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*PUBLIC PROCUREMENT AGENCY
of the Republic of Moldova*

Guide to sustainable public procurement



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INTRODUCTION

“Sustainable Procurement is a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.”¹

Public procurement in the Republic of Moldova has a relatively short history, considering that the first public procurement law dates back to 1997.

In June 2016, Republic of Moldova ratified the Agreement on Government Procurement of the World Trade Organization (WTO GPA), and this, along with the EU-Moldova Association Agreement involves taking all measures to promote trade liberalization and the development of public procurement in accordance with the best international practice.

National legal framework and practices have evolved considerably over the years as the principles of transparency, competition, non-discrimination benefit the state budget by saving public money. Thus, it is the responsibility of each state, and Republic of Moldova is no exception, to put in use the same general principles for procurement taking into account environmental factors with the introduction of pillar of sustainable public procurement process to reduce environmental impact.

Every product or service bought has environmental impacts throughout its life cycle, from raw material extraction, product manufacture and to the use, disposal and/or recycling it. Sustainable public procurement can help to reduce these impacts, bringing local as well as global benefits.

Nowadays there is the prejudice that products, services and environmental work are more expensive than conventional ones. This position does not include however, the entire **product life-cycle management**. Thus, in the course of a **product cost analysis**, the following should be considered:

- procurement and related costs (delivery, installation, commissioning, etc.);
- **operating costs**, including energy, spare parts and maintenance;
- operation period and frequency of revision;
- the cost from the **end of the life cycle**, such as decommissioning and disposal/recycling.

If we were to apply the lowest price criteria, it would seem that ecological products, services or works require greater investment from the contracting authorities. However, when you take into consideration all the costs until the end of the life cycle, it is often the case that a

¹This definition has been adopted by Marrakech Task Force on Sustainable Public Procurement in study Procuring the Future http://www.unep.fr/scp/procurement/docsres/ProjectInfo/MTF_Flyer_A4_Ansicht.pdf

sustainable/ecological products are less expensive and the environmental impacts can be significantly reduced. Therefore, sustainable public procurement approach can lead to saving of public money and resources.

Finally, the Public Procurement Agency is a specialized authority, under subordination of the Ministry of Finance, and has a fundamental role of conceptual development and implementation of public procurement policies, including those related to sustainable public procurement. The implementation of sustainable public procurement is an action expressly established in the Agency's Action Plan, which reflects the commitment of state institutions in this regard. Therefore, it is necessary to promote the concept of sustainable public procurement and its application in practice, as well as the dissemination of the possibility of implementing environmental policies among contracting authorities by organizing trainings.

For many years, national Contracting Authorities have never seriously considered the value and importance of sustainable public procurement. Nonetheless, the developments at a global level with a strong commitment towards sustainable development has produced its effect in the Republic of Moldova as well. In such a manner, the first step towards implementation of sustainable development by using public procurement as a powerful instrument has been taken under the EU funded project "Greening Economies in the Eastern Neighbourhood" (EaP GREEN) during 2015 - 2017.

One of the key activities under the EaP GREEN project included the launch of pilot tenders with sustainability criteria for 2 selected groups - ecological fruits and vegetables and energy efficient/ecological windows and doors. The purpose of this exercise was to train the Contracting Authorities participating in the project to develop bidding documents that include sustainability criteria as well as to familiarize the suppliers/producers with sustainable development concept and sustainability criteria they have to address in upcoming tenders. Lessons learned from these pilot tenders launched in Moldova are further provided in this guide as case studies.

Currently, sustainable procurement in the Republic of Moldova is not widely implemented at the level of contracting authorities and, respectively, a practice in this regard is not well established. This guide is for Contracting Authorities and describes how contracting authorities may purchase goods, works or services with a reduced environmental impact. It shows how to mainstream sustainability into existing public procurement procedures.

This guide aims to, on the one hand, **disseminate the concept of sustainable public procurement** among contracting authorities and, on the other hand to **increase the awareness** of public institutions to purchase goods, services and works including **sustainability criteria** in tender documents when possible.

This guide also aims to present an analysis of the national regulatory framework, procurement procedures and best EU practices to encourage public institutions to consider environmental aspects in public procurement and deliver sustainable development results.

CHAPTER 1. OBJECTIVES IN THE FIELD OF SUSTAINABLE PUBLIC PROCUREMENT AT THE EUROPEAN AND NATIONAL LEVELS

The European Union has set as a goal the greening of public procurement through various strategies, including the Europe 2020 Strategy,² which provides directions for the sustainable development of all EU states. The Republic of Moldova is in the full phase of the EU-Moldova Association Agreement, and it requires cooperation of the parties in terms of policies for agriculture, energy issues and sustainable development. This cooperation includes the management of structural changes, development of public-private partnerships, energy and environmental aspects such as energy efficiency and a greener production.

The Republic of Moldova and the European Union are working on strengthening its cooperation on environmental issues, thereby contributing to the long-term objective of sustainable development and greening the economy. Enhanced protection of the environment will benefit citizens and businesses in the EU and the Republic of Moldova, as well as through improving public health, conserving natural resources, enhancing economic efficiency and integrating environment into other policy areas and the use of a cleaner modern technology, contributing to more sustainable production patterns³.

Starting from 31 December 2020, new buildings will consume energy in the EU “almost zero” and the energy will come “very largely” from renewable sources. Public authorities that own or occupy a new building should be an example by building, buying or renting of such “buildings with almost zero energy consumption” from 31 December 2018. A “building with nearly zero energy consumption” means a building of high energy performance under Annex I of Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings⁴. Energy almost zero or very low needs shall be covered heavily from renewable energy produced on-site or nearby.

EU Energy Policy 20-20-20 sets out the objectives of achieving a 20% reduction in carbon dioxide emissions, a reduction by 20% of energy consumption, and an increase by 20% renewables by 2020. The estimates, however, show that at the current rate of implementation, only half of this target will be achieved⁵. To support energy efficiency target, Directive 2012/27/EU on energy

²http://ec.europa.eu/europe2020/index_ro.htm

³ Law no. 112 of 02/07/2014 to ratify the Association Agreement between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and its Member States, on the other hand, art. 86

⁴ Official Journal of the European Union L 153/13

⁵ Buy smart+ – Green procurement in Europe

services was adopted, in which Art. 6 requires public bodies/purchasers to procure energy efficient products and services⁶.

- After 30 June 2019, new public buildings should be buildings whose energy consumption is nearly zero.
- After 30 June 2021, all new buildings should be buildings whose energy consumption is nearly zero⁷.

Sustainable development is a priority for Moldova which is recorded in Strategy “**Moldova 2020**”⁸, where our state has committed to undertake all necessary efforts to ensure the transition towards green economic development, promoting sustainable development and contributing to poverty reduction, as well as through ensuring better governance for sustainable development by integrating and strengthening environmental aspects in all areas of socio-economic development in the country.

Therefore, there are all prerequisites in place for the implementation of sustainable public procurement and, the objectives already achieved in some European countries represent success stories that can serve as an example for national contracting authorities, much more because they have full political, technical and institutional support for developing and adoption of sustainable policies.

⁶ Official Journal of the European Union L 314 / 11.14.2012 (in force since 4 December 2012)

⁷ Law on Energy Efficiency No. 142 of 02.07.2010, art. 15par.(1) and (2)

⁸ Law no. 166 of 11.07.2012 approving the National Development Strategy "Moldova 2020", as amended, (Official Monitor no. 245-247 / 791 of 30.11.2012)

CHAPTER 2. LEGAL FRAMEWORK FOR SUSTAINABLE PROCUREMENT

The public procurement system of the Republic of Moldova is based largely on European good practices in the context of national legislation harmonization with the EU acquis, relevant Community legislation (Directive 2004/18/EC and 89/665/EEC of the European Parliament and Council of the European Union) was rigorously implemented in the Law No 131 of 07/03/2015, and in the next years will be transposed the latest European regulatory framework (Directives 24/2014 /EC and 25/20014/EC).

Public Procurement Law No 131 of 03/07/2015 is governing the possibility of using **sustainable considerations** in the selection and award criteria, of the technical specifications, including clauses of contract performance.

Therefore, having a conclusive legal framework for public procurement, it is the responsibility of contracting authorities at the institutional level to adopt policies for implementing sustainable public procurement taking into account the 2030 Agenda for Sustainable Development.

National legislation does not expressly define the concept of sustainable procurement, but it can be understood as:

“Sustainable Procurement is a process whereby organizations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life cycle basis in terms of generating benefits not only to the organization, but also to society and the economy, whilst minimizing damage to the environment.”⁹

It is important to note that the **Public Procurement Law No 131 of 03/07/2015** establishes Article 23, which denotes standards of environmental protection and in case of sustainable procurement implementation; they must refer to quality assurance systems based on the relevant European standards series, and environmental management standards¹⁰.

Article 23. Environmental management standards

(1) If the contracting authority requests submission of certain certificates, issued by independent bodies, attesting the fact that the economic operator complies with certain environmental protection standards, then it has to relate to:

a) either to the Community Eco-Management and Audit Scheme (EMAS);

b) or to the environmental management standards based on the series of European or international applicable standards in the field, certified by bodies compliant with the Community law or the European or international standards concerning certification.

⁹ This definition was adopted by Marrakech Task Force on Sustainable Public Procurement in the study of Procuring the Future http://www.unep.fr/scp/procurement/docsres/ProjectInfo/MTF_Flyer_A4_Ansicht.pdf

¹⁰ Law on public procurement 131/03.07.2015 (*Official Monitor* 197-205/402, 31.07.2015)

(2) *In accordance with the principle of mutual recognition, the contracting authority has the obligation to accept the equivalent certificates issued by the bodies established in states of the European Union. If the economic operator does not hold an environmental certificate as requested by the contracting authority, the latter has the obligation to accept any other proof or evidence submitted by the respective economic operator, to the extent the evidence submitted confirms that an appropriate environmental protection level is ensured.*

(3) *If the economic operator holds other certifications than the ones requested by the contracting authority, then the economic operator has the obligation to request from the contracting authority, before the deadline for submission of bids, under the sanction of rejection of bid, a confirmation of approval of such certifications.*

Standards for environmental protection will be extensively analyzed in the following chapters.

A separate article is intended to award criteria for public procurement contract. Thus, it is expressly provided that without prejudice to any legislative or administrative provisions, award criteria for public procurement contract may only be either the most economically advantageous tender or lowest price. In turn, most economically advantageous tender is declared successful under specific evaluation factors/criteria.

A particularly important aspect under legal responsibility in the implementation of SPP has the Art. 37 para. (12) (13) (14) and (15) of Public Procurement Law No 131 of 03/07/2015¹¹:

(12) *The operational performances and requirements used to define the technical specifications may also include environmental characteristics.*

(13) *If the contracting authority requests compliance with environmental characteristics in terms of the operational performance and requirements, then it has the right to use, entirely or in part, the specifications defined as European or (multi)national “eco-labels” or as any other “eco-labels” if the following conditions are cumulatively met:*

a) the respective specifications are adequate to define the characteristics of the products or services whose supply/provision makes up the subject matter of the public procurement contract;

b) the requirements for “eco-label” have been scientifically developed;

c) the “eco-label” was adopted by a specific procedure that allowed the involvement of all interested parties - government bodies, consumers, producers, distributors, environmental organizations;

d) the “eco-label” is accessible/ available to any interested person;

¹¹Ibidem

(14) *The contracting authority is entitled to specify in the Tender Specifications the fact that the products or services offered with a certain "eco-label" are considered to automatically meet the requested technical specifications. On the other hand, the contracting authority is not entitled to deem that a technical proposal is not compliant simply because the products or services offered do not have a specified "eco-label", if the bidder proves by any adequate means that the products/services offered meet the requested technical specifications.*

(15) *The contracting authority has the right to impose in the award documentation, to the extent such are compatible with the Community law, special terms of performing the contract aimed at obtaining certain social or environmental protection effects and the promotion of sustainable development.*

In this respect, a favorable environment for implementing sustainable procurement was created, respecting the principles that make implementation possible.

Art. 69 of the Public Procurement Law No 131 of 03/07/2015 governs special conditions for execution of procurement contract, and among these are, encouraging professionalization at workplace, the employment of the unemployed, and of young people and people with special needs, reducing the level of unemployment, professional training of unemployed and youth, environmental protection, improving working conditions and work safety, rural development and training of farmers, protecting and supporting the small and medium size enterprises.

Therefore, the legislation on public procurement, being consistent with the EU procurement and international good practice, ensures the possibility that contracting authorities may include sustainability criteria at all stages of public procurement, including within clauses of the procurement contract. The following chapters will describe how sustainability criteria can be included at each stage of the procurement procedures.

In order to implement the Public Procurement Law No 131 of 03/07/2015, the Government of the Republic of Moldova approved secondary legislation under a form of regulation, and the Ministry of Finance has approved standard tender documents that help contracting authorities to conduct better public procurement procedures. Secondary normative acts and tender documents can be accessed on the official website¹² of the Public Procurement Agency.

¹²www.tender.gov.md

CHAPTER 3. PROCUREMENT PROCESS

3.1 INTRODUCTION

In order to implement sustainable public procurement it is crucial to have a knowledge of the public procurement process based on legal norms and international best practices. A policy of sustainable public procurement may not be successful if it is not implemented carefully or does not take into account the legal provisions related to the use of public procurement procedures, criteria that may be applied or evaluation method and verification of environmental criteria.

The procurement process is the same whether a contracting authority purchases a product, a service / a work that may be considered "sustainable" or not.

When starting sustainable public procurement the following aspects are relevant:

- The principles governing public procurement.
- The law governing the award process.

3.2 BASIC PRINCIPLES

Throughout the whole process of public procurement, Contracting Authorities must take into account the following principles¹³:

- a) efficient use of public money and minimizing the risk of contracting authorities;
- b) transparency in public procurement;
- c) ensure competition and prevent unfair competition in public procurement;
- d) protecting the environment and promoting sustainable development through public procurement;
- e) maintain public order, morality and public safety, health, protection of people, flora and fauna;
- f) liberalization and expansion of international trade;
- g) free movement of goods, freedom of establishment and freedom to provide services;
- h) equal treatment, impartiality, non-discrimination in respect of all bidders and economic operators;
- i) proportionality;
- j) mutual recognition;
- k) assuming responsibility for public procurement procedures.

¹³ Public Procurement Law No 131 of 03/07/2015 (Monitorul Oficial 197-205 / 402, 31.07.2015)

Current legislation not only emphasizes the importance of these public procurement principles, but also mandates their observance by contracting authorities.

The principles set out below are essential and should be taken into consideration when initiating and carrying out sustainable procedures:

- **transparency** - informing the participants in the procurement process about all information regarding the award procedure, including on the implementation of sustainable criteria;
- **proportionality** - ensuring the correlation between the need of the contracting authority, the object of procurement contract and the requirements to be met during the application procedure and performing the contract;
- **mutual recognition** - recognition of certificates / documents issued by competent authorities of other states;
- **value for money** - any contracting authority is obliged to ensure the efficiency of public procurement, in other words, to ensure best value for money. They have an obligation to get the best value for taxpayers' money for everything they procure; however, identifying the most advantageous offer **does not necessarily mean the least expensive tender**. This means finding a solution that meets the requirements of the Authority, including environmental ones, in the most cost effective manner. The best value not only includes measures related to cost of goods and / or services, but also involves taking into account factors such as quality, efficiency, effectiveness, etc., and environmental protection can be one of these factors as well.

3.3 PLANNING OF PROCUREMENT PROCEDURES

In order to obtain best value for money contracting authorities need to effectively plan the procurement procedure, which will also ensure a positive outcome of the procurement.

First of all, contracting authority will identify their actual needs for goods, works or services. At this stage, careful evaluation may determine that there is really no need for this purchase. Thus, responsible sustainable public procurement also means buying according to needs and avoiding waste.

However, in cases when the contracting authority considers that there is a real need for goods, works or services, before initiating the procurement process, as well as before examining the sustainable public procurement criteria, it is advisable that Contracting Authorities conduct a market survey to get a complete picture of the product/service, technologies and other potential solutions.

Making a **preliminary analysis of the market** can provide information about the availability of products or services and is useful for identifying the type of procurement procedure (open, restricted tenders or competitive dialogue), and how to establish requirements for sustainable public procurement in the tender documents.

A **dialogue with the representatives of the market** prior to the initiation of the procurement procedure can help identify innovative solutions, which the Contracting Authority could not achieve independently. This dialogue can also help identify the criteria that will be applied in the procurement process, and the market may be a valuable provider of information on products, existing requirements necessary for the Contracting Authority.

The outcome of a procurement procedure can be greatly improved when market participants are informed sufficiently in advance on the environmental requirements that contracting authorities intend to provide in the tender documents. One way to initiate such a dialogue is by publication of a notice of intent in the Public Procurement Bulletin, where Contracting Authority submits its requirements, including the description of the consultation process.

At the same time, the competitive dialogue procedure introduced by the Law on Public Procurement¹⁴ also provides opportunities for public authorities to engage in a dialogue with the market to identify the best solutions that meet the needs of the contracting authority and, at the same time, would have less impact on the environment.

Prioritization

Introducing sustainable procurement in practices of procurement requires a step-by-step approach. Initially, contracting authorities may opt for a small range of sustainable products and services by initiating pilot procedures. Such an approach can attract Contracting Authorities interested in participating in this sustainable procurement and successful results of their tenders for selected products and goods could serve as examples for other contracting authorities.

In identification of works, goods and sustainable/ecological services, contracting authorities must take into account three main factors¹⁵:

- **Environmental Impact** - select those products (i.e. vehicle fleet) or services (e.g. cleaning services) that have greater impact on the environment throughout the life cycle.
- **Significant budgetary implications** - focusing efforts on areas where costs are significant.
- **Potential to influence the market** - focusing on areas where there is the highest probability or potential to influence the market. This may be due to the size or visibility of the contract, or the importance for operators to have customers in the public sector.

Nevertheless, to determine their needs with respect to contracting authorities shall take into account other factors no less important, namely:

- **Cost considerations.** Are there alternative sustainable products that would have the same cost compared to usual procurement, or will sustainable procurement affect the budget? In assessing the costs, all **costs throughout the life cycle** must be taken into account: the procurement price, running costs (consumption/water energy, maintenance costs) and disposal.

¹⁴Law on public procurement No 131 of 03/07/2015, art. 52 (*Monitorul Oficial No 197-205/402 of 31/07/2015*)

¹⁵Buying green, a handbook on green public procurement, 3rd Edition, 2016, pag. 11

○ **Criteria availability.** Despite the fact that for many groups of products and services criteria for sustainable procurement have already been developed and can be readily placed directly in the specifications without the need for extensive research on environmental performance, developing sustainable criteria for certain products for which such criteria were not developed, can be a real challenge for the Contracting Authority. In these circumstances, this aspect should be taken into consideration before the initiation of the procurement procedure.

Procurement plan

Once the Contracting Authority has prioritized its needs and decided whether to undertake sustainable or usual procurement, it has to develop a procurement plan. This plan is a viable tool for the Contracting Authority to make public its intention of sustainable/ecologic procurement and give an impetus to the market to focus and / or refocus on products, works and environmental services, as demand always gives birth to the offer.

When planning public procurement, the working group should give answers to the following questions:

What do we need? (Name of products, services and works)

Why/For what do we need it? (Explaining the need for products, services and works)

When do we need it? (Indicate approximate period for goods, services and works procurement)

How much? (it is estimated the value of the goods, services, works, related costs)

Which are the expected results? (Indicate the expected cost-effectiveness).

The public procurement plan should include information about:

- a) contract's object-purpose (identifying a "sustainable" title)
- b) CPV (Common Procurement Vocabulary) code related to products, services or works;
- c) estimated value (MDL);
- d) procurement approach, respectively the award procedure;
- e) expected date for launch of procedure;
- f) expected date for the completion of the procedure;
- g) person in charge for contract award.

In developing the plan, the following should be taken into account:

- the real needs for products, works and services as reflected in the timetable for implementation of investment projects and considerations necessary for the operation of the Contracting Authority and meet business performance conditions;
- the priority of the current needs, on the one hand, and the timing of activities that must be met to implement a project, on the other hand;
- expectations regarding the funds to be allocated in the annual budget;
- public procurement contracts in progress.

Case study. Procurement of ecological fruits and vegetables

The following lessons from pilot tenders have been learned:

It is important to understand and realize that production of produce (organic) takes more time compared to other (manufactured) products, which is explained by specificity of agriculture production where factors as annual production, planting season, harvesting season, land size, crop rotation, etc. should be considered. Therefore, to successfully procure organic produce please take account of:

- *It is crucial for agriculture producers to know the necessities of Contracting Authorities well in advance, which will allow them time to schedule their production accordingly. Thus, Contracting Authorities need to separately highlight in their Annual Procurement Plans the list and estimated quantity of organic food they are going to purchase over the year. This information will give a strong message to producers and allow them to aggregate the annual demand, adjust production and plan their participation in tenders;*
- *Review and re-consider the current seasonal procurement approach of ecological food staff by switching to aggregated/centralized procurement as well as introducing framework agreements.*

3.4 SELECTION OF PROCUREMENT PROCEDURE

The conclusion of a public contract, regardless of the approach used by the Contracting Authority, involves initiating and conducting public procurement procedures in accordance with the law on public procurement. In this respect, the legislation of the Republic of Moldova provides to contracting authorities a number of procedures that can be used, including in the case of sustainable procurement. When choosing the procurement procedure specific elements should be considered to enable the Contracting Authority to identify steps through which environmental criteria can be applied, so as to ensure the maximum efficiency of environmental policy through public procurement contracts.

Most usable procedures and procedural steps to be taken to achieve a procurement procedure will be further described:

1. Open tender¹⁶: a procedure for awarding public procurement contract, where each interested economic operator is entitled to submit a tender. The offers of all economic operators who have met the qualification requirements will be eligible for evaluation.

¹⁶Law on public procurement No 131 of 03/07/2015, art. 45 (*Monitorul Oficial No 197-205/402 of 31/07/2015*)

2. Restricted tender¹⁷: procedure in which any economic operator is entitled to submit candidacy, followed by only selected candidates have the right to submit the tender. It carries the same rules as for an open tender, provided that a shortlisting procedure was carried out with the publication of an invitation for pre-selection.

Restricted tender procedure is performed in two stages:

First stage: submission of nominations and selection of qualified candidates who will participate in the next stage;

The second stage: the submission of application only by selected candidates and award of the public procurement contract by applying the award criteria.

This procedure may only be useful to pre-selection for bidders who demonstrate an adequate level of environmental performance, and this can be provided in the specifications, award criteria and contract performance clauses.

3. The competitive dialogue procedure or negotiated procedures may be used by to purchase sustainable/ecological goods, services or works as they provide the possibility of adapting the solutions proposed by bidders and ensure a greater possibility of achieving environmental policy goals. The procedures may give advantages in the context of public sustainable/ecologic procurement in comparison to other procedures because it introduces elements of flexibility that usually do not exist under open and restricted procedures. These procedures can allow the verification of the environmental requirement effect on the costs, and at the same time show the degree the bidders understood which objectives must be met by the Contracting Authorities. However, the choice of those procedures will take into account the level of professionalism of Contracting Authority's staff to the extent that both procedures require a certain expertise and experience.

Competitive dialogue¹⁸: The competitive dialogue is a procedure carried out in three stages, used for particularly complex public contracts as far as their award is not possible by using the open or restricted procedures. Any economic operator may request to participate in the competitive dialogue procedure, in which a Contracting Authority conducts a dialogue with the candidates admitted to that procedure with a view to develop one or more solutions to meet the needs described, for which/whom the selected candidates will be invited to tender.

Steps of the competitive dialogue:

Step 1) **pre-selection of candidates**, where the qualification procedure is carried out by participation of an unlimited number of interested bidders to present proposals, including preliminary technical offers.

Step 2) **dialogue with the candidates admitted after pre-selection** for identification of the solution(s) meeting the needs of the Contracting Authority and for which/whom, candidates

¹⁷Ibidem, art. 49

¹⁸Ibidem, art. 52

will develop and submit the final offer. At this stage, a proper dialogue is kept with qualified economic operators, and the necessary information is collected for the development of solutions for the contracting authority.

Step 3) **evaluation phase of final, submitted offers** requires submission of final offers based on their assessment of the technical and financial solution identified.

Negotiated procedures¹⁹: Represents the procedures to identify the most advantageous tender where Contracting Authorities shall negotiate with tenderers the offers submitted in order to adapt them to the requirements stated in the notice, the descriptive documentation and any additional documents. The use of this procedure does not depend on the estimated value of the contract.

4. The use of Request for Price Quotations²⁰: simplified procedure whereby the Contracting Authority requests offers from several bidders for the purchase of goods, works or services against concrete technical specifications.

5. Small value procurement²¹: simple way to purchase goods, services or works of small value. Procurement of low value is used when the procurement value does not exceed 80,000 MDL / purchase goods / services and 100,000 MDL for works contracts, this being carried out in accordance with special regulation approved by the Government.

The procedures referred to above offer the possibility of inclusion of environmental requirements at different procurement stages, such as technical specifications, qualification and selection criteria, award criteria or contract clauses. Those stages will be the subject of the following chapters where they are described in more detail.

The other procedures under domestic law were not included in this guide as they do not bring particular value from an environmental policy point of view, and for the integration of environmental requirements.

3.5 TRANSPARENCY OF PUBLIC PROCUREMENTS

In order to ensure transparency and publicity to public procurement, the Contracting Authorities shall elaborate, disseminate and publish different notices provided by the legislation on public procurement, depending on the types of procedures used for the award of contracts.

Notice types under the law on public procurement are:

¹⁹Ibidem, art. 53-54

²⁰Ibidem, art. 55

²¹Ibidem, art. 2, par. (4)

- **notice of intention;**
- **participation notice;**
- **award notice.**

The notice of intention and participation in the procurement procedure is mandatory and should be published in the Public Procurement Bulletin, on the website of the Contracting Authority in accordance with applicable law and shall include at least the information set out in Annex. 3 to the Public Procurement Law No 131 of 03/07/2015. The title of the procurement contract or subject matter specified in the notice of intention / participation shall mention "sustainable" in order to inform market players about the fact that the Contracting Authorities intend to initiate a sustainable procurement procedure.

3.6 TOOLS FOR IMPLEMENTATION OF SUSTAINABLE PROCUREMENT

To implement sustainable public procurement, Contracting Authorities can call on a set of instruments that are recognized as having a vital contribution to financial efficiency with which the highest performance in sustainable procurement can be achieved.

These approaches include:

Life cycle costing - contracting authorities often make the decision to award the contract to the lowest purchase price, however, for many goods, works or services, the costs incurred during use, maintenance and disposal can be also significant (energy, maintenance, removal of hazardous materials). Taking into account the life-cycle costs can attest that a product purchased at the lowest price may generate much higher costs during maintenance than a product that initially had a higher purchase price. Sadly, national legislation does not define the concept of product life cycle, and in this case, Contracting Authorities are to decide independently on their approach.

Centralized procurement – public centralized procurement is one way of increasing the efficiency of public procurement, primarily by providing savings when purchasing products in bulk, including reducing costs in logistics and administrative provisions, while more qualified experts manage a procurement processes. Centralized procurement is a viable tool for sustainable procurement as a policy of procurement based on environmental criteria and will foster dissemination and knowledge of sustainable public procurement especially with regard to the marketing of these products, or their technical specifications, etc. - they will be shared from central to local level.

Energy Performance Contracting (EPC) - is a contractual agreement between a building owner or tenant (including public authorities) and an energy service company (ESCO) to improve the energy efficiency of a building. Investment costs are usually covered by ESCO, or a third party such as a bank, and in these circumstances the financial burden is not imposed on the contracting authority. ESCO receives a fee which usually emerges from energy savings. After the period of

execution of the EPC, the cost savings from improved energy efficiency of the building go back to the contracting authority.

Framework agreements - is another way of implementing sustainable public procurement. A framework agreement may be signed with one or more economic operators with the possibility of issuing successive call-offs/contracts without having to repeat the entire procurement process, and, given that the performance of the contract can be improved in successive call-offs, that performance could refer to the environmental considerations.

Alternative bids – Contracting Authorities may decide to allow alternative operators to submit tenders who would deviate to a greater or lesser extent from technical specifications, provided that these deviations reflect environmental performance. However all offers, including those alternatives, will be evaluated against the same award criteria when identifying the most advantageous offer.

In order for the Contracting Authority to consider alternative bids, the following conditions should be met²²:

- indicating that alternative tenders are accepted in the invitation to bid;
- specifying the minimum requirements that alternative bids must meet;
- awarding the contract on the basis of the most advantageous tender in economic terms.

²²Law on public procurement No 131 of 03/07/2015, art. 42, par. (7)-(11) (*Monitorul Oficial* No 197-205/402)

CHAPTER 4. ENVIRONMENTAL ASPECTS IN THE BIDDING DOCUMENTS AND PROCUREMENT CONTRACT

4.1 INTRODUCTION

Bidding documents are the primary tool for attracting tenders in public procurement procedures and their quality directly results in obtaining the best value for public money and to meeting the expected needs of Contracting Authorities. These are the documents that contain and determine formal, technical, financial characteristics and describe the subject matter of the public procurement against which the bidders will submit bids.

The table below includes information, which may include environmental requirements for economic operators:

Table No 2

Information included in the tender documents	Specific elements of sustainable public procurement
Technical specifications	Minimum requirements for goods, services or works reflecting environmental requirements (Ecolabels, energy efficiency requirements, European criteria on green procurement).
Award criteria	Evaluation criteria will generate benefits for tenderers who submit technical proposals complying with environmental requirements set by the Contracting Authority in technical specifications
Qualification requirements for potential tenderers	Technical and professional capacities which demonstrate that the economic operators have sufficient skills to perform the contract (environmental management systems)
Contract	Contractual clauses (on transportation, packaging, etc.).

4.2 DEFINING THE SUBJECT MATTER OF THE PROCUREMENT

Defining the subject matter of the procurement and the procurement contract is an **important factor** as it will be published in the notices of intention and invitation, and later on transposed in the tender documents. It should therefore clearly state the intention of the Contracting Authority to procure in a sustainable way. The inclusion of a sustainable title for the procurement contract makes the economic operator know from the start what the Contracting Authority wants, including the fact that certain environmental performances will be taken into account when assessing tenders. At the same time, a sustainable title of the contract will be **an example for other Contracting Authorities** who do not know about such opportunities, but would like to implement sustainable procurement in their own institutions.

Sustainable titles are used in procurement procedures in most European countries to **send a signal** to economic operators that the environmental or social impacts will be taken into account when awarding the contract.

In this respect, we present the following examples of sustainable titles²³:

- ‘providing energy efficient public lighting’ (County Kerry, Ireland);
- ‘internal finishing works using environmentally friendly building materials’ (University of Malta);
- ‘energy efficiency services in 12 schools’ (Ministry of Education, Spain);
- ‘providing ecological and recycling paper’ (Piedmont, Italy).

4.3 TECHNICAL SPECIFICATIONS

Once the subject matter of the procurement contract is defined, it is necessary to elaborate technical specifications which, on the one hand, will help the supplier decide whether to participate in the procurement procedure, and which, on the other hand, are used to identify compliance of tenders submitted by economic operators.

Art. 37 of the Law on Public Procurement No 131 of 03/07/2015 regulates the rules with regard to the description of goods, works and services, and identifies several ways of developing of technical specifications.

1. By performing physical description of goods, works and services;
2. By referring to national/European standards, national/European technical homologations, international standards or other technical references developed by national/European standardization bodies;
3. By specifying functional performances and/or requirements required.

However, the law stipulates that for the use of the first method, physical description may be used only if the description of the performances and/or functional requirements is not possible²⁴.

Therefore, the legislation prioritizes the last two ways of drawing up technical specifications.

The specifications are defined as follows²⁵:

1. **Specifications of compliance** - also known as technical specifications; the Contracting Authority describes in details what exactly the desired product must contain or what kind of work to be performed, without specifying in detail or at all the performance parameters and functions of the product or of such works.

²³Buying green, a handbook on green public procurement, 3rd Edition, 2016, pag. 31

²⁴Law on public procurement No 131 of 03/07/2015, art.37, par. (3) (*Monitorul Oficial No 197-205/402*)

²⁵Guide. Public efficient energetic procurement, Violeta Simionescu

2. Performance specifications - known as functional specifications; the Contracting Authority describes what is expected from a product, service or work to be able to achieve functionality and a performance level.

A performance specification defines the functionality, performance and results to be achieved and the details of the input parameters (electricity, water, etc.). It also defines the operating environment and the conditions under which it will operate, the way of interaction with other functions or processes, the expected quality level, safety level, environmental performance and the way to control the desired performance level (including the one with reference to relevant standards). The methods used to measure whether the performance has been fulfilled or not are also defined by the performance specification.

In order to distinguish the practical application of technical specifications and performance specifications, the following example is relevant²⁶:

If you want to keep in office a certain temperature, this goal could be achieved by developing detailed technical specifications for a heating system. Alternatively, in the sense of performance it could be specified that building's inside constant temperature should be of 18-20 °C and allow the tenderers the possibility to come with different solutions. Tenderers may opt for innovative solutions for heating and ventilation that reduce the dependence on fossil fuels, while the technical data confirming the feasibility of the proposed methods can be requested.

Technical specifications based on eco-labels

Eco-labels and the sets of the European Union criteria are useful sources of information in the development of specifications within public procurement procedures. The eco-labels can be used in two different ways in the context of technical specifications:

- to develop technical specifications for defining the characteristics of goods or services;
- to check the compliance with these requirements, by accepting the label as a proof of conformity with technical specifications.

The Law on public procurement expressly provides Contracting Authorities' the right to fully or partially use the specifications defined by eco-labels of the European or multinational type, or any other eco-label.

However, the national law regulates the conditions, as well, when they can be applied²⁷:

- a) such specifications are appropriate to define the characteristics of the goods or services the supply or provision of which is the object of the public contract;
- b) the requirements for the eco-label were developed on a scientific basis;

²⁶Buying green, a handbook on green public procurement, 3rd Edition, 2016, pag. 34

²⁷Law on public procurement No 131 of 03/07/2015 art. 37 par. (13) (*Monitorul Oficial* 197-205/402, 31/07/2015)

c) the eco-label was adopted by a specific procedure that allowed the involvement of all stakeholders - government authorities, consumers, manufacturers, distributors, environmental organizations;

d) the eco-label is accessible/available to any interested person.

At the same time, the Contracting Authority has the right to admit that the offered services which have an eco-label are considered to fulfil implicitly the required technical specifications, but cannot consider the offer as non-compliant for the sole reason that the offered goods or services do not have a precise eco-label provided that the bidder demonstrate in an adequate way that the offered products or services correspond to the required technical specifications²⁸.

4.3.1 EUROPEAN CRITERIA ON GREEN PUBLIC PROCUREMENTS

A number of criteria on Green Public Procurement (GPP) for a range of products and services were established at European level. They were developed to facilitate the integration of environmental requirements in the documents for awarding public procurement contracts. However, the EU criteria on GPP tend towards achieving a better balance between the environmental performance, considerations of cost, commercial availability and ease of verification, so that contracting authorities who procure can choose, according to their needs, the inclusion of all or certain requirements in the tender documents.

The term "green public procurement criteria" includes not only the selection and award criteria, but also specifications and contract performance clauses, and the identification of sustainable criteria represents a very important step for the implementation of green procurement.

The covered groups of products and services are the following²⁹:

- Cleaning products and services;
- Copying and graphic paper;
- Combined heat and power (CHP);
- Office Buildings;
- Electrical and electronic equipment in the health care sector;
- Electricity;
- Food and catering services;
- Furniture;
- Gardening products and services;
- Imaging equipment;
- Indoor lighting;
- Office IT equipment;
- Road Design, Construction and Maintenance;
- Sanitary tapware;

²⁸Ibidem, art. 37, par. (14)

²⁹Buying green, a handbook on green public procurement, 3rd Edition, 2016, pag. 15

- Street lighting and traffic signals;
- Textiles;
- Toilets and urinals;
- Transport;
- Wall panels;
- Waste water infrastructure;
- Water-based heaters.

Since May 2016, this list has been supplemented with criteria relating to the design, construction and management of buildings, and you may access the official website of the European Union for the latest GPP criteria³⁰.

Case study. Procurement of energy efficient/ecological windows and doors.

The following lessons from pilot tenders have been learned:

It is important to understand that the national market capacity for construction materials including (energy efficient/ecological) windows and doors is rather small as we live in a small country with a small population. Therefore, before initiating the procurement procedure especially for sustainable construction works, the Contracting Authority needs to be realistic in its expectations and conduct a thorough survey of the actual situation of the local market. That means that sustainable products or services that are available at regional/international market might not be available at the local market, or/and local suppliers will not be capable of delivering it in compliance with the requirements. In addition, please consider the following:

- *Certification that certifies a sustainable/ecological product being used regionally/internationally might not be offered by local manufacturers. That is explained by the fact that obtaining foreign certification is expensive and thus not economically feasible due to low demand in Moldova. Contracting Authorities may face another challenge, which is non-existence of alternative national certification and standardisation. Such circumstances may create a situation when local manufacturers cannot obtain a certification proving ECO qualities of its sustainable/ecological products, on the one hand, and Contracting Authorities might not be able to accept a sustainable/ecological product without prove/certification, on the other hand;*
- *There are currently no authorised lists of local manufacturers of sustainable/ecological windows and doors.*

4.3.2 USING ECO-LABELS IN SUSTAINABLE PUBLIC PROCUREMENT

Eco-labelling is an activity that aims to establish a voluntary system of eco-label for products with minimum impact on human health and the environment throughout the entire life cycle of the product.

The eco-label is a graphic symbol, and/or descriptive text on the product or packaging, in a brochure or other document accompanying the product and provides the necessary information on ecological criteria of products offered on the market.

³⁰ http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm

The existing eco-labels are intended to help Contracting Authorities to identify ecological or/and sustainable products or services. The most valuable eco-labels in terms of green public procurement are those which are based on objective and transparent criteria, and are awarded by an independent third party. These labels can play a special role in developing technical specifications and award criteria, as well as in verifying the product compliance.

There are several different types of eco-labels, such as those that address one problem (such as Energy Star or the EU Organic label) or those covering several criteria (Forest Stewardship Council³¹).

Labels can be used in two different ways in the context of technical specifications:

- to help Contracting Authorities to draw up technical specifications in order to define the characteristics of goods or services they purchase;
- to check the compliance with these requirements, by accepting the label as a means to demonstrate compliance with technical specifications.

Mostly, the labels can help to save time in preparation of the tender/award documents, while ensuring that high environmental standards are applied in the procurement procedures by contracting authorities.

At the international level there are many eco-labels aimed to help the Contracting Authorities to identify the environmental and/or sustainable goods, works, services and some of them are listed below.

4.3.3 ECO-LABELS

European eco-labels



*The European label*³² was created by the European Commission in 1992 and it is a unique certification scheme to help consumers to identify green products and services, which do not affect adversely the environment. The European label is voluntary, but every year more and more companies apply for it because of the competitive advantage the EU Eco-label gives. This helps to identify products and services that have a reduced environmental impact throughout their life cycle, from raw material extraction to the production, use and disposal.

³¹ <https://ic.fsc.org/en>

³² http://ec.europa.eu/environment/ecolabel/index_en.htm

Examples of national eco-labels



Blue Angel (DerBlaueEngel)³³ is a German certification for products and services that meet environmental aspects.



The Nordic Swan (LebădaNordică)³⁴. Eco north-label is a voluntary eco-labelling scheme that evaluates the environmental impact throughout the lifecycle. Nordic label is applied to a group of 63 products.



"*Organic Agriculture*". This is a sign that confirms the production process is controlled by inspection bodies and ensures that the product is produced according to organic farming exigencies. The mark is registered and recognized by 16 countries in the European Union. Organic products grown in the Republic of Moldova have applied eco-label on the package with mark "*Organic Agriculture*"³⁵.

Specific labels



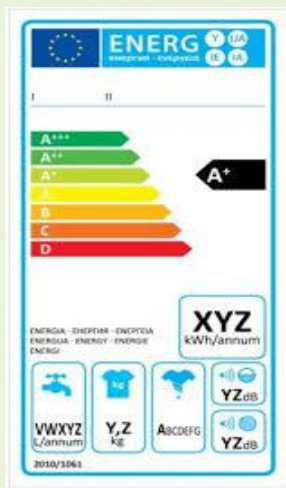
*Energy Star label*³⁶ is a program of the US Environmental Protection Agency, which helps companies and individuals to save money and to protect the environment through superior energy efficiency. In 1995 the Environmental Protection Agency of the US expanded the label for additional products such as office equipment and residential heating, including cooling equipment. Energy Star label can be applied to various office equipment, lighting equipment, household appliances, houses and buildings, etc.

³³ http://www.blauer-engel.de/en/blauer_engel/index.php

³⁴ <http://www.nordic-ecolabel.org/>

³⁵ Rules on the use of national mark "Organic Agriculture - Moldova" (*Monitorul Oficial* 325-332/952, 31/10/2014)

³⁶ <https://www.energystar.gov/>



*Energetic European label*³⁷ was created to provide to buyers accurate, comparable and easily recognizable information on the energy consumption, performance and other features of household appliances. This information allows any person to identify how a product is energy efficient and assess the potential reduction in energy costs. All information contained in the label is based on standard tests under European law. The label initially classified products from A to G, with A being the most efficient energy class and G the least efficient. Revised European legislation introduced for classes up to A +++ to allow the adaptation to technological developments and to allow further differentiation of products in terms of energy efficiency.

Environmental management systems

Among green labels certified by independent bodies are labels awarded to companies that apply environmental management systems: EMAS (EU) and ISO 14001 (International).



*EMAS*³⁸ is a management tool developed by the European Commission for enterprises and other organizations to evaluate, report and improve their environmental performance. EMAS system is primarily used by organizations located in the EU or in the European Economic Area; although it can be used by organizations located elsewhere, but it is always checked by a European accreditation body.

*ISO 14001*³⁹ is an internationally accepted standard that sets out requirements for an



environmental management system. This helps organizations to improve their environmental performance through more efficient use of resources and reduce waste, garnering a competitive advantage and stakeholder's confidence. ISO 14001 was revised at the end of 2015.

³⁷ <http://www.newenergylabel.com>

³⁸ http://ec.europa.eu/environment/emas/index_en.htm

³⁹ <http://www.iso.org/iso/iso14000>

4.4 Award criteria based on environmental aspects

National legislation on public procurement stipulates two award criteria⁴⁰ that are described in the table below:

Table No 4⁴¹

CRITERIA	DESCRIPTION
The lowest price	It is usually used when technical specifications are clear and well defined. This criterion is particularly specific for request for price quotations procedure.
Most economically advantageous tender (MEAT)	<p>It is usually used when the contracting authority intends to award the public procurement contract to an economic operator whose offer has the "best value for money". In this case:</p> <ul style="list-style-type: none">a. the contracting authority has the opportunity to establish specifications for the contract, placing greater focus on functional performance that is intended to be obtained from bidders;b. Specifications against which the offers will be evaluated represent the extended compulsory requirements from the bidding documents. The failure to meet these specifications will not result in rejection of the offer, but their compliance could give an advantage in the evaluation process (in cases when such specifications are subject to some evaluation factors);c. contract award is based on various factors, coupled with the specific purpose of the contract, such as the quality of proposed solutions, additional technical characteristics, functional characteristics, environmental characteristics, running

⁴⁰Ibidem, art. 26 par. (2)

⁴¹Book of the maker in the field of ecologic procurement, 2010

	<p>costs, cost/efficiency, post- sales services and technical assistance, delivery terms, timeframe for work completion, guarantees granted in connection with the proposed technical solutions;</p> <p>d. Contracting Authority shall specify the method of evaluation in the tender documentation.</p>
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Due to the fact that the "most technically and economically advantageous tender" criterion requires evaluation factors and it is advisable that criteria take into consideration environmental aspects as well.

When using the "*lowest price*" criterion, environmental requirements must be included in the technical specifications. Only those offers that correspond to the specifications can be evaluated under this criterion. In these circumstances, a contract awarded under this criterion can be called environmental only if the technical specifications included environmental requirements.

The same method can be used in case of the first criterion but with the condition that for certain environmental performance characteristics will be given extra points - this approach is commonly used because it gives more flexibility to Contracting Authorities.

Evaluation factors included in the award criterion for "*most technically and economically advantageous tender*" may refer as appropriate to price, quality, technical and functional characteristics⁴², delivery terms, post-sales services, technical assistance and certainly, they could refer to environmental performance, life cycle cost, etc. National legislation does not provide an exhaustive list of such factors, leaving to the discretion of Contracting Authorities to identify and to provide them expressly in the contract award documents.

The policy of saving costs - and contributing to environmental protection at the same time - by using the approach based on "life cycle cost" can be implemented in various ways. The following list provides few examples⁴³.

A. Savings on water and energy use

The easiest step towards efficient procurement which also protects the environment is to save water, electricity and fossil fuels. These savings have clear advantages for both, the financial situation of the Contracting Authority, and for the environment. Being easy to calculate and having an obvious economical aspect, the costs of water and energy can easily be used as award criteria in public procurement procedures. From the ecological point of view, the importance of using

⁴²Ibidem, art. 26 par. (7)

⁴³Ecological procurement! Guide of public ecological procurement, Luxembourg, Office of Official Publications of the European Communities, 2007, pag. 37

water and energy is also undisputed, particularly for example in regard to the effect of fuel use on CO₂ emissions, or waste production.

B. Savings on disposal costs

Disposal costs are easily omitted in contracts for the purchase of a product, service or works. Disposal costs will be incurred at some point, although it is often a fairly long period. Ignoring these costs at the procurement stage could transform this purchase into an expensive one. Disposal costs can range from the physical removal cost to the storage cost in safety conditions.

The examples show that including in the award criteria the amount and composition of the waste can save money and protect the environment. Once the approximate cost of waste disposal has been calculated, it should be possible to transpose the environmental criterion of waste reduction into an economic one.

This approach should be taken into consideration by the national Contracting Authorities, because at the moment not enough attention is paid to this issue, mostly because of a lack of knowledge, and also due to the lack of an appropriate regulatory framework on recycling waste.

4.5 QUALIFICATION REQUESTS FOR POTENTIAL BIDDERS

The qualification criteria are minimum requirements stated by the Contracting Authority for bidders to verify that they have sufficient technical, professional and financial skills to perform a procurement contract. When assessing the ability to perform a contract, Contracting Authorities may take into account the specific experience and competence relating to environmental matters that are relevant to the contract subject matter.

The Contracting Authority will apply proportionate qualification and selection criteria related to the contract subject matter referred only to⁴⁴:

- a) personal situation 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 standards.

From the contract award procedure will be excluded, and therefore being ineligible, any economic operator who is in one of the following situations⁴⁵:

- a) it is in the process of insolvency as a result of the Court Order;

⁴⁴Law on public procurement No 131 of 03/07/2015, art. 17 (Monitorul Oficial 197-205/402, 31/07/2015)

⁴⁵Ibidem, art. 18, par. (2)

b) it has not fulfilled the obligations relating to the payment of taxes and social security contributions in accordance with the legal provisions in force in the Republic of Moldova or the country in which he/she is established;

c) it has been convicted in the past 3 years, by final court judgment for an act which prejudiced professional ethics or for committing a professional error;

d) it has submitted false information or has not submitted the information required by the Contracting Authority in order to demonstrate fulfilment of the qualification and selection criteria;

e) it is included in the list of debarred suppliers.

An economic operator can be excluded from the proceedings, if he/she has violated legislation on environmental protection to the extent that this has undermined his/her professional conduct.

Among the criteria concerning the technical capacity, a useful instrument for integrating environmental criteria is the experience resulting from previously executed contracts. Thus, when the contract is an environmental-friendly one, this criterion can be used to identify whether the bidder has experience in the respect of such contracts. However, the Contracting Authority is obliged to clearly establish what type of information or documents the economic operator must submit to prove this.

Another environmental condition that can be requested by a Contracting Authority is the implementation of an environmental management system. There are two environmental management systems used most frequently. These are the 'Environmental Management and Audit of Community Scheme EMAS (1) and European/International Standard for Environmental Management Systems EN/ISO 14001 (2).

National legislation is in line with European best practice requirements and Contracting Authorities have the right to include requirements for environmental management, in this regard, they may require certificates issued by independent bodies attesting that the economic operator meets certain standards of environmental protection, it should be in line with⁴⁶:

a) either to the Community Environmental Management and Audit Scheme (EMAS);

b) the ecological management standards based on the series of European standards or international, certified by bodies conforming to Community law or the European or international standards on certification.

The EMAS system is applied largely by companies established in the EU or in the European Economic Area, but the ISO system is open to businesses around the globe without limitations within some geographic regions, including in Europe. Environmental management systems support organizational tools designed to improve the overall environmental performance of the organization involved. These allow organizations to have a clear picture of impacts of their activities on the environment, help them to focus on significant impacts and manage them efficiently to continuously improve environmental performance. Relevant areas for improvement include the use of natural resources such as water and energy, training and information of

⁴⁶Ibidem, art. 23, par.(1)

employees, use of environmentally sound production methods, purchase of green office products, production of green products, etc.⁴⁷

Example:

The minimum qualification requirements for economic operators who supply ecological vegetables and fruits include:

Mandatory documents:

- a) Enterprise registration certificate - copy - issued by the State Registration Chamber or by the competent body in the country of residence of the foreign economic operator, confirmed by application of the signature and stamp of the Participant;
- b) Certificate of bank account - copy - issued by the bank holding the account;
- c) Certificate of systematic payment of taxes, contributions - copy - issued by the Tax Inspectorate or by the competent body in the country of residence of foreign economic operator (validity - Tax Authority as required for residents of Moldova);
- d) Last financial report - copy - confirmed by the signature and seal of the Participant.
- e) Authorization concerning the use of the national mark "Organic Agriculture - Republic of Moldova" or other eco-label recognized by Republic of Moldova - Copy - confirmed by signature and stamp of the Participant.**
- f) Certificate of conformity of ecologic product - issued by the inspection and certification body - the original copy confirmed by the stamp and signatures of the participant;**
- g) Statement of Ethics and non-involvement in fraudulent practices and corruption.

Optional documents, presented obligatorily only on their subsequent request:

- a) Certificate confirming non-application of criminal sanctions (criminal record) of Participant - issued by the Interior Ministry, which provide information about non-criminal sanctions during the last 3 years or by the competent body in the country of residence of the foreign economic operator;
- b) Certificate confirming non-application of administrative and disciplinary sanctions toward Participant's officials - original - issued by the Participant, that reflecting information about non administrative and disciplinary sanctions over the last 3 years or by the competent body in the country of residence of the foreign economic operator;
- c) Recommendations - original; environment.

⁴⁷Ecological procurement! Guide of public ecological procurement, Luxemburg, Office of Official Publications of the European Communities, 2007, pag. 30

Example:

The minimum qualification requirements for economic operators performing installation works of PVC windows and doors include:

Mandatory documents:

- a) Certificate (decision) of enterprise registration - Copy - issued by the State Registration Chamber (Ministry of Information Development), confirmed by application of the signature and stamp of the Participant;
- b) Certificate of bank account - copy - issued by the bank holding the account;
- c) Certificate of making systematic payment of taxes, contributions - copy - issued by the Tax Inspectorate (validity of the certificate - as required by the Tax Inspectorate of the Republic of Moldova);
- d) Last financial report - copy - confirmed by the signature and seal of the Participant;
- e) Activity License - Copy - confirmed by signature and stamp of the Participant;
- f) Recommendations from other beneficiaries;
- g) Project/site supervisor, attestation according to current legislation, confirmed by the attesting certificate of professional and with a similar experience in the field of work that are to be executed;
- h) The list of bidder's founders;
- i) Quality manual;
- j) Certificate confirming the non-existence of plumbum in the manufacture of the frames - copy, issued to the manufacturer and confirmed by the signature and stamp of the Participant;**
- k) ISO 14001 or EMAS certificate - copy, issued to the manufacturer and confirmed by the signature and stamp of the Participant (frame, hardware, glass);**
- l) Means of transport that will be used for the delivery of construction materials shall meet at least the EURO 5 exhaust emission requirements - a list of vehicles that will be used for the delivery of construction materials and the technical documents specifying the emission levels.**

Optional documents, presented obligatorily only on their subsequent request:

- a) Certificate confirming non-application of criminal sanctions (criminal record) of Participant - issued by the Interior Ministry, which provide information about non-application of criminal sanctions during the last 3 years or by the competent body in the country of residence of the foreign economic operator;

b) Certificate confirming non-application of administrative and disciplinary sanctions of Participant - original - issued by the Participant, that reflecting information about non administrative and disciplinary sanctions over the last 3 years or by the competent body in the country of residence of the foreign economic operator;

c) Recommendations - original;

4.6 CONTRACT CLAUSES ESTABLISHMENT

The Public procurement contract is perceived as being outside of public procurement procedure, but contract clauses at the procurement stage can contain environmental or sustainable requirements, and the Public Procurement Law expressly provides for this right granted to Contracting Authorities.

Thus, the Contracting Authority may develop contractual clauses to achieve a number of objectives that ensure sustainable development by taking into account environmental requirements among others. Respective contractual clauses may be aimed, in particular, at encouraging workplace training, employment of the unemployed, youth and persons with integration difficulties, reducing the level of unemployment, training unemployed and young people, environment protection, improving working conditions and safety, rural development and training of farmers, protecting and supporting small and medium enterprises⁴⁸. However, the law also imposes a condition for such clauses - they should be included in the notice of intention/invitation to bid or in bidding documents for economic operators to know from the start what are Contracting Authority's expectations from the contract execution, and at the same time to defend their rights in cases where contract clauses are drafted in a discriminatory manner.

Contract clauses must not be assimilated to evaluation criteria, qualification, selection or technical specifications, or these must be formulated in such a way that they can be executed by any economic operator which has been awarded a public contract.

Legislation is rather drastic on the execution of the contract, and the economic operator is obliged to execute public contract clauses unconditionally, respecting the quality and price requirement⁴⁹. At the same time, Contractor has contractual liability and for contravention and/or administrative non-execution of contract terms, administrative penalty may be considered, even the inclusion in the list of debarred suppliers in cases where Contractor's the non-performance caused damage to the Contracting Authority or the affected its activity.

Contractual clauses when purchasing goods

In contracts for goods procurement, the contractual clauses regarding protection of the environment or sustainability can be included in the terms of delivery and the easiest ways to reduce environmental impact during performance of the contract may refer to the following⁵⁰:

⁴⁸Law on public procurement No 131 of 03/07/2015, art. 69 (Monitorul Oficial 197-205/402, 31/07/2015)

⁴⁹Ibidem, art. 70, par. (5)

⁵⁰Buying green, a handbook on green public procurement, 3rd Edition, 2016, pag.64

- product delivery in the appropriate quantity. Bulk delivery by using single transport is more environmentally efficient compared to a delivery made through several shipments. Specifying a maximum number of deliveries per week or month can also be another way of achieving the same result;

- deliveries to be performed outside the peak traffic hours in order to minimize the traffic congestion effects of delivery process;

- Requiring that the supplier takes back (and recycles or reuses) any packaging that comes with the product – this has the double advantage of centralising packaging prior to reuse or recycling and encouraging the supplier to cut down on any unnecessary packaging.

In cases when requirements with respect to materials, production processes or special methods were included in bidding documents, they can be further included in the contractual clauses of the supply contracts.

Contractual terms for works or services procurement.

In contracts for services or works the following clauses may be included:

Referring to the mode the service or work is performed⁵¹:

- application when appropriate, of specific environmental management measures in accordance with a third party certificate, such as, for example, ISO 14001 or EMAS;

- use of dosage indicators in order to ensure that appropriate quantities of cleaning product are used;

- efficient use of resources such as electricity and water.

Economic operator's staff training:

They should be aware of the Contracting Authority's environmental policy and of the environmental impact of their work.

Transport of needed materials and tools:

- delivery of materials in concentrated form which may be subsequently diluted on site;

- reusing containers or packaging for transport;

- disposal of the packaging;

- takeover by the supplier of packaging for reuse, recycling or storage.

The existence of environmental-friendly and/or sustainability contractual clauses will achieve the objectives set by the Contracting Authority only if their implementation is rigorously monitored.

Monitoring compliance with contract requirements can be achieved in different ways⁵²:

- economic operator should prove compliance with contractual terms;

- Contracting Authority may conduct spot checks;

⁵¹Ibidem, pag. 65

⁵²Ibidem, pag. 66

○ verification by a third party of the way of contract execution, and in this regard civil society can be a reliable partner.

Notwithstanding the above, **monitoring of the appropriate execution of the contract clauses lies with the Contracting Authority** and, an obligation in this respect is clearly provided in law provisions⁵³.

PURCHASE RESPONSIBLY, PURCHASE FOR SUSTAINABILITY!!!

⁵³Law on public procurement No 131 of 03/07/2015, art.par. (1),let. i) (Monitorul Oficial 197-205/402, 31/07/2015)