the preliminary offer must not be less than 10 days.

The negotiations continue until the moment when each participant in the negotiations declares that the preliminary offer he presented can no longer be improved, a fact that is explicitly recorded in the minutes of the meeting. During the final meeting, each participant has the obligation to present the final elements of his preliminary technical and financial proposal, for which the award criteria will be applied. As a result of the final meeting, the working group draws up the minutes of the final meeting, which ends with each participant separately. Within two days of the final meeting, the bidders are obliged to submit in writing to the contracting authority, for the attention of the working group, the final bid in full accordance with the aspects established during the negotiation rounds. The offer will be presented in the format required in the award documentation.

*Negotiation without prior publication of a contract notice.* The contracting authority has the right to apply the negotiation procedure without the prior publication of a tender notice only in the following cases: • no offer or no adequate offer or no candidacy has been submitted in response to an open tender or restricted tender procedure so while the initial conditions of the contract are not substantially modified; • to a strictly necessary extent, for reasons of maximum urgency as a result of unforeseeable events for the contracting authority in question. In this case, the reasons invoked to justify the urgency of the acquisition must not represent the result of the negligence of the contracting authority; • for technical reasons, creation or related to the protection of exclusive rights, a single economic operator has the necessary goods, works and services or a single economic operator has priority rights over them and there is no other alternative. [art. 56, 1]

In the case of public procurement contracts for works and services: for the additional works or services that are not provided for in the initial estimated project or in the initial contract and that have become necessary for the execution of the works or the provision of the services indicated therein, as a result of an unforeseeable situation : • if the respective additional works or services cannot be separated, from a technical or economic point of view, from the object of the initial contract without constituting a major inconvenience for the contracting authorities; or • if the respective additional works or services, even if they can be separated from the object of the original contract, are strictly necessary for its completion. The cumulative value of contracts awarded for additional works or services must not exceed 15% of the initial contract value.

*The framework agreement* represents an agreement concluded between one or more contracting authorities and one or more economic operators, with the object of establishing

the conditions for the contracts to be awarded during a determined period, in particular the prices and, as the case may be, the stipulated quantities. [art. 61, paragraphe 1, 1]

The contracting authority has the obligation to conclude the framework agreement by applying the open tender or restricted tender procedure. The contracting authority does not have the right to establish that the duration of a framework agreement exceeds 4 years, except in exceptional cases, which it can justify in particular by the specific object of the contracts to be awarded based on the respective framework agreement.

Contracts that are awarded on the basis of a framework agreement can only be concluded between the contracting authority/authorities and the economic operator/operators that are part of the respective agreement. If the contracting authority concludes the framework agreement with several economic operators, their number cannot be less than 3, as long as there is a sufficient number of economic operators who have met the qualification and selection criteria and who have submitted offers admissible. If the number of economic operators who have met the qualification and selection criteria and who have submitted admissible offers is lower than the minimum number indicated in the notice/invitation to participate, the contracting authority is obliged to cancel the procedure for concluding the framework agreement. The contracting authority has the right to assign subsequent public procurement contracts to a framework agreement concluded with several economic operators: *either without resuming the competition; either by resuming competition between economic operators signatories of the framework agreement.* [7]

It is well known that green public procurement is a way in which public authorities can contribute to the protection of the environment through the process of acquiring the goods and services necessary to carry out specific tasks. This approach encourages the production and use of goods and services that meet environmental standards, as well as encouraging innovation and the development of clean technologies.

In the European space, ecological public procurement is considered to be a key element for achieving the objectives set by the European Union in the field of environment, such as reducing greenhouse gas emissions, conserving natural resources and promoting sustainable development. That is why, starting in 2008, the European Commission established an action plan for green public procurement. Therefore, ecological public procurement not only benefits the environment, but also the economy. They can reduce the operating and maintenance costs of purchased goods and services in the long term by reducing the consumption of energy and other resources. [8]

They can also stimulate innovation and the development of green technologies, thus providing business opportunities for companies that produce and provide such products and services. In addition, green public procurement can help raise public awareness of environmental issues and encourage behavioral changes among consumers. The European Union has developed and promotes the use of standardized environmental criteria for public procurement, through guidelines and environmental impact assessment tools. These criteria aim to ensure that public procurement is carried out in a way that minimizes the negative impact on the environment by selecting goods and services that are less polluting and more sustainable. Moreover, the use of standardized criteria facilitates the comparison and evaluation of offers, contributing to increased transparency and competition in the procurement process. [8]

The author Boguş A., in her own studies, brings plausible arguments such as "the Moldovan government has made considerable progress in optimizing the social dialogue with civil society, a significant actor in the democratization of society. Recently, the

involvement of civil society, in the process of monitoring the use of public money, has accelerated. Civil society managed to bring to light a series of illegalities, frauds". [9, p. 422]

In the same study, the author mentions that increasing the role of civil society in the supervision of public procurement procedures represents an important step in increasing the degree of democratization of society, but in practice, there are still many problems. Civil society encounters many difficulties in this complex process, from restricting access to information to neglecting its role. [9, p. 421]

Through the objectives of the National Development Strategy "Moldova Europeană 2023" [10], a development vision centered on man is proposed, where he is a beneficiary and not a resource or instrument of development. The path to be implemented will have a direct positive impact on well-being and will capitalize on human potential on an entrepreneurial, educational, cultural and productive level. Thus, the efficient use of public money, through the effective capitalization of "wise" public procurement procedures, will constitute a good way to achieve all the objectives proposed by the Strategy.

## CONCLUSIONS

In this study, an attempt was made to emphasize the importance and impact of some tools and mechanisms for achieving sustainable public procurement, in the context of ensuring national economic security. Or, as the result of the research carried out, the efficient use of public money requires following a balanced, well-determined route, from highlighting the best procurement procedures to effective control.

National economic security is also described by the phenomenon of the public procurement contract, which will take into account the rigors imposed by the legislator, respecting the fundamental principles and capitalizing on concepts such as good management of public money, green procurement, wise procurement, managerial quality control, by involving with the responsibility of all participating actors.

Undoubtedly, we can state that there are obvious benefits to the use of green public procurement, but their implementation may encounter certain challenges, such as the lack of knowledge and experience regarding the use of environmental criteria. For this reason, the EU green public procurement criteria are regularly updated to ensure that they reflect the latest technological and market developments.

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