

INVESTIGATION

Troubled sidewalks in Bălți: underestimation of the value of the purchase and discriminatory evaluation criteria

Ciolac Valeria, expert

Human Rights Association Lex XXI

Introduction

This investigation is a product of the "Public Procurement on the Understanding of All" project, carried out by the Lex XXI Human Rights Association, as a beneficiary of a sub-grant of the "Strengthening Integrity in Public Procurement" project. The project is implemented by the Institute for Development and Social Initiatives (IDIS) "Viitorul", in collaboration with the Transparency Partnership Fund (USA). The project aims to support public procurement reforms in Moldova, which will increase transparency and fairness of public procurement empowering citizens to hold the relevant institutions accountable. The views expressed and the responsibility for the content of this product belong to the author and do not necessarily reflect the views of IDIS "Viitorul" and the donor.

The monitoring activities described in this article took place in April-June 2022, focusing on a procurement procedure that took place between May and June 2020 (more precisely, the major repair of pedestrian sidewalks by paving - procedure carried out by Bălți City Hall as a contracting authority). The monitoring team followed this public procurement procedure at different stages: starting with the procurement planning stage, continuing with the stage of elaboration of the award documentation, the stage of launching the procurement, submission and opening of tenders, but also the stage of evaluation of tenders and award of the contract. The implementation and monitoring stage of the contract was not monitored, due to the fact that this public procurement procedure was canceled repeatedly (twice).

At the *procurement planning stage*, the following monitoring tools were used: the market prices of the planned paving installation works were analyzed; historical procurement contracts and possible connections between contracting authorities and contracting companies were analyzed; the procurement contracts included in the contracting authority's annual procurement plan were analyzed. At the same time, the following tools were used during the stage of elaboration of the awarding documentation: the detailed analysis of the awarding documentation, the specifications with technical specifications; examination of a possible submission of appeals on the award documentation and analysis of the ANSC decision, including the claims of economic operators; the reasoning of the contracting authority, if an appeal has been lodged. Last but not least, during the stage of *launching the procurement*, submitting and opening the tenders, the monitor used the following methods to identify the red flags: detailed analysis of all procurement documents; analysis of published clarification questions and answers of the contracting authority published in the electronic system; analysis of ANSC decisions (appeal partially / fully admitted, rejected) regarding the

appeal / appeals filed by economic operators and alleged violations; analysis of the connections between the members of the working group and the founders / administrators of the companies that submitted bids: Nostalitserv-Prim SRL, “VLADMIH COMPANY”, Primaterax-nord, and 5AQ INVEST SRL. Towards the end, the tender evaluation and contract award stage was monitored through the following mechanisms: verification of potential conflicts of interest that may exist; the analysis of possible appeals filed with the object of annulling the procurement procedure, and whether they have been filed; analysis of ANSC decisions, etc.

Practical case: troubled sidewalks in Bălți

On May 7, 2020, the City Hall of Balti published the Participation Notice on the execution of the works "Capital repair of pedestrian sidewalks by paving", according to the needs of DCC of the City Hall of Balti, through the procurement procedure Request for Quotations, MTender ID ocds-b3wdp1-MD-1588849671489.



The award documentation was attached during the procedure in SIA RSAP MTender <https://mtender.gov.md/tenders/ocds-b3wdp1-MD-1588849671489?tab=contract-notice> and on the website of Bălți City Hall: <https://balti.md/transparenta/achizitii-publice/invitatii-de-participare/>. This procurement procedure was divided into two lots. The first lot was aimed at the capital repair of the pedestrian sidewalk in Alexandru cel Bun Street, by installing paving, and the estimated value without VAT of this lot was established in the amount of 517 666.67 MDL. The second lot was aimed at the capital repair of the pedestrian sidewalk in Bulgară Street, by installing paving, the estimated value without VAT of this lot being 517 666.67 MDL without VAT.

Criteriu de atribuire	Prețul cel mai scăzut
Surse de finanțare	20018481

Lista loturilor

Lot2: Reparația capitală a trotuarului pietonal din str.Bulgară, prin instalare de pavaj Anulată
 Buget: 516667.0 MDL

Lot 1: Reparația capitală a trotuarului pietonal din str.Alexandru cel Bun, prin instalare de pavaj Anulată
 Buget: 517666.0 MDL

Point 15 of the targeted Participation Notice contains the criteria regarding the eligibility of economic operators that may determine their elimination, but also the selection criteria. Of the 24 criteria listed, one criterion draws our attention instantly: criterion no. 20. The mentioned criterion reads as follows: “Availability of its own technical or material base for rent or on the territory of Bălți municipality”, and the contracting authority requests, in this sense, a series of confirmatory documents with the application of the electronic signature.

20.	Disponibilitatea bazei tehnico-materiale proprii sau în chirie pe teritoriul mun.Bălți	Documente confirmative, cu aplicarea semnăturii electronice	DA
21.	Declarație privind obligațiile contractuale față de alți beneficiari (F 3.8)	Original. Confirmat prin semnătură electronică	DA
22.	Avizul Agenției Supraveghere Tehnică	Original. Confirmat prin semnătură electronică	DA
23.	Termenul garanției lucrărilor - 5 ani	în acest termen defectele apărute vor fi înlăturate din contul propriu cu condiția exploatării corecte a obiectului și cu excepția cazului de forță majoră	DA
24.	Garanția de bună execuție 3%	Garanția de buna execuție (emisă de o bancă comercială) conform formularului F3.4; la semnarea contractului, pentru agentul economic câștigător.	DA

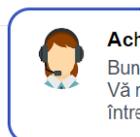
Analyzing the clarifications of the economic operators on the Mtender page, anyone can see and understand their obvious dissatisfaction with criterion no. 20. "Point 20 is included in the notice. We request that you exclude this point or we will have to challenge this requirement"; „Exclude no. 20 of the requirements. This is a requirement that limits economic operators from participating in the tender. We will have to submit an appeal to ANSC ”, etc., are just

some of the comments of economic operators in relation to this procurement procedure.

Data: 8 mai 2020, 10:11
Subiectul întrebării: documentatia
Întrebare: in anunt este inclus punctul 20. solicitam sa excludeti acest punct sau vom fi nevoiti sa contestam aceasta cerinta. Disponibilitatea bazei tehnicomateriale proprii sau în chirie pe teritoriul mun.Bălți nu poate fi criteriu de evaluare. Aceasta este favorizarea firmelor de constructie din Balti si limitarea altor agenti economici de pe teritoriul republicii moldova. Aceste acțiuni sunt contrare principiului tratamentului egal și imparțialității în privința tuturor operatorilor economici. Этот пункт притяннут за уши.

Data: 8 mai 2020, 12:26
Subiectul întrebării: Documentatia de atribuire
Întrebare: Excludeti nr 20 din cerinte,asta este o cerinta ce limiteaza agentii economici la participare la licitatie.Vom fi nevoiti sa depunem o contestatie la ANSC.O zi buna

Data: 8 mai 2020, 20:10
Subiectul întrebării: Valoarea estimativa
Întrebare: Descrierea lucrarii din punctul 8 din caetul de sarcini nu corecspunde cu cerintele conform desenelor aplicate. Valoarea estimativa a ambelor loturi este micsorata cu mult in comparatie cu valoarea reala ,



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Indeed, the availability of its own technical or material base or for rent on the territory of Bălți municipality cannot be an evaluation criterion. This criterion facilitates the favoring of construction companies in Bălți and the limitation of other economic agents on the territory of the Republic of Moldova. These actions are contrary to the principle of equal treatment, impartiality, non-discrimination against all tenderers and economic operators. This principle is stipulated very clearly in Law no. 131 of 03.07.2015 on public procurement, Chapter I, Article 7, point h: "The regulation of relations on public procurement is carried out on the basis of the principle of equal treatment, impartiality, non-discrimination with respect to all bidders and economic operators".

Respect for the principle of equal treatment implies that, at any time during the award procedure, identical rules, requirements and criteria are established and applied for all economic operators, so that they have equal chances to become contractors. The principle has sometimes been explained as involving both procedural and substantive issues: equal treatment means both equal opportunities - the definition of requirements in accordance with this principle. In applying this principle, the City Hall of Balti did not comply with an essential rule in the case investigated in this article, namely the elimination of subjective elements that may influence decisions in the process of awarding public procurement contracts.

The principle of equal treatment, impartiality, non-discrimination against all tenderers and economic operators is not the only principle that has been violated in the public procurement

procedure investigated. There is reasonable doubt that the value of the public procurement in question has been significantly underestimated. Analyzing the specifications, any construction planning expert can instantly confirm that the description of the work in point 8 of the specifications does not correspond to the requirements according to the drawings applied, and the estimated value of both lots is greatly reduced compared to the actual value, which includes labor prices and construction materials existing at the time of acquisition in the Republic of Moldova. This was also brought to light by economic operators interested in the targeted public procurement procedure: “Assessing the specifications, and comparing it with current prices, I can strongly say that it is far from reality, the value of the object being reduced. Please explain the reason! ”.

In order to convince ourselves that the value of the procurement was really underestimated, we compared the values of similar public procurements, carried out by other contracting authorities in the Republic of Moldova, in approximately the same reference period. Thus, the specifications for lot 1 - "Capital repair of the pedestrian sidewalk in Alexandru cel Bun Street, by installing paving" - indicates a quantity of 1,676 square meters of sidewalk for paving. The specifications for lot 2 - "Capital repair of the pedestrian sidewalk in Bulgară Street, by installing paving" - indicate a quantity of 1,797 meters of sidewalk for paving. Given the total estimated value of the acquisition (1,034,333.00 MDL), one meter of sidewalk to paving would have an estimated price of 298 MDL, according to the calculations of Balti City Hall.

The monitoring team identified a similar acquisition, carried out in 2021, by the General Directorate of Communal Housing and Planning of the Chisinau City Hall **ocds-b3wdp1-MD-1624282864102**. In this case, 169 square meters of pavements made of prefabricated concrete pavement slabs in Valea Trandafirilor Park had an estimated value of 120,000 MDL, which means approximately 710 MDL for a square meter of sidewalk, 2.4 times more than the price estimated by the City Hall of Balti.

The logical question that arises would be the following: why would the City Hall of Balti try to underestimate the value of this public procurement? First of all, it is worth mentioning that the value of the contract could be underestimated compared to the real contract price, either intentionally (with the respective price per m², and subsequently modified at the execution stage), or unintentionally. At the same time, when the estimated value is not correlated with the current prices, no bidder can draw up a financial and technical proposal that corresponds to the requirements of the specifications, the procurement procedure being thus subject to

cancellation. Contracting authorities may sometimes pursue certain interests in canceling procurement procedures (for example, in order to favor a particular tenderer over the repeated procedure).

It should be noted that the given procurement procedure was canceled in accordance with the request of the Communal Household Directorate.

Motivul anulării	Procedura se anulează în conformitate cu solicitarea Direcției Gospodăriei Comunale din 11.05.2020.
Data anulării	11 mai 2020, 14:59

The contracting authority launched a repeated procedure, published on 21 May 2020, which removed the two red flags described above (the discriminatory clause on the tenderer's area of operation, but also the underestimated value of the procurement).

Planificarea Achizițiilor Buletinul Achizițiilor Publice Registru contractelor

Reparația capitală a trotuarelor pietonale prin instalare de pavaj

Valoarea estimată a achiziției fără TVA
2 076 167 .00
MDL

Reparația capitală a trotuarelor pietonale prin instalare de pavaj

21 May 2020 01 Jun 2020 11 Jun 2020

Solicitare clarificări Depunerea ofertelor Calificarea ofertanților

Tipul procedurii
Licitație deschisă

Statutul procedurii
Procedură anulată

Autoritate contractantă denumire
Primăria mun. Bălți

Raion
mun.Bălți

Numărul de notificări
OCDS-B3WDP1-MD-1590059640477

This repeated procurement procedure was also canceled (because, according to the contracting authority, the number of tenderers / candidates who meet the qualification and selection requirements would have been less than the minimum number provided for each procedure). However, Law 131/2015 does not provide for the obligation of at least three qualified offers for the purchase of works. Therefore, the cancellation of a procedure “in the absence of 3 qualified tenders” is contrary to law 131/2015 and the contracting authority actually referred to GD on the procurement of works (at the date of procurement, GD 669/2016 was still in force). However, in August 2020, a new GD was approved regarding the procurement of works in which, according to law 131/2015, the obligation of the 3 offers

was excluded. Even so, the law is a priority, so here the authority has committed a third violation.

Motivul anulării

Anularea procedurii de achiziție publică:
În temeiul art. 71 alin. _1_ lit _b_).

Argumentare: numărul de ofertanți/candidați care întrunesc cerințele de calificare și selecție este mai mic decât numărul minim prevăzut pentru fiecare procedură, iar autoritatea nu a optat, conform prevederilor specifice, pentru continuarea procedurii de atribuire. În urma comparării și evaluării ofertelor, nu există trei oferte calificate. Grupul de lucru a decis anularea procedurii.

Data anulării

4 iul 2020, 13:16

Finally, although the procurement procedure in question was canceled without reason for the second time, it is a good sign that the contracting authority reacted constructively to the complaints of economic operators and to the warning signals sent by civil society. After all, it is important to keep in mind that red flags are signals or indicators of possible irregularities, fraud or corruption. At the same time, a red flag does not necessarily indicate an illegality or an act of corruption, but rather a possibility that it exists. Sometimes a red flag can indicate a human or technical error without malicious intent. In any case, civil society has a key role to play in monitoring public procurement through these red flags, ensuring transparency in the award and execution of public procurement contracts.

Theoretical notions: red flags in the field of public procurement

In the sense of Law no. 131 of 03.07.2015 on public procurement, a public procurement represents the procurement, through a public procurement contract, of goods, works or services by one or more contracting authorities from the economic operators selected by them, regardless of whether the goods, whether or not the works or services are intended for a public purpose. The contracting authority is any public authority or legal person governed by public law and an association of such authorities or persons.

In the Republic of Moldova, public procurement remains a vulnerable area to fraud and corruption, which amplifies the role of civil society in overseeing the procurement process. Limited transparency, inconsistent legal framework, lack of control and lack of qualified specialists in the field are the major problems of the public procurement system. All these produce negative effects on the development of social and economic infrastructure, the quality of public services, as well as on the trust of citizens and the business environment in state institutions.

A crucial tool that can be used by civil society to monitor how the procurement process is carried out is the red flags tool, valid for different stages of the procurement process. At the procurement planning stage, the main red flags are: (1) poor planning of public procurement without taking into account average market indicators, place of delivery of goods/provision of services, complexity of goods, purpose of procurement of goods, period of execution of contracts, etc.; (2) manipulating the need, by including in the Procurement Plan goods, services or works that do not correspond to the real needs of the authority and its beneficiaries; (3) overestimating the purchase value with the aim of favoring a certain economic operator and/or obtaining personal benefits, subsequently, at the stage of awarding contracts; (4) planning the purchase according to the interests of individual persons or groups of persons, etc.

At the stage of drafting the award documentation, the following red flags are often raised: (1) discriminatory technical specifications, which refer to a specific trademark, patent, blueprint, type of goods, works or services, etc.; (2) the technical specifications are complex, vague, too narrow or "tailored" to a particular economic operator; (3) not dividing the purchase into lots (including without justification), especially in the case of large purchases containing various categories of goods, services, works, etc.

During the stage of launching the procurement, submitting and opening the bids, the following red flags are found: (1) the notice of participation was published in terms far too narrow for the type and complexity of the procurement; (2) evasive and unclear responses from the contracting authority to requests for clarification submitted by economic operators; (3) unjustified refusal by the contracting authority at the civil society's request to be part of the procurement working group; (4) a conflict of interest between a member of the working group and one of the bidders, etc.

The most frequent red flags encountered during the tender evaluation and contract award stage are the following: (1) presentation of false documents in the public procurement procedure; (2) exclusion of a bidder/bidders without legal basis; (3) accepting inappropriate offers; (4) unjustified cancellation of the procurement procedure, etc.

Last but not least, a series of red flags can be identified at the contract implementation and monitoring stage: (1) the contractor requests an increase in the contract value (independent of the contracting authority) in a very short time after signing the contract; (2) the contracting authority admits violations regarding the quantity/quality of the goods delivered or the works

performed; (3) the contracting authority admits the violation of the terms of delivery of goods, execution of works, etc.

The fate of the target acquisition nowadays

In September 2021, the procurement "Capital repair of the pedestrian sidewalk in Bulgăra street (from I. Franco street to the ring road) Balti municipality" was launched repeatedly, according to the needs of the DGC of the Balti Municipality City Hall. The contract was planned for 2 years: a. 2021 – 8,408,000.00 lei with VAT, and a. 2022 – 967,950.00 lei with VAT. In this open tender, 2 economic bidders participated: "Tehnologica Construct" (with an offer of 7,597,819.76 MDL) and "VLADMIH COMPANY" (with an offer of 8,422,051.01 MDL). The winner of this public procurement procedure was the company "Tehnologica Construct".

According to the contracting authority, to demonstrate similar experience, SRL "Tehnologica Construct" specified contract no. 61 of 04.09.2020 concluded with the Orhei District Council for road construction works L336,1 Access road to the village of Tabăra in the amount of 14,369,570.46 lei (verified information on the official page of AAP). Paving samples (4 types) corresponding to the technical requirements of the execution project were presented, as well as photos/images for benches and trash cans. The price of 8,950.00 lei without VAT per ton for the metal parapet 11DO-U2 was confirmed. The economic operator presented the offer that corresponds to the minimum qualification requirements requested by the documents related to similar experience, insurance with qualified personnel and specialized equipment to be trained for the execution of the works. Also, all the certificates from the control bodies were presented, the quotations, the execution schedule, the guarantees, the declarations and other documents necessary for the qualification were created. It was found that the economic operator SRL "Tehnologica Construct" developed the quotations in accordance with the requirements of the technical regulations in force, including all the works and respecting all the requirements submitted to the object of the acquisition, according to the specifications.

Speaking about the second sidewalk (from Alexandru cel Bun Street), more information about the fate of this purchase can be found in the Annual Public Procurement Plan for 2022 (on the Bălți City Hall website). Thus, the capital repair of the sidewalk in Konev Street (including Alexandru cel Bun Street to the intersection with Ivan Franko Street) is planned for the period July-August 2022 (open tender). The estimated planned amount of this procurement procedure (thousands of lei) is 2137.2 MDL without VAT and 2564.6 MDL

with VAT. The ADO Lex XXI team will continue to monitor the fate of this public procurement procedure, and further.

Disclaimer

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