

**DECISION**

**for the approval of the Regulation on public works contracts**

**no. 669 of 27.05.2016**

*Official GazetteNo.150/713 of 31.05.2016*

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Pursuant to LawNo.131 of 3 July 2015 on public procurement (Official Gazetteof the Republic of Moldova, 2015, No.197-205, art.402), the Government

**DECIDES:**

**1.**to approve the Regulation on public works contracts, according to AnnexNo.1.

**2.**certain Government Decisions shall be repealed, according to AnnexNo.2.

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| **PRIME MINISTER** | **Pavel FILIP** |
| **Countersigned by:** |  |
| **Minister of Finance** | **Octavian Armaşu** |
| **No.669. Chisinau, 27 May 2016.** |

AnnexNo.1

to Government Decision

No.669 of 27 May 2016

**REGULATION**

**on public works contracts**

**I. GENERAL PROVISIONS**

**1.**For the purposes of this Regulation, the following definitions shall be applied:

***Public procurement of works*** – the purchase of works for all types of constructions and related facilities, as well as intervention works in the existing constructions (upgrades, modifications, transformations, consolidations, expansions and repairs), for the needs of one or several contracting authorities;

***public works contracts***– public procurement contract having as subject matter either the execution, or both the design and the execution of certain works or construction, or the performance, by any means, of a work that meets the needs specified by the contracting authority;

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

***specifications*** – written documentation, a component part of the awarding documentation detailing the technical conditions for the execution of the works, the requirements for the quality of the materials, the applicable technical standards and regulations, environmental protection, labour protection, technologies, shipments, inspections, tests, verifications, modifications, measurements, etc.;

***the most economically advantageous tender*** – winning tenderin accordance with the criteria laid down in this Regulationand determined in the procedures for the award of public works contracts;

***economic operator*** – works contractor, any natural or legal person, public entity or association of such persons and / or entities performing works;

***offer*** – a legal act whereby an economic operator expresses his/her willingness to legally engage in a public procurement contract. The offer includes the technical and the financial proposals;

***technical proposal*** – part of the offer drawn up on the basis of the specifications or, where appropriate, the descriptive documentation;

***financial proposal*** – part of the offer that includes information on the price, tariff, other financial and commercial conditions corresponding to the satisfaction of the requirements imposed by the awarding documentation;

***repeated procurement procedure*** –repeated procedure for the award of public works contract where the original contract terms are not substantially altered;

***tender validity period***– time period starting with the opening of tenders, specified both in the awarding documentation, and the text of the offer to be submitted, during which the offer produces legal effects;

***similar works*** – construction works performed in accordance with a certain technology and a complexity similar to the subject matter of the public procurement procedure.

**2.**Works contracts awarded for the purpose of making an investment shall be considered as public works contracts, where the estimated value of the construction works is at least 20% of the estimated investment total value and which is part of therespective contract subject matter.

**3.**Where the subject matter of the contract is an investmentfor the completion of which an assembly of construction works and, where appropriate, the supply of equipment, plant, machinery or other equipment related to the investment are necessary, the value of the contract shall be determined, taking into account the total value of the investment. The contracting authority shall be allowed to purchase the technological equipment separately, if the contracting authority provides conclusive arguments in this respect.

**4.**The contracting authority shall be required to estimate the value of the public works contract in accordance with the average prices currently established on the market, subject to the provisions of art.3 of LawNo.131 of 3 July 2015 on public procurement.

**II. GENERAL RULES ON THE INITIATION AND PERFORMANCE OF**

**PUBLIC PROCUREMENT PROCEDURES**

**Section 1**

**Publicityand transparency**

**5.**The contracting authority shall be required to ensure publication in the Public Procurement Bulletin, through the Public Procurement Agency (hereinafter – Agency), of intention and contract noticesconcerning thepublic works procedures, in accordance with current public procurement legislation.

**6.**The contracting authorityshall be entitled to, for the purpose of maximum transparency, publish thecontract noticealso by other local, national or international mass media, or the Internet, but only after the publication of that notice in the Public Procurement Bulletin, having the obligation to strictly observe the content and form of the published announcement.

**Section 2**

**Rules applicable to communication**

**7.**Communications, information exchanges and their storage shall be carried out in such a way as to ensure the preservation of data integrity and the confidentiality of tenders and requests to participate.

**8.**Electronic communication instruments used, as well as their technical characteristics must be available to the public at all times and compatible with the general information and communication technologies.

**9.**All communications and all exchanges of information may, according to the choice of the contracting authority, be carried out by post, fax, electronically, by telephone or by combining these means.

**10.**The means of communication chosen must be generally accessible and must not restrict the access of economic operators to the procedure for the award of public contracts.

**11.**The contracting authorityshall be required not todiscriminate tenderers in terms of the form in which they submit or receive documents, decisions or other communications.

**12.**The contracting authorityshall be entitled tokeep secret information on the award of the public works contract and which could be included in all the information relating to the characteristics and relative advantages of the winning tender over other offers, namely where that information:

1) would lead to the non-application of a legal provision and implicitly would be contrary to the public interest;

2) would prejudice the commercial interests of the tenderers, including those of the tenderer whose offer was declared winning;

3) would prejudice fair competition between tenderers.

**Section 3**

**Preparation and content of the awarding documentation**

**13.**The contracting authority, through the Procurement Working Group, shall be required todraftthe awarding documentation.

**14.**The awarding documentationshall be published on the website of the contracting authority, along with thecontract notice.

**15.**If, for technical reasons, the awarding documentationcannot be published electronically, the contracting authorityshall be required tomakethe awarding documentationavailableto the economic operatoras soon as possible, within at most2 days from the receipt of a request by the latter.

**16.**In the event referred to in paragraph 15, the awarding documentationshall be sent free of charge by post, fax or other electronic means, also picked up directly by the economic operator, in any instance, this fact shall be recorded.

**17.**The awarding documentationmay be publishedand, respectively, made available to the economic operators, bythe contracting authority, only after registration with the Agency.

**18.**The awarding documentationmust include, without limitation, at least the following:

1) general information on the contracting authority, in particular: address, including telephone, fax, e-mail, contact persons, means of communication etc.;

2) instructions for tenderers to be fulfilled in connection with the participation in the award procedure;

3) minimum qualification requirements, as well as documents to be submitted by tenderers to prove their fulfilment;

4) specifications;

5) instructions on preparation and submission of the technical and financial proposal;

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

7) information on mandatory contractual clauses.

**19.**The qualification requirements that may be used in applying the awarding procedures are the following:

1) the tenderer's personal situation;

2) ability to exercise professional activity;

3) the economic and financial situation;

4) technical and / or professional capacity;

5) quality assurance standards;

6) environmental protection standards.

**20.**The qualification requirements specified in the awarding documentation must be the same as those specified in thecontract notice.

**21.**Where there are any discrepancies between the provisions of the tender documentation and the provisions of the contract notice, the procurement procedure shall be cancelled.

**22.**Qualification criteria established bythe contracting authoritymust be directly related to the subject matter of the contract to be awarded, and the level of minimum requirements imposed by the awarding documentation, as well as the documents proving for theirfulfilmentshall only be limited to those strictly necessary for the proper performance of the contract.

**23.**The minimum qualification requirements shall be determined at the discretion of the contracting authority, having the obligation to take into account the complexity, volume, duration, value and nature of the public procurement contract to be concluded.

**24.**The contracting authorityshall not impose any conditions that are not relevant or disproportionate to what is to be purchased.

**25.**For the purposes of point 19 sub-section 4, the contracting authority shall request the necessary information in the awarding documentation, in accordance with the provisions of Article 21 (3) of theLawNo.131 din 3 July 2015on public procurement.

**26.**Changing the content of tender documentation after its registration may only be made for duly justified reasons bythe contracting authority, notifying the Agency. Changes to the awarding documentation shall be notified bythe contracting authorityat least 5 days before the tenders’ opening date and shall be mandatory for allthe economic operatorswho have obtained this documentation or filed arequest to participate. At the same time, where the changes made to the content of the awarding documentation are substantial, the contracting authorityshall be required toextend the deadline for tenders’ submission, so that economic operators have enough time for the elaboration and submission of the offers, thereby informing all participants in the procurement procedure and the Agency.

**27.**Any economic operator who has received a copy of the awarding documentationshall be entitled torequest in writing clarifications on the elements contained therein from the contracting authority.

**28.**The contracting authorityshall be required torespond to any request for clarification within a period that should not, as a rule, exceed three business days from the receipt of such a request from the economic operator, except forthe request for quotations process, in which case this period should not exceed one working day.

**29.**The contracting authorityshall be required toforward the content of the response to all economic operators who have obtained a copy of the awarding documentation or filed a request to participate, taking measures not to disclose the identity of the person who requested the clarifications.

**Section 4**

**Specifications**

**30.**The specificationsare an integral part of the awarding documentation and constitute the set of requirements on the basis of which the technical offer is prepared by each tenderer.

**31.**The technical specifications area mandatory element. They shall define, as appropriate and without limitation, qualitative, technical and performance levels, operational safety, dimensions, as well as quality assurance systems, technology, rules, codes or symbols, tests and testing methods, packaging, labelling, marking, conditions for certification of compliance with the relevant or other similar standards.

**32.**Specificationsare an integral part of the technical execution project verified, endorsed and approved in accordance with the legal provisions. In order to provide the complete information necessary to prepare the technical offer, the minimum documentation must contain the specifications on specialties, lists of works, as well as the main object drawings.

**33.**The technical specifications shall also refer to the design and calculation prescriptions or to the verification, inspection and acceptance conditions of works, as well as to construction techniques, processes and methods, including any other technical conditions which the contracting authorityis able to describe, in accordance with the various normative acts and regulations, concerning the final work and raw materials, or materials, or parts of the work used.

**34.**Specificationsshall also specify the competent institutions from which performers can obtain information on the mandatory regulations concerning labour protection, fire prevention and extinguishing and environment protection, which must be observed during the performance of the contract in question and which are in force at national level or, in particular, in the region or in the locality where the works are carried out.

**35.**The contracting authorityshall be required to definethe technical specifications only by reference to technical regulations, in the specificationsand in the contract, as they are defined in the law on national standardization in construction, and in case of lack thereof, by referring, as a rule, to other standards that are compatible with the European Community regulations.

**36.**Where special standards are applied, thespecificationsmust state that products, services or works that meet other standards established by the Authority and which ensure a quality substantially equal to those standards shall also be accepted.

**37.**The technical characteristics of the works requested by the contracting authority included in the specifications must be an exact and complete description of the procurement subject matter.

**38.**When developing the technical characteristics, projects, technical drawings, sketches and descriptions:

1) the physical description of the works shall be carried out on the basis of the technical, qualitative, objective and relevant characteristics;

2) characteristics shall be made from the point of view of operational safety and the efficiency of the works, where the physical description is impossible or the efficiency parameters prevail.

**Section 5**

**Criteria for the award of the public works contract**

**39.**The contracting authorityis required tospecifythe main criteria under which the contract has been awardedin the awarding documentation and which, once established, cannot be changed during the entire duration of the procedure.

**40.**The criteria mentioned in paragraph 39of this Regulationmay be defined, depending on the complexity of the subject matter of the procurement:

1) the most advantageous offer in technical and economic terms;

2) the lowest price.

**41.**Where „the most economically advantageous tender”criterion is applied, the winning tender shall be the proposalwith the highest score, resulting from the application of a calculation algorithm.

**42.**The calculation algorithm provided for atpoint 41 of this Regulationshallbe appliedon the basisof various tender evaluation criteria, depending on the specifics of each contract, such as: terms of execution, the quality offered, the life cycle, other items considered significant for tenders’ evaluation, as well as the price.

**43.**The contracting authorityis required tospecifythe tender evaluation criteriaprovided for inpoint42 of this Regulationin the awarding documentation in the orderof their importanceforthe tenders’ evaluation, as well as the detailed calculation algorithm to be applied. The price share in the rating shall not be less than 80 percent.

**44.**Where „the lowest price” criterion is applied,the requirements imposed by the contracting authoritythroughthe awarding documentationshall be deemed as minimum requirements.

**III. PUBLIC PROCUREMENT PROCEDURES**

**Section 1**

**Terms of application**

**45.**The contracting authorityshall be entitled toinitiate the procedure for the award of the public works contractif only the following conditions are met cumulatively:

1) the contract has been included in the contracting authority's annual procurement plan, unless the subject matter of the contract is determined by the occurrence of a force majeure situation or certain situations requiring urgent coverage of unforeseen needs;

2) all or part of the financial means, necessary for the fulfilment of the provisions of the public procurement contract, are ensured;

3) the design, verification and approval, in the established manner, of the project and quotation documentation are ensured;

4) the awarding documentationhas been developed and finalised;

5) the working group has been established.

**46.**The contracting authorityshall not be entitled todivide the public procurement of works by concluding separate contracts, for the purpose of applying a procurement procedure other than the procedure that would have been used in accordance with this Regulation, if the public works contract would not have been split.

**47.**The contracting authority, depending on the value and complexity of the public works contract,shall be entitled to use one of the following procurement procedures:

1) open tender;

2) restricted tender;

3) negotiated procedures;

4) competitive dialogue;

5) request for quotations;

6) acquisition for social housing construction plans.

**48.**The open tender and the restricted tender are the basic procedures for the award of the public works contract.

**Section 2**

**The open tender**

**49.**The open tender for the public procurement of works shall be organised in a single phase with an unlimited number of economic operators wishing to participate and meet the qualification requirements imposed by the contracting authorityin the awarding documentation.

**50.**Prior to the launching of the open tender,the contracting authorityshall be required to publishthe contract notice in the Public Procurement Bulletinin order to inform the potential tenderers, so that they can prepare their offers. The period between the date of the contract noticepublication and the deadline for tenders’ submission must be of at least 20 days.

**51.**Where the estimated value of the contract to be awarded is equal to or higher than the one provided for in Article 2 (3) ofLawNo.131 din 3 July 2015, the period between the date of the contract noticepublication in the Public Procurement Bulletinand the deadline for tenders’ submission must be of at least 52 days.

**52.**Wherethe contracting authorityhas publishedacontract noticeconcerning the contract to be awarded, it shall be entitled to reduce the period provided for in point 51 up till 36 days.

**53.**The reduction provided for in point52 shall be allowedwhere thenotice of intention publishedcovers all the information provided for in the contract notice, to the extent that they are knownon the date of the notice of intention publication, and has been submitted for publication up to 12 months and at least 52 daysin advanceto the dateof submission for publication of thecontract notice.

**54.**Wherethe contracting authority publishesall the awarding documentation in electronic format andallows, starting with the date of the contract notice publication, direct and unrestricted access of the economic operatorsto the documentation, itshall be entitled to reduce the periodsprovided for inpoint50 and 51 by 5 days.

**55.**The reduction referred to in point54 shall be allowedonly in the event that thecontract noticecontains details of the internet address at which the awarding documentationisavailable.

**56.**The contract noticeshall be draftedin accordancewith the provisions of art.28 ofLawNo.131 of 3 July 2015.

**57.**The open tender procedure shall be carried out through the following activities:

1) the contracting authority establishes the Working Group;

2) the contracting authority drafts the award documentation;

3) the contracting authority presentstheaward documentationto the Agencyfor registrationand thecontract noticefor publicationin the Public Procurement Bulletin;

4) the contracting authority receives/registerstherequestsfor participationandissues theaward documentationto all the entities who submitted a request in that regard, if for technical reasons, the awarding documentationcannot be published electronically;

5) the contracting authority visits, in a mandatory manner,the construction site of the tenderers who obtained the awarding documentation;

6) the contracting authority drafts and presents the answers to the clarifications on the elements included in the awarding documentation, requested by the economic operators who submittedrequestsfor participationor who have been given a copy of that documentationbythe contracting authority;

7) the contracting authorityreceives the sealed packages containing the offers and accompanying documents;

8) the working group opens the tenders and finalises the respective minutes;

9) the working group fulfils its duties under the applicable regulatory framework;

10) the contracting authoritysubmits the result of the public procurement to all the tenderers;

11) the contracting authorityconcludes the public works contract with the winning tenderer;

12) the contracting authoritysubmits the public works contract, along with the report on the procurement procedure for registration by theAgency.

**Section 3**

**The request for quotations procedure**

**58.**The request for quotationsshall be appliedwhere the estimated value of the public works contract does not exceedthe amount of 1500000 MDL.

**59.**The request for quotations procedureshall be carried out in one stage, through the performance of the following activities:

1) the contracting authority publishes thecontract noticeor drafts thecall for tenderand thespecifications;

2) the contracting authoritysends thecalls for tenders tothe economic operatorsperforming works;

3) the contracting authoritydrafts and sends theanswers to clarifications on the elements included in the notice/call for tenderand thespecifications, requested by the economic operators;

4) the contracting authority receives the offers, where the case, and other required documents;

5) the working group exercises its tasks in accordance with the provisions of the normative framework in force;

6) all tenderers are notified on the outcome of the procurement procedure;

7) the report on the performance of the procurement procedure through the request for quotations is prepared and submitted to the Agency.

**60.**The contracting authorityshall not be entitled todivide the acquisition in separate contracts, for the purpose of applying the tender procedure other than the procedure used in accordance with the provisions of this Regulation if the acquisition had not been split.

**61.**When organizing the public procurement procedure throughthe request for quotations, where the estimated value of apublic works contractdoes not exceed 200000 MDL, the contracting authorityis required todraft acall for tenderandspecifications.

**62.**The call for tendermust contain, but not limited to, the following information at a minimum:

1) The name and location of the contracting authority;

2) A brief description of the works;

3) Information on tenders’ preparation;

4) The manner, place, date and time of the deadline for submitting tenders by economic operators;

5) Information on tender price formation, calculated in national currency or in foreign currency, including indications of the need to include other elements in the price, excluding the actual cost of the works;

6) the tenders’ validity term;

7) place and date of opening of the offers;

8) the main clauses of the public works contract;

9) tenderers' qualification documents;

10) other requirements deemed necessary by the contracting authority, but which shall not contravene the provisions of this Regulation and other provisions in forceon public procurement.

**63.**When purchasing works of an estimated value exceeding MDL 200000, the contracting authorityshall publish in advancethe contract noticein the Public Procurement Bulletin, in addition to the contracting authority's website, along with the specifications.

**64.**The call for tendermust be accompanied by a copy of the specificationsand information on the conditions imposed by the contracting authorityconcerning the tenderer's personal situation, his/her ability to exercise professional activity, the economic and financial situation, technical and / or professional capacity, quality assurance standards, environmental protection standards, in so far as the fulfilment of those conditions is considered relevant for the contract performance.

**65.**The call for tenderand thespecificationsshall be sent by post, fax or other electronic means or picked up directly by the economic operatorafter receiving the call for tender, in all cases, this shall be recorded.

**66.**The call for tender, to be sent tothe economic operatorsshall be signed bythe chairman of working group in a mandatory mannerand stamped by the contracting authority.

**67.**The contracting authorityshall send the call for tender and thespecificationsto all the economic operators at the same time.

**68.**The call for tender, in the case of the request for quotationswithout publication of a contract notice, shall be sent to as many as possible economic operators so as to ensure submission of at least three offers before the submission deadline.

**69.**Anyeconomic operatorshall be entitled toengage in such a procedure.

**70.**The contracting authorityshall set the deadline for the submission of tenders, which is at least 12 days, so that economic operators have enough time for the preparation of the tender and other required documents. Late submissions shall be rejected.

**Section 4**

**Other public works contract procedures**

**71.**The contracting authoritymay award public works contracts through other procurement procedures,in accordance with LawNo.131 din 3 July 2015and this Regulation.

**72.**The contracting authorityshall also be entitled to applyspecific procedures for the award of public contracts,in accordance with the regulations governing such procedures.

**IV. AWARD OF THE PUBLIC PROCUREMENT CONTRACT**

**Section 1**

**Task performance by the Procurement Working Group**

**73.**Once the procedure for awarding the public works contract has been initiated, the contracting authority shall establish a working group, responsible for opening, examining, assessing and comparing tenders.

**74.**The working group shall be required to open tenders on the date and place specified in the notice or call for tender.

**75.**Any tenderer shall be entitled to be present at the opening. The Working Group shall not be entitled to reject a tender, having as its sole reason the absence of the tenderer who has submitted the offer.

**76.**During the tenders opening, the working group shall verify compliance with the rules for the submission and presentation of tenders and the supportive documents.

**77.**The envelopes shall be opened by the chairman or a member of the working group, who is required to read the following information:

1) Tenderer(s)name(s);

2) Changes and withdrawals of offers;

3) The existence of tender guarantees;

4) Offered price and qualifying documents;

5) Proposals of alternative offers;

6) Any other details and clarifications necessary to ensure the publicity of the tenders submitted.

**78.**No offer can be rejected at opening, except for late offers, which shall be returned unopened.

**79.**The Working Group shall prepare the opening minutes, which contain the information provided in point77and which is to be signed both by the members of the working group, and the tenderers’ representatives present at the opening of the tenders, at their request, as the case, on each file of the minutes.

**80.**To ensure the confidentiality of the offerscontent, as well as any other information submitted by the tenderers, the working group is required, as a rule, to open, examine and evaluatethe offers at the headquarters of the contracting authority.

**81.**After signing the minutes on opening, examiningand comparingthe offers by the working group, the contracting authorityshall submit the minutes to the Agency for registration and, as the case may be,the public procurement contract concluded between the contracting authority and the economic operator.

**82.**The contracting authority shall include representatives of civil society in the working groupif a written request has been filed in this respect two days before the deadline for submitting tenders, but they cannot account for more than a third of the group's total membership. The representatives of the civil society included in the working group have consultative voting rights or the right to separate opinion, which is set out in the deliberative act of the respective group.

**83.**Depending on the object and complexity of the purchase, representatives of the central specialised bodies, with voting rights, may be included in the working group.

**84.**Depending on the specifics of the purchase contract, the contracting authoritymay includeinthe working group, without the right to vote, consultants and experts with experience in the field of acquisition. In cases expressly provided for in the decision (order) or the provision to set up the working group, specialists and experts are included in the working group with the right to vote.

**85.**During the evaluation, examination and comparison of the offers, members of the working group:

1) are required to preserve the confidentiality of the content of the offers, as well as any other information submitted by the tenderers, the disclosure of which could harm them, as well as to protect their intellectual property or commercial rights;

2) are not entitled to disclose to tenderers or other persons not officially involved in public works procedures additional information related to the examination, evaluation and comparison of offers.

**86.**The working group members are required to sign on their own responsibility a statement of confidentiality and impartiality, which also confirms the following:

1) he/she is not a spouse, relative or son, up to the third degree inclusively, with one or more employed persons of the tenderer(s) or one or more founders;

2) in the last 3 years, he/she has not worked on the basis of an individual employment contract or other document proving the working relationship with one of the tenderers or not belonging to the board of directors or any other management body thereof;

3) he/she does not hold stocks or shares in the subscribed share capital of the tenderers.

**87.**The statement referred to in point86 of this Regulation must be signed before the opening of the offers.

**88.**If any of the members of the working group finds that any of the situations provided for in point86 of this Regulation occurred, that member shall be required to immediately request his/her replacement from the group with another person, without issuing a new order or special decision in that regard.

**89.**In the event of non-compliance with the provisions of points 86, 87 and 88 of this Regulation, the Agency shall not accept the procurement results.

**Section 2**

**Rules for participation in the award procedure**

**90.**Any economic operator who has submitted a request to participate in the award procedure shall be entitled to participate, individually or in association, in the procurement procedure.

**91.**Several economic operators performing works have the right to associate and submit a single offer, being obliged to present their association in a written form.

**92.**In the case of an association, the requirements required for the fulfilment of the qualification and selection criteria relating to the capacity to exercise the professional activity and the personal situation must be met by each associate and the criteria relating to the economic and financial situation and the technical and professional skills can be met by proportionate cumulation of the tasks assigned to each associate.

**93.**In the case of an association, the annual average turnover taken into account will be the overall amount resulting from the aggregation of the annual average figures for each member of the association.

**94.**Requirements for quality assurance standards shall be met by each member of the association.

**95.**With regard to the similar experience, one of the associates is to meet the required requirement in order to qualify according to the requirements, and the other associates proportionate to the tasks assigned to each associate. For the qualification of associated economic operators, the responsible partner (associate leader) is expected to meet at least 40% of the qualification requirements for the average business figure and similar experience.

**96.**The responsible partner (associate leader) shall execute at least 40% of the value of the future public works contracts.

**97.**Failure to meet the conditions laid down in point92-96 of this Regulation shall result in the rejection of the joint tender.

**98.**The associate partners shall designate a leader among them, in the case of a public works contract award, to represent them in the relations with the contracting authority and sign the contract on their behalf*.*

**99.**The natural or legal person who participated in the awarding procedure, as an economic operator, to be a tenderer, an associated tenderer or a subcontractor but only if its involvement in the preparation of the award documentation is not such as to distort competition.

**100.**The contractor shall not be entitled to engage, for the purpose of fulfilling the procurement contract, natural or legal persons who have been involved in the process of verification/evaluation of tenders submitted in the context of the award procedure, and to subcontract the rejected tenderers or have withdrawn their offer under the same procurement procedure under the sanction of nullity of the contract.

**Section 3**

**Offer preparation and submission**

**101.**The tenderer shall be required to prepare the tender in accordance with the provisions of the award documentation.

**102.**The technical offer shall be drawn up in accordance with the requirements of the awarding documentation so as to ensure the provision of all the information necessary for the technical assessment.

**103.**The financial offer is the document providing the information required by the awarding documentation or by contract notice regarding prices, tariffs, other financial and commercial conditions. It is rejected by the working group if it is not filled in according to the pre-defined requirements in the awarding documentation or in the contract notice.

**104.**The offer is binding in content terms for the entire period of validity set by the contracting authority and must be signed on its own responsibility by the tenderer or by a person legally empowered to do so.

**105.**By submitting the offer, the tenderer expresseshis/her will to sign the public procurement contract with the contracting authority and to carry out the work, in accordance with the awarding documentation.

**106.**The tenderer shall be entitled to include in the technical proposal the possibility to subcontract part of that contract, having the obligation to specify the part (s) of the contract to be subcontracted and the identification data of the proposed subcontractors. The volume of work that may be subcontracted will not be more than 40 percent of the total volume.

**107.**The tenderer shall not be entitled within the same tender procedure:

1) to submit two or more individual and/or joint offers, subject to the exclusion of all the tenders concerned from the competition;

2) To submit an individual / joint offer and to be nominated as a subcontractor in another tender, subject to the exclusion of the individual offer or, as the case may be, of the tenderer.

**108.**The economic operator shall be required to submit the tender at the address and by the closing date set in the notice or call for tender and assume the risks of supply, including force majeure.

**109.**Offer placed at a different address than the one set or after the submission deadline shall be returned unopened.

**110.**The time period required for the preparation and submission of tenders shall be determined by the contracting authority, in accordance with the provisions LawNo.131 din 3 July 2015.

**111.**Withdrawal or modification of the offer by the tenderer after its opening and up to the award of the procurement contract, entails the loss of the offer guarantee.

**112.**Withdrawal or modification of the offer by the successful tenderer after the award of the procurement contract, entails the loss of the offer guarantee.

**113.**The tenderershall be entitled tosubmit a singleoffer, called as basic offer, with the obligation not to deviate from the requirements stipulated in the awarding documentation.

**114.**As an exception, the tenderer shall be entitled to submit additional offers, referred to as alternative offers, but only if the tender evaluation criterion is the most economically advantageous tender and such possibility is provided in the awarding documentation.

**115.**The contracting authorityshall be required to providethe minimum mandatory requirements and specifications in the awarding documentationthat alternative offers have to meet, in order to be taken into account.

**116.**If the contracting authorityintends to allow for the submission of alternative offers, this fact shallbe specified in the contract notice.

**117.**The contracting authorityshall not be entitled toreject an alternativeoffer on grounds thatit was prepared using international technical specifications or standards.

**118.**The tenderershall be entitled to modifyor withdrawthe offer. Before the deadline for submitting offers, without losing the right to withdraw the guarantee for the offer. Such an amendment or notice of withdrawal is valid if it has been received by the contracting authority before the deadline for the submission of tenders.

**119.**The contracting authorityshall be required todisqualify any tenderer who fails to meet the requirements set out in the awarding documentation or does not provide the offer guarantee.

**120.**The tenderershall be required tomaintain the offer valid for the entire period set by the contracting authorityin the awarding documentation.

**121.**The contracting authorityshall be entitled torequest thetenderers to extendthe offer validity period, before its expiration.

**122.**The tenderershall be required tonotify the contracting authority whether or not it agrees with the extension of the offer validity period. In this case, the tenderer shall be entitled to:

1) reject the proposal without losing the right to withdraw the guarantee for his offer;

2) accept the proposal, extending the validity period for his offer or offer new guarantees for the offer over the extended offer validity period.

**123.**Where thetendererhas not extended the validity of the offer guarantee or has not provided a new offer guarantee, it shall be considered that he refused to extend the validity of the offer.

**124.**The tendererwho disagrees with the extension of the offer validity period shall bedeemed to have withdrawn his offer, without losing his offer guarantee.

**Section 4**

**Offer guarantees**

**125.**In the case of public works contracts, the contracting authority shall require economic operators submitting tenders, to deposit the offer guarantee at the same time lodge. The tenderer's tender is a guarantee for the purpose of protecting the contracting authority against the risk of any inappropriate conduct during the entire period before the public works contract.

**126.**The contracting authorityis required toincludein the awarding documentation:

1) Requirements to the issuer, form and other basic terms of the offer guarantee;

2) The amount of the offer guarantee, which will not exceed 2% of the value of the offer without VAT;

3) The period of validity of the offer guarantee, which will be at least equal to the period of validity of the offer.

**127.**The offer guarantee can be expressed in MDL or in foreign currency and can be submitted in oneof the following forms, as stipulated in the awarding document:

1) Letter of guarantee;

2) Transfer to the contracting authority's account;

3) Bail;

4) A "stand-by" letter of credit;

5) Other forms that do not contradict Law.

**128.**Letters of bank guarantee will be issued by a Moldovan bank, as the case may be, by a bank from abroad, preferably with a correspondent in the Republic of Moldova. The contracting authority shall not be entitled to require the release of the guarantee for the offer by a particular bank.

**129.**Before submitting the tender, the economic operator may request the contracting authority to confirm acceptance of the offer guarantee. The contracting authority shall respond promptly to suchrequest, but this confirmation cannot prevent the contracting authority from rejecting the offer guarantee if the issuer has become insolvent or has lost its credibility.

**130.**The contracting authority shall be entitled to keep the offer guarantee, the tenderer thereby losing the amount set when the latter is in any of the following situations:

1) Withdraws or modifies the offer during its period of validity;

2) Although his offer is determined as winning, he does not provide the contractual guarantee after accepting the offer;

3) His offer is established as winning, refuses to sign the public procurement contract;

4) No conditions specified in the awarding documentation before the public works contract are signed.

**131.**The offer guarantee, set up by the tenderer whose offer has been established as winning, shall be returned by the contracting authority no later than 3 working days after the date of the contractual guarantee.

**132.**The offer guarantee, made up by tenderers whose offer has not been established, shall be returned by the contracting authority as soon as possible but no later than 3 working days after the date of any of the following events:

1) The expiry of the warranty period for the offer;

2) The conclusion of the public works contract and the deposit of the contractual guarantee, if such a guarantee is provided in the awarding documentation;

3) Suspension of the procurement procedure without the conclusion of a public procurement contract;

4) Withdrawal of the tender before the expiry of the time limit for the submission of tenders, where the awarding documentation does not provide for the inadmissibility of such withdrawal.

**133.**The offer guarantee is submitted at the same time as the submission of the technical and financial offers.

**134.**For public works contracts with an estimated value of less than 1500000 MDL, the contracting authority is entitled not to require the economic operator to guarantee the offer. If the contracting authority requires such a guarantee, the economic operator will comply with the provisions of this Regulation.

**Section 5**

**Examining, evaluating and comparing tenders**

**135.**Examination, evaluation and comparison of tenders shall be carried out by the working group without the participation of tenderers or their representatives.

**136.**In the process of examining, evaluating and comparing tenders, the working group has the obligation:

1) To examine, assess and compare the offers of economic operators, within the terms and conditions set out in the awarding documentation, in accordance with the legislation;

2) To examine first of all the meeting of the minimum qualification requirements by each tenderer;

3) To establish, after verifying that the minimum requirements have been met, qualified and, where appropriate, excluded;

4) To examine the offers of all qualified tenderers;

5) To verify the conformity of each technical and financial offer with the requirements set out in the awarding documentation;

6) To set out the necessary clarifications for the evaluation of each tender and the time allowed for submitting the clarifications;

7) In the case of an offer of alower value than 85% of the estimated value of the works, to request abnormally low-price justifications and to check the calculation of price elements and compliance by the tenderer with the technical requirements laid down in the specifications;

8) To request in writing, in the case referred to in subpoint (7) of this point, before taking any decision to reject that offer, details and clarifications which it considers relevant to the offer and to verify the answers justifying that price.

**137.**The Working Group shall reject any offer in any of the following cases:

1) The tenderer did not meet the qualification requirements laid down in the awarding documentation;

2) The offer is submitted after the deadline for submission of offers;

3) The offer has not been prepared and submitted in accordance with the requirements of the awarding documentation, including the offer guarantee;

4) The tenderer does not submit the clarifications requested during the period specified by the contracting authority;

5) The tenderer modifies the content of the technical offer and / or financial offer, with the clarifications it presents, unless the change is due to the correction of the arithmetical errors;

6) The explanations required under subpoint 7) and 8) point136 of this Regulation are not conclusive and / or not supported by the supporting documents requested by the Working Party;

7) The offer contains separate prices for the same tenderer in the financial proposal and / or technical proposal or which obviously do not appear to be the result of free competition and cannot be reasonably substantiated;

8) The offer contains proposals regarding the contractual clauses, proposals that are obviously disadvantageous for the contracting authority.

**138.**The working group shall be entitled to correct the arithmetical errors found in the tender during its examination, without delay informing the tenderer. If the tenderer does not accept the correction of these errors, his offer will be considered inappropriate and will therefore be rejected.

**139.**The Working Group is required to evaluate all the appropriate tenders and, following this assessment, to establish the winning tender based on the criterion applied for the award of the public works contract.

**140.**Where the public works contract is awarded on the basis of the "most economically advantageous tender" criterion, tenders shall be evaluated by awarding for each tender a score resulting from the application of the calculation algorithm set out in the awarding documentation. The working group must draw up the decreasing order of the awarded score, the ranking on the basis of which the winning tender is established. Score is the average of individual scores awarded by each member of the working group.

**141.**If the award of the public procurement contract is made on the basis of the "lowest price" criterion, the evaluation of the tenders shall be carried out by comparing the prices of each tender and by compiling, in descending order of those prices, the ranking on the basis of which the winning tender.

**142.**If the application criterion for the award of the public works contract is "the most economically advantageous tender" and the working group has awarded the same score for two or more tenders, the contracting authority shall be required to select the tenderer whose tender it has the lowest price.

**143.**If the tendered prices are equal and at the same time the lowest, the contracting authority will award the public works contract to the best qualified tenderer on the basis of the existing and additional required documents.

**144.**The winning tender cannot be changed and forms an integral part of the public works contract to be concluded. The unit prices of the offer are firm and cannot be exchanged for the entire duration of the contract. The winning tender price is also the contract price.

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

**146.**In the case of establishing a winning tender based on the score, the agreement of the members of the working group is reflected by individual score given to each offer.

**Section 6**

**Rejecting offersdue to corruption acts**

**147.**The contracting authority will reject any offer if the tenderer who submitted it offers (intends to offer), directly or indirectly, any liability factor or ordinary employee (former or current) of the working group or of the contracting authority Benefit in any form, a job offer or any other service as a reward for certain actions, decisions or the application of procurement procedures to his advantage.

**148.**The rejection of the offer and the reasons for the rejection shall be recorded in the report on public works procedures and shall be immediately communicated to the tenderer concerned.

**149.**No tenderer shall be entitled to contact the contracting authority or the working group on any matter relating to its tender from the time of the opening of the tenders until the award of the public works contract. Tenderer shall be entitled to provide clarification on the offer and / or the documents accompanying the tender only upon written request from the contracting authority.

**Section 7**

**Cancellation of the public works procurement procedure**

**150.**The contracting authority, on its own initiative and/or at the request of the Agency, following the inspection, shall cancel the procedure for awarding the public works contract, if a decision in that regard is adopted before the date of notification on the outcome of the public works procurement procedure in the following cases:

1) there are less than three tenderers who meet the qualification requirements set;

2) in the case of public works contracts, the total value of each tender is:

- higher by at least 15% than the estimated value of the works, calculated in accordance with the provisions of art. 3 of LawNo.131 din 3 July 2015on public procurement; or

- lower by at least 15% than the estimated value of the works, calculated in accordance with the provisions of art. 3 ofLawNo.131 din 3 July 2015on public procurement, provided that the tenderers were not able to submit the abnormally low tender justification;

3) only inappropriate tenders were submitted, which:

- Are submitted after the deadline for submission of tenders;

- Have not been developed and presented in accordance with established requirements;

- Contain, in the financial proposal, prices which obviously do not appear to be the result of free competition and cannot be reasonably justified;

- Contain proposals on contractual clauses, proposals that are obviously disadvantageous for the contracting authority;

- Have a value that exceeds the threshold stipulated by the public procurement procedure;

4) A corrupt act was found to have been committed, confirmed by a final court decision;

5) Although submitted, cannot be compared because of the uneven approach to technical and / or financial solutions;

6) The existence of serious deviations from the legal provisions affects the award procedure or makes it impossible to conclude the contract. Serious deviations from the legal provisions mean that:

- The principles or rules on transparency and communication governed by this law have not been complied with; or

- During the analysis, assessment and / or completion of the award procedure, errors or omissions are found and the contracting authority is unable to take corrective measures without leading to a breach of the principles governing public relations;

7) Tenderers ranked No. 1 and 2 refuse to conclude the contract.

**151.**If the repeatedly organized procedure reveals the existence of fewer than 3 qualified economic operators, the contracting authority is entitled to award the contract according to the criteria initially set, except for the procedure for requesting works price offers with an estimated value of less than or equal to MDL 200000.

**152.**After the date of the communication of the outcome the public procurement procedure, only by the Agency shall be entitled to cancel the procurement procedure, including where an offer has been submitted after the closing date for submission of tenders, and the impossibility of filing in due time is solely due to the actions or inactions of the contracting authority.

**153.**The decision to cancel the public procurement procedure does not entail any obligation on the part of the contracting authority or theAgencyagainst the participantsto theprocurement procedure, with the exception of the return of the offer guarantee and the contractual guarantee.

**154.**The contracting authorityshall be required tocommunicate in writing to all participantsto the public works procedures, both the cessation of the obligations that they created by submitting offers and the reason for the cancellation, within at most 3 days from the date of cancellation.

**Section 8**

**Notification on the results of the application of the public procurement procedure**

**155.**The contracting authorityis required to:

1) send a written communication to all the tenderers simultaneously regarding the outcome of the application of that procedure;

2) in the case of tenderers who have been disqualified or whose offers have been rejected, the communication must specifythe reasons for the offer (s) disqualification or rejection, the name of the winning tenderer, as well as the relative advantages of the winning offer against the other offers;

3) in the case of the winning tenderer, that communication must specifythe fact that the offer has been declared winningand that he is invited to conclude the public procurement contract.

**156.**The contracting authorityis required tosend the communicationsprovided for inpoint155 of this Regulationwithin 3 days from the date of the working group decision.

**Section 9**

**The contract performance guarantee**

**157.**For the public procurement of works, the contracting authorityshall require the tenderer to submit an assurance of its performance in the form of a guarantee at the conclusion of the contract. The contract performance guaranteeshall be provided by the tendererin order to ensure the contracting authority of the quantitative, qualitative and timely fulfilment of the contract.

**158.**The contracting authorityis required todetermine the followingin the awarding documentation:

1) requirements towards the issuer, the form and other main conditionsofthe contract performance guarantee, required for the performance of the contract;

2) the amount ofthe contract performance guarantee, which must not exceed 15% of the procurement contract estimate value.

**159.**Wherethe contracting authorityrequires the contract performance guaranteeby means of a bank guarantee letter, this shall be attached to the contract.

**160.**Where agreed by the parties, the contract performance guaranteemay be provided by means of:

1) successive deductions from the due payment for partial bills, by transferring that amount to a special account opened by the economic operator, made available to the contracting authority, at a bank agreed by both sides;

2) by successive deductions from the due payment for partial bills.

**161.**For works of more than one year, the contract performance guaranteeshall be determined according topoint160 of this Regulation.

**162.**The contracting authorityshall be entitled toissue claims over the contract performance guarantee, if the economic operator does not fulfil its obligations under the contract. Prior to the issue of a complaint overthe contract performance guarantee,the contracting authorityshall be required to notify thecomplaint tothe economic operator, specifying the obligations that have not been met.

**163.**The contracting authorityis required toissue/reimbursethe contract performance guaranteewithin 15 days from signing the final acceptance report, ifthe contracting authorityhas not filed complaints until that date. If the construction process is temporarily stopped or preserved, the contracting authorityshall pay backthe contract performance guarantee.

**164.**Prior to the submission of the contract performance guarantee,the economic operator may require the contracting authority to confirm the admissibility of a proposed issuer for the provision of that guarantee. The contracting authorityshall be required to react promptly to such a request.

**165.**For public works contracts with an estimated value less thanMDL 1500000, the contracting authorityshall be entitled not to requirethe contract performance guarantee from the economic operator. Wherethe contracting authorityrequires such a guarantee, the economic operator shall comply with the provisions of this Regulation.

**Section 10**

**Conclusion of thepublic works contract**

**166.**The contracting authorityshall be required toconclude the public procurement contractwith the tenderer whose offer has been established as winning. The tenderer whoseofferhas been established as winning, might be required by the awarding documentationto signthe procurement contract within 10 calendar days from the date on which it was handed over for signature.

**167.**Public works contracts may only be concluded after the standstill periodsgoverned by art.31 ofLawNo.131 din 3 July 2015.

**168.**Wherethe contracting authoritydoes not conclude the contract with the tendererwhose offer has been established as winning, or where the tendererhas not submitted the performance guarantee within the set deadline, then itshall be entitled to:

1) invite the tenderer on the second position in the ranking, for the purpose of concluding the public works contract;

2) where the tenderer classified as second in the ranking refuses to conclude the contract, the contracting authorityshall be required tocancel the award of the public works contract.

**169.**The contract shall be deemed to have been concluded on the date of signature by the parties and shall come into force as of its registration in the manner established by this Regulation.

**170.**Where the tenderer who has received the tender acceptance offer has not signed the procurement contract or has not submitted the performance guarantee within the set deadline, the contracting authorityshall be entitled to reject the offer and to select the second ranked tender.

**171.**The tenderer invited bythe contracting authorityfor the conclusionof the public works contractis required toprovidethe contractual guarantee in accordance with the provisions of the awarding documentation.

**172.**The contracting authorityis required todenounce unilaterally the public procurement contract, within at most 30 daysfrom the occurrence of unpredictable circumstances at the dateof conclusion of the public works contractand leading to the modification of the contractual clauses to such an extent that the performance of the contract would be contrary to the public interest.

**173.**In such case, the economic operator shall be entitled toclaim the appropriate payment for the part of the public works contract completed until the date of termination, as well as the recovery of other costs related to its fulfilment, performed until the unilateral termination of the contract.

**174.**Assignment of payables (debts), as well as changing any element of the concluded contractand the introduction of new elements, if such actions are likely to change the terms of the offerand increase its valuewhich grounded its selection, except as provided in art.72 ofLawNo.131 din 3 July 2015.

**175.**For public works contractswith an implementation period longer than one year, the contract may be concluded for the entire purchase, but its performance is to be ensured within the limits of annual allocationsprovided for these purposes and specified annually in the contract.

**176.**In the case of public works contracts with ongoing execution, concluded for more than one year, periodic adjustment of contract value to current prices is allowed, in accordance with the provisions of Article 72 of LawNo.131 din 3 July 2015.

**177.**In the event of non-observance of the contractual obligations by one of the parties, the injured party shall be entitled torequest terminationof the public works contractand claim damages.

**Section 11**

**The report**

**178.**The contracting authorityshall be required todraftthe report onpublic works proceduresfor each contract awardedor additional agreement (on the modification / termination of the contract) and to present it to the Agency, within 5 days from the date of the contract / agreement conclusion.

**179.**The report onthe public works procedureshall include at least the following:

1) a brief description of the works which the contracting authorityrequested offers for;

2) tenderers’ names and contact details, as well asthe name and contact details ofthe economic operatorconcluding the procurement contract, the price of the contract;

3) tenderers' qualification data;

4) the tender price or the basis for its determination, brief description of other essential conditions of each tender and the procurement contract;

5) summary of tenders’ evaluation and their comparison;

6) the decision and the appropriate arguments, where all tenders are rejected;

7) the reasons for choosing the respective acquisition method, where other than open auction procedures have been applied;

8) the decision and grounds for the application of procurement procedures, other than open auction, if those procedures did not result in the conclusion of a procurement contract;

9) the reasons for rejection, where the tender has been rejected due to corruption;

10) a summary of the requests for explanations regarding pre-selection documents or the awarding documentation, a summary of replies thereto, as well as a summary of any changes made to these documents;

11) the grounds for cancelling the procurement procedure, where the procedure has been cancelled.

AnnexNo.2

to Government Decision

No.669 of 27 May 2016

**THE LIST**

**of Government Decisions tobe repealed**

**1.**Government DecisionNo.834 of 13 September 2010 „for the approval of the Regulationon public works contracts” (Official Gazetteof the Republic of Moldova, 2007, No.169-171, art.923).

**2.**Point 2 of the amendments and supplements to be operated in certain Government Decisions, approved byGovernment DecisionNo.723 of 28 September 2012 (Official Gazetteof the Republic of Moldova, 2012, No.208, art.781).

**3.**Point 39 of the amendments and supplements to be operated in certain Government Decisions, approved byGovernment DecisionNo.928 of 12 December 2012 (Official Gazetteof the Republic of Moldova, 2012, No.263-269, art.1001).

**4.**Point 3 of the amendments and supplements to be operated in certain Government Decisions, approved byGovernment DecisionNo.62 of 21 January 2013 (Official Gazetteof the Republic of Moldova, 2013, No.18-21, art.101).

**5.**Government DecisionNo.121 of 17 February 2014 „on the amendment of theRegulationon public works contracts” (Official Gazetteof the Republic of Moldova, 2014, No.43-46, art.138).

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Government Decisions
669/27.05.2016 Decision for approving theRegulationon public works contracts*//Official Gazette 150/713, 31.05.2016*