

**DECISION**

**approving the Regulation on public procurement**

**using the negotiated procedure**

**no. 668 of 27.05.2016**

*Official Gazette no.150/712 of 31.05.2016*

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Pursuant to art.53 and 54 of Law no.131 of 3 July 2015 on public procurement (Official Gazette of the Republic of Moldova, 2015, no.197-205, art.402), the Government

**DECIDES:**

**1.**to approve the Regulation on public procurement using the negotiated procedure, according to Annex No.1.

**2.**certain Government Decisions shall be repealed, according to Annex No.2.

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| **PRIME MINISTER** | **Pavel FILIP** |
| **Countersigned by:** |  |
| **Minister of Finance** | **Octavian Armaşu** |
| **No.668. Chisinau, 27 May 2016.** |

Annex No.1

to Government Decision

no.668 of 27 May 2016

**REGULATION**

**on public procurement using the negotiated procedure**

**I. GENERAL PROVISIONS**

**1.**For the purposes of this Regulation, the following terms are defined as follows:

***negotiated procedure***– a procedure whereby the contracting authority carries out consultations with one or more preselected / selected candidates and negotiates the contract terms, technical details, including the price;

***candidate*** – any economic operator supplying goods and / or service provider who may be a natural or legal person, public entity or association of such persons and / or entities that have submitted an application under the first stage of the negotiated procedure;

***candidacy*** – the documents whereby a candidate demonstrates his / her personal situation, the ability to pursue his / her professional activity, the economic and financial situation, the technical and professional capacity;

***awarding documentation*** – the documentation containing all information relating to the subject matter of the public procurement contract and the award procedure, including the specification or, where appropriate, the descriptive documentation;

***preliminary tender***– the document whereby the candidate proposes preliminary solutions that meet the needs and requirements of the contracting authority, as presented in the tender documentation;

***final offer*** – the financial and technical offer drawn up as a result of the completion of the negotiation round(s);

***technical offer*** – the tender document prepared on the basis of the requirements of the awarding documentation, set by the contracting authority;

***financial offer*** – the tender document providing the information required by the awarding documentation on prices, tariffs, other financial and commercial conditions;

***technical specifications*** – in the event of public works contracts, the set of technical specifications contained, in particular, in the specifications of the characteristics required for a material, a product or a good and which allow their description appropriate to the intended use of the contracting authority. These features shall include environmental performance levels, design for all types of uses (including accessibility for people with disabilities) and assessment of compliance, performance, safety or dimensions, including quality assurance procedures, terminology, symbols, tests and testing methods, packaging, marking and labelling, as well as the production process and methods. The characteristics shall also include the design and calculation rules for the works, the test, control and acceptance conditions for the works, as well as the construction techniques and methods and all other technical conditions which the contracting authority is able to provide, by general or specific regulations, in respect of finished works and in respect of materials or components thereof;

***technical specification*** – in the event of public supply or service contracts, the specification listed in a document defining the characteristics required for a product or service, such as quality levels, environmental performance levels, design for all types of uses (including access for persons with disabilities) and the assessment of conformity, performance, product use, safety or dimensions, including indications applicable to the product as regards the name under which it is marketed, terminology, symbols, testing and test methods, packaging, marking and labelling, production processes and methods, and conformity assessment procedures;

***standard*** – the technical specification approved by a designated standardization body for repeated or permanent use which is not mandatory and which falls into one of the following categories:

*- international standard* – a standard adopted by an international standardisation body and made available to the public;

*- European standard* – a standard adopted by a European standardisation body and made available to the public,

*- national standard* – a standard adopted by a national standardisation body and made available to the public;

***common technical specification*** – the technical specification drawn up in accordance with a procedure recognised by the Member States of the European Union and published in the Official Journal of the European Communities;

***technical reference*** – a product manufactured by European standardisation bodies, other than the official standards, in accordance with a procedure adapted to the evolution of market requirements.

**2.**The contracting authority shall be required to publish in the Public Procurement Bulletin, through the Public Procurement Agency (hereinafter referred to as the Agency), the public announcements of intent, participation and award of the public procurement contract according to the form and content approved in this sense.

**3.**The contracting authority shall be entitled, for the purpose of maximum transparency, to publish the contract notice by other local, national or international media, or the Internet, but only after publication of the notice in the Public Procurement Bulletin and on the Agency’s webpage, having the obligation to strictly observe the content and form of the published announcement.

**4.**The contracting authority shall be required to publish in the Public Procurement Bulletin and on the Agency’s website the notice of awarding the public procurement contract no later than 30 calendar days from the date of its conclusion.

**II. THE NEGOCIATED PREROCEDUREWITHPRIOR**

**PUBLICATION OFTHE CALL FOR TENDER**

**Section 1**

**Conditions for the application of a negotiated procedure**

**with prior publication of a call for tenders**

**5.**The contracting authority shall be entitled to apply the negotiated procedure with the prior publication of a call for tenders in the following cases:

1) The contracting authority shall be entitled to apply the negotiated procedure with the prior publication of a call for tenders in the following cases. The contracting authority shall be entitled not to publish a call for tenders where it includes in the negotiated procedure all tenderers or only the tenders who meet the qualitative selection criteria and who have submittedin the open or restricted procedure, preceding the tender procedure or the previous competitive dialogue, tenders conforming to the formal requirements of the award procedure. Application of the negotiated procedure in this case is only possible after the initial procedure has been cancelled;

2) In exceptional, duly justified cases, whether it is goods, works or services whose nature or risks do not allow the prior and definitive fixing of prices;

3) In the field of services, including intellectual property, such as design of works, to the extent that due to the nature of the services to be rendered, the specifications of the contract cannot be set sufficiently precisely to allow the award of the contract by selecting the most advantageous offer, in accordance with the rules on open or restricted procedure;

4) In the event of public works contracts or services rendered exclusively for research, development or experimentation purposes and not to secure a profit or to cover the costs of research and development.

**6.**In the events referred to in point 5 sub-section 1), the contracting authority shall be entitled not to submit for publication the invitation to tender where it invites only the tenderers who have met the qualification criteria in the previous procedure and who submitted tenders in accordance with the formal rules laid down in the award documentation.

**7.**Substantial modifications in the award documentation, shall be considered, but are not limited to, the modifications that refer to:

1) qualification criteria;

2) award criteria;

3) specifications – Technical specifications, execution deadlines;

4) evaluation factors;

5) estimated contract value.

**Section 2**

**The contract award criteria**

**8.**In the case of a negotiated procedure with the publication of a call for tender, the lowest price or the most economically advantageous tender may be applied as award criterion.

**9.**Where the most economically advantageous tender is chosen as award criterion, the offer with the highest score resulting from the application of a rating system for which relative weights or a specific calculation algorithm are set shall be established as winning tender.

**10.**In accordance with Article 26 of the Law No.131 of 3 July 2015 on public procurement, the most economically advantageous offer shall be established as winning tender based on the following evaluation factors:

1) In the event of public supply contracts – the price, delivery terms, payment terms, quality, aesthetic, functional and technical characteristics, technical service possibilities and costs, technical assistance, other elements considered significant for tenders’ evaluation. The share of the price in the total evaluation of the tender shall not be less than 60%;

2) In the event of public works contracts - the quality offered, the unit price, the total price, other points considered significant for tenders’ evaluation. The share of the price in the total evaluation of the tender shall not be less than 80%;

3) In the event of public service contracts – the quality offered, the unit price, the total price, other points considered significant for tenders’ evaluation. The share of the price in the total evaluation of the tender shall not be less than 40%.

**11.**In addition to the tender valuation factors provided in section 10, there may still be the following:

1) Qualitative, technical or functional features;

2) Warranty terms proposed in correlation with the offered technical solution;

3) Environmental characteristics;

4) Running costs;

5) Cost / effectiveness ratio;

6) Post-sales services and technical assistance;

7) Terms of delivery or execution;

8) Other elements considered significant for tenders’ evaluation.

**12.**The evaluation factors under point 11 shall not be subject to excessive weightings.

**13.**The contracting authority may combine the above-mentioned evaluation factors, but with respect to the price share regulated by art. 26 of Law No.131 of 3 July 2015.

**14.**For the purpose of the provisions of points 11 and 13, the contracting authority shall have the obligation to specify in the tender documentation, clearly and in detail, the evaluation criteria of the tender, their relative weightings or the calculation algorithm, as well as the concrete method of scoring the advantages resulting from the technical and financial offers submitted by the tenderers. The evaluation criteria and their relative weightings, the calculation algorithm and the advantage scoring methodology must have a concrete link with the specificity of the contract.

**15.**When determining the criteria and factors for tenders’ evaluation, the contracting authority shall not be entitled to use criteria which:

1) are not directly related to the nature and subject matter of the contract to be awarded;

2) do not reflect a real and obvious advantage that the contracting authority can obtain by using the relevant assessment criterion.

**16.**The weighting established for each evaluation factor should not lead to a distortion of the outcome of the procedure for the award of the public procurement contract. For each evaluation criterion, the contracting authority shall have the obligation to set a weight that reflects correctly:

1) the importance of technical / functional characteristics considered to be a qualitative advantage that can be scored; or

2) the amount of the financial benefits that tenderers can offer by undertaking additional commitments in relation to the minimum requirements set out in the tender documentation.

**17.**When defining the evaluation criteria, the contracting authority, through the working group, must be able to justify how the weighting of the assessment factors has been established, mentioning this fact in the evaluation report drawn up by the working group and in the minutes.

**Section 3**

**Procedure initiation**

**18.**Prior to the initiation of the negotiated procedure, the working group shall be obliged to verify compliance with the conditions set out in Section 1. The verification shall result in the elaboration of a minutes by the working group on the need to apply the negotiated procedure for the award of the public procurement contract, which shall become part of the public procurement file.

**19.**The decision on the application of the negotiated procedure for the award of the public procurement contract shall be taken by majority vote of the members of the working group and shall be recorded in the minutes. Where there are separate opinions, they shall be recorded in the minutes.

**20.**In accordance with the accountability principle, the determination of the framing circumstances for the application of the negotiated procedure shall be the exclusive responsibility of the contracting authority, or of the designated working group.

**21.**The contracting authority shall have the right to initiate the application of the negotiated procedure for awarding the public procurement contract if the following conditions are fulfilled cumulatively:

1) The contract is included in the contracting authority's annual procurement plan;

2) The financial means necessary for the fulfilment of the provisions of the public procurement contract are provided;

3) The working group has been established and it has developed the awarding documentation.

**III. PERFORMANCE OF THE FIRST STAGEOF THE NEGOTIATED PROCEDURE**

**WITH PUBLICATION OF A CALL FOR TENDER**

**Section 1**

**Launching a negotiated procedure with the publication of a call for tender**

**22.**The negotiation procedure shall be initiated by submitting for publication a call for tender, whereby the economic operators are invited to participate in the negotiation procedure. The contracting authority shall be obliged to publish the contract notice in the negotiation procedure in the Public Procurement Bulletin and on the Agency's website.

**23.**Where the estimated value of the public procurement contract is equal to or greater than the one provided for in Article 2 (3) of Law No.131 of 3 July 2015on public procurement, a contract notice whereby economic operators are invited to participate in the negotiated procedure shall also be published in the Official Journal of the European Union and the period between the publication of the contract notice and the closing date for applications’ submission must be at least 37 days.

**24.**Where the estimated value of the public procurement contract is less than that provided for in Article 2 (3) of the Law No.131 of 3 July 2015, the period between the publication of the contract notice in the Public Procurement Bulletin and the Agency web site on the one hand and the closing date for the submission of applications on the other hand must be at least 20 days.

**25.**Where the minimum time limits set out in points 23 and 24 of this Regulation cannot be met because of the emergency situation, the contracting authority shall be entitled to speed up the procedure by reducing these periods, but not less than 15 days.

**26.**Where the contract notice is submitted in electronic format for publication in the Official Journal of the European Union, the period set out in point 23 may be reduced by 7 days and the period set out in point 24 may be reduced by 5 days.

**27.**The contract notice to the negotiated procedure shall be published in the state language and, where applicable, in one of the international circulation languages.

**28.**The access of economic operators to the awarding documentation shall be ensured from the time of publication of the contract notice. The contracting authority shall have the obligation to place the awarding documentation at the disposal of the economic operator as soon as possible, within a period not to exceeding 2 days from the receipt of a request from the latter.

**29.**The following shall be indicated in the contract notice for the submission of applications:

1) the name, headquarters of the contracting authority, contact details;

2) the subject matter of the public procurement contract to be awarded;

3) the manner and the place where the awarding documentation can be obtained;

4) the currency and the manner of paying the fee for the awarding documentation (account, bank, etc.);

5) the language (s) of the documents to be submitted by the candidates in response to requests for the awarding documentation;

6) the place, date and deadline for applications’ submission;

7) the date, time and place of opening the applications;

8) the minimum number of candidates that the contracting authority wishes to select for the negotiation;

9) information on the valuation criterion used (the lowest price or the most economically advantageous tender) and the weighting of the evaluation factors;

10) as the case may be, the legal form of organization of the group of economic operators to be awarded the contract;

11) qualification / selection criteria regarding the personal situation of economic operators that may entail the exclusion of the latter, as well as the information / documents proving that they do not fit in the cases justifying exclusion. Qualification / selection criteria for economic and financial capacity as well as the technical and / or professional capacity of the economic operator; information / documents to be submitted by the economic operator for the assessment of the minimum economic and technical capacity, where these have been imposed. The minimum specific level(s) for the capacities required;

12) where appropriate, the name and address of the economic operators already selected by the contracting authority;

13) The name and address of the competent appeal body. Exact information on the deadlines for filing the appeal and, where appropriate, the name, address, telephone number, fax number and e-mail address of the office where this information can be obtained;

14) The date of publication of the notice of intention or, where appropriate, the indication that no such notice has been published;

15) It is specified whether the contract is covered by the Government Procurement Agreement of the World Trade Organization (only for advertisements for publication in the Official Journal of the European Union).

**30.**The contract notice must contain clear information so as to avoid, as far as possible, the blurring of potential economic operators.

**31.**The awarding documentation shall be sent to the economic operators along with the call for tender. Where the awarding documentation is published electronically, the direct link where it can be downloaded shall be indicated in the call for negotiated tender.

**32.**Any interested economic operator shall be entitled to request explanations on the manner to carry out the negotiated procedure and / or the documents to be submitted in order to meet the qualification requirements imposed by the contracting authority.

**33.**The contracting authority shall be obliged to respond clearly, completely and unambiguously, as quickly as possible, to any clarification requested, within a period not exceeding 3 working days from the receipt of such request by the economic operator.

**34.**To the extent that, for good reasons, it is necessary to extend the period granted to the economic operators for the preparation of the documents and information requested by the contracting authority during the selection stage, it shall be obliged to extend the deadline for submitting applications by publishing the new data in the Procurement Bulletin public.

**Section 2**

**Access to the award procedure**

**35.**During the period between the publication of the contract notice and the closing date for the submission of applications, the contracting authority must ensure that any economic operator is able to obtain complete information on the conditions for participation in the award procedure.

**36.**Any economic operator shall be entitled to submit his/her application to participate in the negotiated procedure.

**37.**Several economic operators have the right to associate, under the law, with the purpose of submitting a joint application.

**38.**The contracting authority shall be entitled to require legalization of the association if only the joint tender is declared winning and if only such a measure is a necessary condition for the proper performance of the contract.

**39.**Without diminishing its liability for the way the future public procurement contract is performed, the tenderer shall be entitled to include the possibility to subcontract part of the contract in the technical offer.

**40.**If inquired by the contracting authority, the tenderer shall specify the part (s) of the contract to be subcontracted and information on the proposed subcontractors.

**41.**In order to ascertain the qualification data in the negotiated procedure, the economic operator shall submit the qualification documents pursuant to art.16 of the Law No.131 of 3 July 2015.

**Section 3**

**Opening of applications of economic operators to the negotiated procedure**

**with the publication of a call for tender**

**42.**Applications shall only be opened by the working group members assigned in this respect particularly. The Working Group shall be obliged to open the applications at the date, time and address indicated in the contract notice, insofar as the deadline for submitting applications is not subject to extension.

**43.**Candidates can participate in the opening of applications process. Applications shall be opened by the Working Group in the presence of representatives of economic operators who are empowered to do so by economic operators who have submitted applications.

**44.**The opening session shall be finalized by drawing up the minutes, signed by the members of the working group and the representatives of the economic operators, if they request the minutes for countersigning, recording the way the meeting is held, the qualifications documents submitted at the applications’ opening.

**45.**The Working Group shall be obliged to submit, upon request, a copy of the opening minutes to the economic operators who have submitted applications, whether or not present at the opening session.

**46.**Any decision on the qualification / selection of candidates shall be adopted by the working group during meetings following the opening session.

**Section 4**

**Assessing applications and setting the shortlist**

**47.**The Working Group shall be required to check fulfilment by each candidate of the qualification requirements, as set out in the awarding documentation.

**48.**During the examination and verification of the documents submitted by the candidates, the working group shall be entitled to request at any time explanations on the documents to demonstrate the fulfilment of the qualification requirements, as provided in the tender documentation.

**49.**The economic operator shall be obliged to respond to the requests of the working group, submitting supporting documents that confirm the fulfilment of the qualification requirements, when receiving a request by the working group, within the deadline stipulated in the respective request. This term cannot be less than 2 business days.

**50.**The application shall be rejected in the following cases:

1) where it does not meet the qualification requirements set out in the contract notice;

2) has not replied or has not replied in a meaningful way to the working group inquiries;

3) the commission of corruption acts has been found, as described in Article 40 paragraph (1) of the Law No.131 of 3 July 2015;

4) it has been found that the qualification data submitted are erroneous or incomplete to a considerable extent;

5) it does not meet the requirements for the pre-selection of the maximum number of candidates, as set out in the contract notice.

**51.**Following the candidates’ pre-selection process (meeting the qualification requirements set out in the contract notice), the working group shall be obliged to draw up and approve a report on the economic operators whose applications have been opened.

**52.**The contracting authorities may limit the number of suitable candidates to be invited to the negotiated procedure, provided that a sufficient number of candidates is available. The contracting authorities shall indicate in the contract notice the objective and non-discriminatory criteria or rules they are expected to use, the minimum number and, where appropriate, the maximum number of candidates they expect to invite.

**53.**In the negotiated procedure with the publication of a call for tender, the minimum number of invited candidates may not be less than 3. In any event, the number of invited candidates must be sufficient in order to ensure genuine competition.

**54.**Where the number of candidates pre-selected in accordance with the provisions of this Regulation is lower than the minimum number stipulated in the contract notice, due to either insufficient applications or due to the fact that some of the candidates has not met the minimum qualification requirements, the contracting authority shall cancel the negotiated procedure with prior publication of a call for tender.

**55.**Where the option to reduce the number of offers to be negotiated is invoked under point 53, contracting authorities shall do so by applying the award criteria they have indicated in the call for tender,in the specifications or in the descriptive document. In the final stage, this number must ensure real competition, insofar as there is a sufficient number of suitable solutions or candidates.

**56.**The contracting authority shall be obliged to inform all candidates of the outcome of the pre-selection procedure (Stage I) immediately after its completion; rejected candidates must be informed of the concrete reasons behind the decision of the working group.

**IV. CARRYING OUTTHE SECOND STAGE OF THENEGOTIATED PROCEDUREWITH THEPRIOR PUBLICATION OF A**

**ACALL FOR TENDERS – NEGOTIATION WITH THE CANDIDATES**

**IN THE SHORT LIST**

**Section 1**

**Call for tenders in the negotiated procedure**

**57.**Following the completion of the pre-selection phase, the contracting authority shall, through the working group, be required to submit a call for tenders to the second stage of the negotiated procedure with the prior publication of a call for tenders to all the preselected candidates.

**58.**It shall be forbidden to invite an economic operator who has not applied in the first stage or who has not met the pre-selection criteria at the second stage of the negotiated procedure.

**59.**The call for tenders in the negotiated procedure shall include at least the following information:

1) references to the procedure for which this stage is being carried out and the contract notice published;

2) the address, the deadline for the submission and opening of the preliminary tenders and the language of their drafting;

3) the address where the negotiation rounds shall take place and the date and time when they are to be launched;

4) the language(s) in which the negotiations shall be carried out;

5) where appropriate, particulars of the additional documents which economic operators are required to submit for the purposes of verifying declarations or completion of the documents submitted in the first stage, in order to demonstrate the technical and / or professional and the economic and financial capacities;

6) detailed and complete information on the award criterion applied to determine the winning tender;

7) the agenda of negotiation rounds (place, duration of the negotiation rounds, number of rounds, planning ofnegotiation rounds with each economic operator).

**60.**The Working Group shall be obliged to send the invitation to negotiation enough days in advance to the closing date for submission of tenders, so that each selected participant has reasonably enough time to prepare the offer - this term must be correlated with the degree of the contract complexity.

**61.**The time allowed for the preparation of the preliminary tender must be not less than 10 days.

**Section 2**

**Explanations on the awarding documentation**

**62.**Any selected candidate shall request explanations regarding the awarding documentation.

**63.**The contracting authority shall be obliged to respond clearly, in full and without ambiguity, as soon as possible, to any clarification requested, within a period not exceeding three working days from the receipt of such a request by the economic operator.

**64.**The contracting authorityshall be obliged tosubmit replies, along with the related questions, to all the economic operators to whom the invitation to submit a preliminary tender was sent, taking measures not to disclose the identity of the person who requested the clarifications.

**65.**Without prejudice to the provisions of point 63, in so far as clarifications are requested in due time, the contracting authority's reply to these inquiries must be submitted no later than 4 days before the deadline set for the submission of the preliminary tenders.

**66.**To the extent that, for duly motivated reasons, it is necessary to extend the period granted to economic operators for the preparation of preliminary tenders, the contracting authority shall be obliged to extend the deadline for their submission by informing in due time all the preselected tenderers.

**Section 3**

**Submission of preliminary tenders**

**67.**Each participant in the second stage of the negotiated procedure with the prior publication of a call for tenders shall present, as necessary, the objectives and constraints of the contracting authority, as outlined in the award documentation, a proposal for a preliminary tender, which shall be the starting point in the negotiations.

**68.**The economic operator shall be obliged to submit the tender at the address and by the deadline set in the invitation to negotiate and assume the offer submission, including force majeure risks. The preliminary tender, written and signed, shall be submitted in a sealed envelope. The contracting authority shall issue a receipt to the economic operator, indicating the date and time when the offer was received.

**69.**The preliminary tender that is filed at a different address than the one set or later than the submission deadline shall be rejected and returned unopened.

**Section 4**

**Opening of preliminary tenders**

**70.**The Working Group shall be obliged to open the preliminary tenders at the date, time and address indicated in the invitation to negotiate, in so far as the obligation to extend the deadline for the submission of preliminary tenders.

**71.**All tenderers participating in the second stage of the negotiated procedure with the prior publication of a call for tenders shall be entitled to take part in the opening of preliminary tenders.

**72.**During the opening session, the working groupshall be entitled toreject only the preliminary tenders submitted after the deadline.

**73.**The opening session shall be concluded by a report signed by the working group members and the representatives of the economic operators present at the meeting, recording the manner of holding the respective meeting, the value of the submitted tenders.

**74.**The working groupshall be obliged tosend a copy of the opening minutes, upon request, to economic operators who have submitted a preliminary tender, whether or not they were present at the opening session.

**75.**Any decision on tenders’ evaluation shall be taken by the working group at subsequent meetings of the tenders’ opening, these meetings taking place without the participation of the tenderers or their representatives.

**Section 5**

**Improvingpreliminary tenders –final meeting**

**with each participant to the procedure**

**76.**In the second stage of the negotiated procedure with prior publication of a call for tender, the working groupshall be obliged to holdmeetings with each pre-selected candidate in part, where negotiations are held on the preliminary technical and financial proposal.

**77.**The goal of the negotiations at this stage is to improve the preliminary tender and adapt it to the concrete conditions in which the future contract is to run. At the end of each meeting, the working group shall be obliged to record the issues discussed and the issues agreed with each participant in the minutes of the meeting to be signed by each negotiator. There shall be a record of each meeting and each economic operator separately.

**78.**As far as feasible, the negotiation on the financial proposal shall take place after completion of the negotiation on the technical proposal.

**79.**In order to comply with the public procurement principles, the deadline for submitting improved financial offers shall be the same for all participants in the procedure. Financial offers shall be submitted in a closed envelope and be open by following that deadline.

**80.**At this stage, one or more meetings may be held with the same economic operator, each of these meetings being treated identically in procedural terms.

**81.**The working groupshall be obliged toanalyse and verify each preliminary tender both in technical and financial terms.

**82.**Preliminary technical proposal must meet the minimum requirements set out in the tender documentation.

**83.**The working groupshall be obliged to determine whether explanations are necessary before the start of the negotiation rounds. In such case, the working group shall also set the time allowed for submitting clarifications.

**84.**The communication submitted to this effect by the working group to the tenderers must be clear and precise and define explicitly and in sufficient detail what the request of the working group is. The deadline for tenderers to answer explanations should be linked to the complexity of the questions and cannot be less than 2 days.

**85.**The working groupshall carry out negotiations with each preselected candidate in part. In the negotiations, the parties shall discuss:

1) the way the preliminary solution meets the needs of the contracting authority;

2) the technical, financial and legal aspects of the future contract;

3) the date, place and time of any intermediate stages of the negotiation.

**86.**At the end of each negotiation round a record of the meeting shallbe drawn up, signed by each participant and the issues discussed, technical and financial aspects agreed shall be recorded.

**87.**During the negotiations, the working groupshall be obliged toensure the application of equal treatment principle to all candidates. In this regard, the contracting authorityshall have no right to provide information in a discriminatory manner, that might bring an advantage to one / several candidates against the others.

**88.**The working groupshall be obliged not todisclose, without the consent of the economic operator concerned, elements of the proposal or other confidential information submitted thereby.

**89.**The working groupshall be entitled toprovide for the possibility of conducting successive negotiations rounds in the awarding documentation, in order to reduce the number of tenders which are entering into negotiations. The successive reduction of the tenders shall only be made on the basis of evaluation factors specific to this stage, which have been laid down in the awarding documentation and brought to the attention of the economic operators.

**90.**Negotiations shall be carried out until each negotiating participant declares that the preliminary offer he/she has submitted can no longer be improved, which shall be explicitly recorded in the minutes of the meeting.

**91.**If during the negotiations the Working Group finds that there are no substantial improvements to the preliminary offer, compared to the previous meetings / rounds, it shall be entitled to establish a final meeting with each individual participant.

**92.**At this meeting, each participant shall be required to submit the final elements of his / her preliminary technical and financial proposal for which the award criterion is to apply. Following the final meeting, the working group shall draft the minutes, ending with each participant.

**93.**Within two days of the final meeting, tenderers shall have the obligation to submit in writing, at the headquarters of the contracting authority, to the working group's attention, the final offer in full compliance with the issues established during the negotiation rounds. The offer shall be submitted in the format required in the awarding documentation.

**V. CARRYING OUTTHE THIRD STAGE OF THENEGOTIATED PROCEDURE**

**WITH THE PUBLICATIONOF ACALL FOR TENDER**

**Section 1**

**Evaluation of final tenders**

**94.**The working groupshall be obliged toverify the negotiated elements in the final tender submitted as a result of the conclusion of the negotiated procedure.

**95.**At this stage, the working group shall reject the final tender in the following cases:

1) it does not meet the technical requirements;

2) it does not ensure compliance with the mandatory regulations on specific work and labour protection conditions, as this requirement was formulated in the awarding documentation;

3) the price included in the financial offer exceeds the estimated value and there is no possibility of release of additional funds to meet the respective public procurement contract;

4) following the verifications provided by art. 66 of Law No.131 of 3 July 2015,it is found that the offer has an abnormally low price for what is to be delivered / performed / executed; in thepublic procurementof works, the value of the offer is less than 85 percent of the estimated value of the works, calculated by the contracting authority in the established manner, and the tenderer has failed to prove access to a specific technology or more favourable market conditions in order to provide such price;

5) it contains proposals to amend the contractual clauses that the contracting authorityhas established in the final form of the awarding documentation, that are obviously disadvantageous to the latter, and the tenderer, although being informed of the situation, does not accept waiving those clauses.

**96.**The submission of the final offer is the manifestation of the tenderer 's will to sign the public procurement contract withthe contracting authorityand to fulfil the subject matter of the contract, in accordance with the documentation submitted and the results of the negotiation rounds.

**97.**The offer shall be binding in content terms, throughout the term of validity established bythe contracting authorityand must be signed, on sole responsibility, by the tenderer or by a person legally entitled.

**98.**The tenderershall be obliged tomaintain the offer valid over its entire validity periodthat beginning with the date of submission of the offer and ends with the date of signing the contract by both the partiesto the public procurement contract.

**99.**Any decision by the working group shall be adopted by a majority of the members' votes.

**100.**Where the decision cannot be taken because of possible divergences of opinion among the working group members, the chairman shall be obliged toask the working group to reconsider the divergence points, with a view to finalising the tender evaluation stage and determining the winning tender in a timely manner.

**101.**Tenders that do not qualify for rejection under this Regulation or Law No.131 of 3 July 2015are the only ones to be deemed admitted bythe working group.

**102.**The winning tender shall only be determined among the offers accepted by the working groupand only on the basis of the evaluation criteria specified in the contract noticeand in the awarding documentation.

**103.**The comparison of the prices provided in the submitted financial offers shall be made at value excluding VAT.

**Section 2**

**Cancellation of the award procedure**

**104.**The contracting authority, on own initiative, as well as at the request of the Agency, following the inspection, cancels the award procedure for the public procurement contract, before the date of the contract conclusion, in the following cases:

1) it was not possible to ensure a satisfactory level of competition, respectively, the number of candidates was lower than that provided for this procedure;

2) only offers rejected by the working group were submitted, subject to the provisions of this Regulation;

3) serious deviations from the legal provisions affect the negotiated procedure or contract conclusion is impossible;

4) an act of corruption was found, confirmed by final court decision.

**105.**Following the submission of the communication on the outcome of the public procurement procedure and the date of the contract conclusion, cancellation of the procurement procedure shall be carried out only by the Agency.

**106.**The decision to cancel the procurement procedure does not entail any obligation on the contracting authorityor the Agency over participants in the procurement procedure, except for the return of the tender guarantee and / or the contractual guarantee.

**107.**The contracting authorityshall be obliged tocommunicate in writing to all participants in the procurement procedure, within at most 3 business days from the date of cancellation, both the cessation of the obligations they have created by submitting tenders, and the reason for cancellation.

**Section 3**

**Winner assignment and communication of the final result**

**108.**The winner shall be assigned and the contract shall be awarded in accordance with the criteria set out in the contract notice and the awarding documentation.

**109.**The contracting authorityshall be obliged toinform tenderers about the decisions on the outcome of the procurement procedure or the public procurement award procedure, as the case, cancellation of the award procedure and the possible subsequent initiation of a new procedure, in writing and as soon as possible, but no later than 3 business days following their issuance.

**110.**Within the communication provided above, the contracting authorityshall be obliged toinform the rejected tenderers or whose tender has not been declared winning on the grounds which that decision was based on, as follows:

1) for each rejected offer, the concrete reasons behind the rejection decision, detailing the arguments under which the offer was rejected, particularly elements of the tender which did not meet the operation and performance requirements, provided for in the final form of the awarding documentation;

2) any tenderer who has submitted an admissible tender, but which has not been declared winning, the characteristics and relative advantages of the winning tenderin relation to his/her tender and the name of the tenderer who is to be awarded the public procurement contract.

**Section 4**

**Contract conclusion**

**111.**Once the winning tenderer has been established, the contracting authorityshall notify the result within 3 days.

**112.**Contracts may only be concluded after the fulfilment of a 10-day waiting period since the transmission of the communication on the outcome of the procedure.

**113.**Within 5 days from the conclusion of the procurement contract, the contracting authorityshall prepare the report on the conduct of the procurement procedure and the award of the contract and submit it to the Agency for examination.

**114.**The Agencyshall be entitled toreject or cancel the results of the procurement procedure, where found that the procedure has not been carried out in accordance with this Regulation. In this respect, a new procurement procedure shall be required.

**Section 5**

**The report**

**115.**The report on the negotiated procedure shall be drawn up pursuant to the provisionsof art.73 ofLaw No.131 of 3 July 2015.

**VI. NEGOTIATION WITHOUT PRELIMINARY PUBLICATION**

**OF ACALL FOR TENDER**

**Section 1**

**Conditions for the application of the procedure**

**116.**The contracting authorityshall be entitled to apply the negotiated procedure without prior call for tenders in the following cases:

1) No offer, or appropriate offer,or no candidacy has been submittedin response to an open tender or restricted tender procedure, as long as the initial terms of the contract are not substantially modified (terms ofdelivery/supply/performance, payment, the conditions of delivery / supply, for quality, quantity requirements, warranties, other essential conditions);

2) To a strictly necessary extent, for reasons of extreme emergency,as a result of unforeseeable eventsforthe respective contracting authority, the deadlines for the open or negotiated procedure with the prior publication of a call for tenders cannot be met. In such case, the reasons invoked to justify the emergency of the procurement must not be the result of negligence by the contracting authority. The contracting authorityshall not be entitled to set the duration of the contract for a period longer than necessaryto deal with the emergency situation which determined the applicationof the negotiated procedurewithout the prior publication of acall for tender;

3) For technical, creative or protection-related reasons, 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.

**117.**In the event of public supply contracts, the contracting authorityperforms purchases through the negotiated procedurewithout the prior publication of acall for tender, where:

1) These goods are produced only for the purpose of research-development or experimentation. This provision shall not apply to quantitative production designed to establish commercial viability of the product or to amortize the costs of research and development;

2) The procurement contract refers to the additional deliveries made by the original supplier, intended either for the partial replacement of the goods or of the current use facilities, or for the expansion of the existing goods or facilities, if switching the supplier would oblige the contracting authorityto acquire technical material with different characteristics, leading to incompatibility or disproportionate technical difficulties in use and maintenance. As a rule, the duration of such contracts as well as renewed contracts may not exceed 3 years;

3) The goods to be procured are listed and purchased on a commodity market;

4) The procurement contract refers to the procurement of goods on particularly advantageous terms, either from a supplier who has ceased trading, or from an insolvency administrator, either based on a plan procedure or another procedure of the same kind, under the national law.

**118.**In the event of public service contracts, the contracting authorityshall carry out purchases through the negotiated procedurewithout the prior publication of acall for tender, if the contract in question is the result of a solutions’ contest,according to the applicable rules, must be assigned to the winner or one of the winners of the solutions’ competition. In the latter case, all winners of the contest must be invited to participate in the negotiations.

**119.**In the event of public works and service contracts, the contracting authorityshall carry out purchases through the negotiated procedurewithout the prior publication of acall for tender:

1) for additional works or services not foreseen in the project originally estimated or in the original contractand which have become necessary for the execution of the works or the provision of the services indicated therein, as a result of an unpredictable situation, subject to the award of the contract to the economic operator carrying out that work or performing the service:

a) where the additional works or services concerned cannot be separated, technically or economically, from the subject matter of the original contract without creating a major inconvenience for the contracting authorities; or

b) where the additional works or services concerned, even though impossible to be separatedfrom the subject matter of the original contract, are strictly necessary for its completion. The aggregate value of the contracts awarded for additional works or services must not exceed 15% of the value of the original contract;

2) for new works or services, consisting in the repetition of similar works or services entrusted by the same contracting authoritiesto the economic operator being awarded the original contract, provided that the works or services concerned are in compliance with a basic project and have been the subject of an initial contractawarded through an open, restricted or request for quotations procedure.

**120.**The possibility of applying the conditions specified under point119 sub-point2) is announced with the launch of thecall for tenders to the first project, and the contracting authorities take into account the estimated total value for the continuation of the works or services. The situations provided for in points 116-119 may only be applied within 3 years of the original contract.

*Note: See Erratumof the Official Gazette No.163-168 of 17.06.2016, page 92 (In point 120 the number „118” shallread as „119”, and the numbers „115-118” shall read as „116-119”)*

**Section 2**

**Initiating andcarrying out thenegotiated procedurewithout**

**prior publication ofcall for tender**

**121.**Negotiation without publishing acall for tenders is the procedurewherebythe contracting authorityconducts consultations and negotiates contractual clausesthrough the working group, including the price, with one or more economic operators, in one of the situations referred to in points116-119.

*Note: See Erratum of Official Gazette No.163-168 of 17.06.2016, page 92 (In point 121 the numbers „115-118” shall read as „116-119”)*

**122.**Where this procedure is applied, economic operators are invited to submit preliminary tenders, directly, through a call for tender, without publishing acall for tender.

**123.**In the situations provided for in point 117 sub-point 1) and 3), where this is possible, the contracting authorityshall be requiredto inviteto the negotiationsseveral economic operators, so as to ensure real competition.

*Note: See Erratum of Official Gazette No.163-168 of 17.06.2016, pag.92 (In point 123 the number „116” shall read as „117”)*

**124.**Thenegotiated procedurewithout the prior publication of acall for tenders shall be conducted through the following activities:

1) Working Group establishment by the contracting authority;

2) elaborationbythe contracting authority of a call for tenders to thenegotiated procedurewithout the prior publication of acall for tender;

3) receiving and evaluating the offer (s);

4) negotiating the offer (s) with the selected candidate (s);

5) awarding the contract;

6) reporting on the results of thenegotiated procedurewithout the prior publication of acall for tender, for which the working groupisrequiredto prepare, including electronically, the following documents, and shall bear liabilityregarding its content:

a) the minutes of the working grouponnegotiated procedurewithout the prior publication of acall for tender, with the relevant arguments;

b) the procurement contract concluded betweenthe contracting authorityandthe economic operator;

c) the report on the performance of the negotiated procedurewithout the prior publication of acall for tender;

d) other confirmatory documents necessary to carry out this procurement procedure.

**125.**For the submission of preliminary tenders,the Authority must set a reasonable minimum periodbetween the date of the call for tenders to the negotiated procedure and the deadline for their submission. This deadline shall be correlated with the complexity degree of the contract and must be sufficient to allow candidates prepare the offer.

**126.**The call for tenders to the negotiated procedure shall include:

1) the name, headquarters of the contracting authority, contact details;

2) the subject matter of the public procurement contract to be awarded;

3) the language (s) in which the documents to be submitted by the tenderer(s) shall be prepared in response to the requests for tender documentation;

4) the place, date and deadline for the offer (s) submission;

5) the date on which the tenders shall be opened, the time, place and manner of opening (with or without the participation of economic operators);

6) the minimum number of tenderers whichthe contracting authoritywishes to select for the purpose of the negotiated procedure, as appropriate;

7) information on the assessment criterion applied (the lowest price or the most economically advantageous tender), as well as the weight of the assessment factors.

8) agenda of the negotiation rounds (the place, duration, number of rounds, eventually negotiation rounds with each economic operator).

**127.**Contracts with the following subject matters shall not be submitted for registration with the Agency:

1) electricity, heat, natural gas, water, sewerage and fixed telephony services as well as domestic solid waste transportation services;

2) wood for heating;

3) rent and lease concluded by contracting authorities for the performance of their service activities;

4) state security services which are mandatory for the contracting authorities, in accordance with the normative acts;

5) medical services provided by public health care institutions, in accordance with the Unique Tariffs Catalogue, approved by the Government;

6) Continuing professional training services for medical and pharmaceutical staffoffered by public institutions under the Ministry of Health, according to the tariffs approved by the Government;

7) test development services for graduation and Olympiad exams in primary and pre-university education, as well as their assessment and examination services,provided in accordance withthe time and cost norms for organising and conducting graduation examsin the pre-university education systemand final assessment in primary education approved by the Government;

**128.**The Agency shall cancel the results on the negotiated procedurewithout the prior publication of acall for tenders if it is found thatthe purchase was made with deviation from the provisions of Law no.131 of 3 July 2015and this Regulation, or if it is found thatthe contracting authorityand/orthe economic operatorhas/have created an artificial situation for the purpose of purchasing goods, works and services on the basisof the negotiated procedurewithout the prior publication of acall for tender.

Annex No.2

to Government Decision

no.668 of 27 May 2016

**LIST**

**of Government Decisions to be repealed**

**1.**Government Decision No.1407 of 10 December 2008 „approving the Regulation on the single source public procurement” (Official Gazette of the Republic of Moldova, 2008, no.226-229, art.1425).

**2.**Point 20 of amendments and supplements to be operated in certain Government Decisions, approved byGovernment Decision No.661 of 10 November 2009 (Official Gazette of the Republic of Moldova, 2009, no.163-164, art.729).

**3.**Point 44 of amendments and supplements to be operated in certain Government Decisions, approved byGovernment Decision No.341 of 3 May 2010 (Official Gazette of the Republic of Moldova, 2010, no.70-71, art.418).

**4.**Government Decision No.570 of 6 August 2012 „on amending and supplementingGovernment Decision No.1407 of 10 December 2008” (Official Gazette of the Republic of Moldova, 2012, no.166-169, art.627).

**5.**Point 8 of amendments and supplements to be operated in certain Government Decisions, approved byGovernment Decision No.723 of 28 September 2012 (Official Gazette of the Republic of Moldova, 2012, no.208, art.781).

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Government Decisions
668/27.05.2016 Decision approving the Regulation on public procurementusing the negotiated procedure*//Official Gazette 150/712, 31.05.2016*